03-798-CD
UTICA MUTUAL INSURANCE CO.vs.HAMILTON BROTHERS COAL,[illegible]



Utica Mutual Insurance Company vs. Hamilton Brothers Coal, Inc., et al

Civil Other

Date		Judge
6/2/2003	Filing: Civil Complaint Paid by: Paul K. Vey, Esq. Receipt number: 1860852 Dated: 06/02/2003 Amount: $85.00 (Check)	No Judge
6/10/2003	Sheriff Returns: Served Complaint on Defendants June 4, 2003 Shff. Hawkins $62.53, Surcharge $50.00 Paid by Atty.	No Judge
7/16/2003	Preliminary Objections to Plaintiff's Complaint filed by Atty. Bell. 5 CC to Atty.	No Judge
7/18/2003	Miscellaneous Payment: Copy Fee Paid by: James G. Rossi, Esquire Receipt number: 1863234 Dated: 7/18/2003 Amount: $1.00 (Check)	No Judge
8/8/2003	Praecipe to Place Case on Argument List, filed by s/William J. Wyrick, Esq. No CC	No Judge
	Preliminary Objections to Defendants' Preliminary Objections, filed by s/William J. Wyrick, Esq. No CC	No Judge
11/21/2003	ORDER, NOW, this 20th day of November, 2003, re; Preliminary Objections allegingPlaintiff's improper service of Complaint against the corporation Defendant shall be and is hereby DISMISSED as objections haveno basis to raise this issue. Defendants' Preliminary Objections seeking to require Plaintiff to join the Department of Environmental Protection and Fred Kuzemchak as necessary parties defendant shall be and is hereby DISMISSED as Defendantss may accomplish the same objective by joining said parties as additional defefendants. by the Court, s/JKR, JR., P.J. 1 cc Atty Vey, Bell, and Hamilton Brothers Coal, Inc.	John K. Reilly Jr.
	~~Certificate of Service. Petition to Amend Complaint upon: BRIAN M. JURY. filed by, s/Kimberly M. Kubista, Esquire no cc~~	~~John K. Reilly Jr.~~
3/25/2004	Consented Motion For Leave Of Court To Amend Complaint. filed by, s/Robert J. Monahan, Esquire Verification s/Robert J. Monahan, Esquir Certificate of Service 1 cc to Atty Vey	John K. Reilly Jr.
	Praecipe To Place Case On Argument List. filed by, s/Robert J. Monahan, Esq. Certificate of Service 1 cc Atty Vey Copy to CA	John K. Reilly Jr.
3/26/2004	ORDER, NOW, this 25th day of March, 2004, re: Plaintiff's Consented Motion for Leave of Court to Amend Complaint, a Rule is issued upon Defendants. Argument is scheduled the 20th day of April, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 3 cc Atty Vey w/memo re: Rule	Fredric Joseph Ammerman
4/19/2004	Stipulations and Consent for Plaintiff's Motion for Leave of Court to File Amended Complaint., filed by Atty. Vey. 3 Cert. to Atty..	Fredric Joseph Ammerman
6/9/2004	Amended Complaint In Civil Action. filed by, s/Paul K. Vey, Esquire Verification s/Frank L. Madia Certificate of Service no cc	Fredric Joseph Ammerman
1/12/2006	Notice of Praecipe to Enter Default Judgment, (10 day Notice) filed by s/ Paul K. Vey Esq. No CC.	Fredric Joseph Ammerman
1/19/2006	Preliminary Objections to Plaintiff's Amended Complaint, filed by s/ F. Corte Bell, III, Esquire. 4CC Atty. Bell	Fredric Joseph Ammerman

DATE: 10 / 28 / 08

NAME: Shelly M Zattoni

TELEPHONE NUMBER: (814) 236 - 2946

ADDRESS: 265 Bailey Rd
Curwensville PA 16833

OTHER PARTIES INVOLVED:

REASON FOR FILING THIS PETITION (Write a brief description of your financial problems(s), please be specific. Failure to do so could result in your request being delayed or denied.) (Example: request for filing fee or Mediation Conference fee to be waived due to your inability to submit the required fee because. . .)

request for filing fee to be waived due to the inability to submit the required fee because my husband left us with outstanding bills and still doesn't help financially at all.

TYPE OF ACTION: (divorce, custody, District Justice appeal, etc. Please specify what type of action you are pursuing through this application.)

Civil Other

Date		Judge
1/20/2006	X Order, NOW, this 20th day of Jan., 2006, upon consideration of Defendants' Preliminary Objections to Plaintiff's Amended Complaint, Ordered that argument has been scheduled for the 24th day of Feb., 2006 at 1:30 p.m. in Courtroom No. 1. By The Court: /s/ Fredric J. Ammerman, Pres. Judge. 1CC to: Atty. Vey Atty. Bell Hamilton Bros. RD Box 184, Coalport, PA 16627 Hamilton Bros., Fred Kuzemachak, RD2 Box 563, Clymer, PA 15728	Fredric Joseph Ammerman
2/17/2006	X Motion to Withdraw as Councel, filed by Atty. Bell. 5 Cert. to Atty.	Fredric Joseph Ammerman
2/22/2006	X Rule to Show Cause AND NOW, this 21st day of February, 2006, upon consideration of the Motion to Withdraw as Counsel filed in the above captioned matter, Rule is hereby granted on the Defendants to show cause why said Motion should not be GRANTED. Rule Returnable for Answer by the Defendants and hearing on said Motion to be held on the 20th day of March, 2006 at 9:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 5CC atty Bell.	Fredric Joseph Ammerman
3/1/2006	X Order NOW this 28th day of February, 2006 upon consideration of the Preliminary Objections to Plaintiff's Amended Complaint filed by the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton and the Court having held argument thereon it is the ORDER of this Court that said Preliminary Objection be and are hereby granted as follows: 1. The Plaintiff is directed to file an Amended Complaint and attached theret complete copies of all documents by way of Indemnity Agreements, Surety Bonds and/or Permits which are the basis for the claim asserted by the Plaintiffs against the Defendants. 2. The Plaintiff is directed to make service of said Amended Complaint upor each of the specific Defendants named to include specifically service upon the defendant Hamilton Brothers Coal, Inc. which service as to Hamilton Brothers Coal Inc. is not to be made upon Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton Jr and/or Ethel M. Hamilton. BY THE COURT /s/ Fredric J. Ammerman, P. Judge. 1CC to Atty Vey, Hamilton Borthers Coal Inc., Hamilton Coal Inc., c/o Fred Kuzemachak, Robert Hamilton, James E. Hamilton Jr. and Atty Bell.	Fredric Joseph Ammerman
	X Order NOW this 28th day of Feb., 2006 upon consideration of the Motion to Withdraw as counsel filed by F. Cortez Bell, III, Esquire in regard to his representation as to certain of the Defendants in the above cpationed matte and the Court having held hearing thereon on Friday, February 24, 2006, it i the ORDER of this Court that said Motion to WIthdraw as Counsel be and is hereby granted and the appearace of F. Cortez Bell III, Esquire as counsel for the defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton Jr. and Ethel M. Hamilton be and is withdrawn. BY THE COURT: Fredric J. Ammerman, P. Judge. 1CC Atty Vey, Hamilton Brothers Coal Inc., Hamilton Brothers Coal Inc. c/o/ Fred Kuzemachak, Robert Hamilton, James E. Hamilton Jr. and Atty Bell.	Fredric Joseph Ammerman
	X Order, NOW, this 24th day of Feb., 2006, following argument on Defendants Preliminary Objections to Plaintiff's Amended Complaint, Ordered that counsel for Defendants supply the Court and counsel for Plaintiff with proposed Order by no later than Feb. 28, 2006. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys Vey, F. Cortez Bell III. 1CC Hamilton Brothers Coal inc	Fredric Joseph Ammerman

In the Court of Common Pleas of Clearfield County, Pennsylvania

Civil Division

Shelly M Zatton,

Plaintiff

vs.

Ronald W Zatton,

Defendant

No. 08-2060-C.D.

ORDER

NOW, this _____ day of _____, _____, upon consideration of the foregoing Affidavit in Support of Petition to Proceed In Forma Pauperis, It is the ORDER of this Court that said Petition is GRANTED/DENIED.

If the Petition is GRANTED, Filing / Mediation Conference fee is hereby WAIVED.

By the Court,

_____
JUDGE

Civil Other

Date		Judge
3/6/2006	Returned mail, Order, dated Feb. 28, 2006 to Hamilton Brothers Coal Inc at Rd Box 184, Coalport, PA 16627, no further address in file.	Fredric Joseph Ammerman
	Returned mail, Order, dated February 24, 2006, to Hamilton Brothers Coal Co Inc. at RD Box 184, Coalport, PA 16627	Fredric Joseph Ammerman
5/24/2006	Petition for Judgment of Non Pros, filed by James E. Hamilton, Jr. 5 Cert. to Hamilton, Jr.	Fredric Joseph Ammerman
5/25/2006	Order, NOW, this 24th day of May, 2006, upon consideration of Def.'s Petition for Judgment of Non Pros, Ordered that argument has been scheduled for the 14th day of July, 2006 at 9:00 a.m. in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC James Hamiltor Jr. 262 Market St., Coalport, PA 16627	Fredric Joseph Ammerman
5/31/2006	Second Amended Complaint in Civil Action, filed by s/ Matthew D. Gailey Esq. No CC.	Fredric Joseph Ammerman
6/6/2006	Preliminary Objections to Plaintiff's Second Amended Complaint, filed by s/ Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton Jr and Ethel M. Hamilton-defts. 3CC defts.	Fredric Joseph Ammerman
6/23/2006	Response to Defendants' Preliminary Objections to Plaintiff's Second Amended Complaint, filed by s/ Matthew D. Gailey Esq. No CC.	Fredric Joseph Ammerman
7/13/2006	Sheriff Return, June 15, 2006, Sheriff of Indiana County was deputized. June 26, 2006 Attempted to Serve the within Second Amended Complaint o Hamilton Brothers Coal Inc., not found. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Pietragallo $31.00 Indiana Co. costs pd by Pietragallo $50.00	Fredric Joseph Ammerman
7/14/2006	Praecipe To Withdraw Argument, filed by s/ Matthew D. Gailey, Esquire. NO CC	Fredric Joseph Ammerman
7/17/2006	Order, NOW, this 14th day of July, 2006, It is Ordered the Petition for Non Pros and Preliminary Objections to Plaintiff's Second Amended Complaint are hereby dismissed. Defendants with the exception of Hamilton Brothers Coal, Inc. shall have 45 days from this date in which to file a responsive pleading to the Second Amended Complaint. The 45 day period shal also apply to the Defendants filing a petition to join any additional defendants. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to: Paul K. Vey, Esquire William Wyrick, Esq. Robert J. Monahan, Esquire Matthew D. Gailey, Esquire Pietragallow, Bosick & Gordon Hamilton Brothers Coal Inc. Robert Hamilton Anna Marie Hamilton James E. Hamilton, Jr. Ethel M. Hamilton	Fredric Joseph Ammerman
7/23/2006	Mail returned, copy of Court Order dated July 14, 2006, addressed to Hamilton Brothers Coal, Inc. c/oFred Kuzemachak, RD 2 Box 563 Clymer, PA 15728	Fredric Joseph Ammerman

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*** FAX TX REPORT ***
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TRANSMISSION OK

JOB NO.	1451
DESTINATION ADDRESS	2665108
PSWD/SUBADDRESS	
DESTINATION ID	
ST. TIME	11/17 15:33
USAGE T	13'55
PGS.	30
RESULT	OK

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

Clearfield County Courthouse

Fax

To: Stephanie From: William A. Shaw

Fax: 814-266-5108 Date: November 17, 2008

Phone: 814-266-1799 Pages: 30

Re: CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

* This is not a title search, if you need one of those you can call the local Abstracters at 814-765-3869

Civil Other

Date		Judge
8/22/2006	X Motion For Extension of Time to File A Responsive Pleading to Second Amended Complaint And to File Petition To Join Additional Defendants, File by s/ Robert E. Hamilton, Pro-Se, Anna Marie Hamilton, Pro-Se, James E. Hamilton, Jr., Pro-Se, and Ethel M. Hamilton, Pro-Se. 5CC R. Hamilton	Fredric Joseph Ammerman
8/23/2006	X Order, NOW, this 23rd day of August, 2006, it is Ordered that Def.'s Motion for Extension of Time to File a Responsive Pleading to Second Complaint and to File Petition to Join Additiional Defendants is Granted. Defendant shall have an additional 60 days from this date to file responsive pleadings. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 5CC R. Hamilton, RR Box 16, Irvona PA 16656	Fredric Joseph Ammerman
9/13/2006	X Praecipe, filed. Kindly enter my appearance as counsel for the above defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton Jr. and Ethel M. Hamilton, filed by s/ Ronald L. Collins Esq. 3CC Atty.	Fredric Joseph Ammerman
	X Motion For Reconsideration to Scheduled Argument on Preliminary Objections, filed by s/ Ronald L. Collins, Esquire. 4CC to Atty.	Fredric Joseph Ammerman
	Original Transcript of Proceedings, filed by Ronald L. Collins, Esquire. Held on July 14, 2006 before Fredric J. Ammerman, Pres. Judge.	Fredric Joseph Ammerman
9/18/2006	X Order, NOW, this 14th day of Sept., 2006, Motion for Reconsideration to Schedule Argument on Preliminary Objection is Denied. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to: Paul K. Vey, Esquire William Wyrick, Esquire Robert J. Monahan, Esquire Matthew D. Gailey, Esquire Pietragallo, Bosick & Gordon Hamilton Brothers Coal Inc. Robert and Anna Marie Hamilton James E. Jr. and Ethel M. Hamilton	Fredric Joseph Ammerman
9/22/2006	X Returned mail, Order, dated September 14, 2006 to Hamilton Brothers Coal Inc., not deliverable as addresses-unable to forward at C/O Fred Kuzemachak Rd @ Box 563, Clymer, PA 15728	Fredric Joseph Ammerman

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

NATURE'S BLEND WOOD PRODUCTS, INC., Plaintiff	:	No. 03-1350-CD
vs.	:	Type of Pleading:
RYAN HORCHEN, DUSTIN HORCHEN and BRUNIE HORCHEN, d/b/a HORCHEN'S CABINETRY AND FINE WOODWORK, Defendants	:	**COMPLAINT IN CONFESSION OF JUDGMENT**
	:	Filed on Behalf of: PLAINTIFF
	:	Counsel of Record for This Party: Matthew B. Taladay, Esq. Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P.O. Box 487 DuBois, PA 15801 (814) 371-7768

FILED

SEP 15 2003

William A. Shaw
Prothonotary

Civil Other

Date		Judge
10/23/2006	Praecipe for Writ of Summons to Join Additional Defendants, filed by s/ Ronald L. Collins Esq. (Additional Defendants: Evergreen Insurance Associates Inc., Commonwealth of Pennsylvania Department of Environmental Protection and Fred Kuzemchak) 6CC & 6 writs to Atty Collins.	Fredric Joseph Ammerman
	Answer, New Matter and Counterclaim, filed by s/ Ronald L. Collins Esq. 2CC Atty Collins.	Fredric Joseph Ammerman
12/6/2006	Preliminary Objections of Plaintiff to Defendants' Counterclaim to Plaintiff's Second Amended Complaint, filed by s/Matthew D. Gailey, Esq. No CC	Fredric Joseph Ammerman
	Reply to New Matter, filed by s/ Matrthew D. Gailey Esq. No CC.	Fredric Joseph Ammerman
12/13/2006	Scheduling Order, AND NOW, this 13th day of December, 2006, argument on Plaintiff's Preliminary Objections to Defendants' Counterclaim to Plaintiff's Second Amended Complaint is scheduled January 29, 2007, at 11:00 a.m. BY THE COURT: /s/Fredric J. Ammerman, P.J. Six CC Attorney Gailey	Fredric Joseph Ammerman
1/30/2007	Order, NOW, this 29th day of Jan., 2007, upon the agreement of counsel, Ordered that the Defendants' Preliminary Objections to the Counterclaim to the Second Amended Complaint are granted to the extent that Paragraph 5 is stricken from the Defendants' Counterclaim. The bad faith claim as set forth within the Counterclaim is dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Vey, Wyrick, Monahan, Gailey, R. Collins 1CC: Hamilton Brothers Coal, Inc. Fred Kuzemchak RD 2, Box 563 Clymer, PA 15728 1CC: Evergreen Ins. Assoc., Inc. PO Box 505 Ebensburg, PA 15931 1CC: Comm. of PA-DEP Hawk Run District Office Empire Road Hawk Run, PA 16840	Fredric Joseph Ammerman
2/5/2007	Returned mail, Order, dated January 29, 2007 to Hamilton Brothers Inc., Fred Kuzemchak remailed to RD#1 Box 16, Irvona, PA.	Fredric Joseph Ammerman
	Returned mail, Order, dated January 29, 2007 to Commonwealth of Pennsylvania, Dept of Environmental Protection, no further address in file.	Fredric Joseph Ammerman
2/15/2007	Sheriff Return, February 15, 2007 Returned the within Writ to Join Additiona Defendant "NOT SERVED, TIME EXPIRED" as to Evergreen Insurance Associates Inc. February 15, 2007 After diligent search I returned the within Writ to Join Additional Defendant "NOT FOUND" as to Commonwealth of Pennsylvania Department of Environmental Protection. February 15, 2007 Returned the within Writ to Join Additional "NOT SERVED, TIME EXPIRED" as to Fred Kuzemchak. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Collins $70.41	Fredric Joseph Ammerman
5/8/2007	Reply to Counter-Claim And New Matter to Counter-Claim, filed by s/ Matthew D. Gailey, Esquire. No CC	Fredric Joseph Ammerman
9/25/2007	Motion to Compel Discovery Responses, filed by s/Matthew D. Gailey, Esquire. No CC	Fredric Joseph Ammerman

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

NATURE'S BLEND WOOD PRODUCTS, INC., Plaintiff	:	
vs.	:	No. 03-1350-CD
RYAN HORCHEN, DUSTIN HORCHEN and BRUNIE HORCHEN, d/b/a/ HORCHEN'S CABINETRY AND FINE WOODWORK, Defendants	:	

COMPLAINT - CONFESSION OF JUDGMENT

Plaintiff, NATURE'S BLEND WOOD PRODUCTS, INC., by his undersigned attorney avers as follows:

1. Plaintiff is NATURE'S BLEND WOOD PRODUCTS, INC., is a corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 202 First Avenue, Ford City, Armstrong County, Pennsylvania, 16226.

2. Defendant, RYAN HORCHEN, is an adult individual with a business mailing address of 305 Aspen Way, DuBois, Clearfield County, Pennsylvania, 15801.

3. Defendant, DUSTIN HORCHEN, is an adult individual with a business mailing address of 305 Aspen Way, DuBois, Clearfield County, Pennsylvania, 15801.

Civil Other

Date		Judge
9/27/2007	Order, this 27th day of Sept., 2007, oral argument on the above Plaintiff's Motion to Compel Discovery Responses is scheduled before the undersigne in Courtroom 2 on Oct. 10, 2007 at 9:30 A.M. By the court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Gailey	Fredric Joseph Ammerman
10/11/2007	Order, Filed 3 Cert. to Atty Gailey NOW, this 10th day of October, 2007, ORDERED that Defendant provide answers to all of Plaintiff's discovery within 20 days. Plaintiff's Motion to Compel Discovery Requests is hereby Granted.	Fredric Joseph Ammerman
11/2/2007	Motion For Sanctions, filed by s/ Matthew D. gailey, Esquire. No CC	Fredric Joseph Ammerman
11/6/2007	Scheduling Order, this 5th day of Nov., 2007, oral argument on the above Plaintiff's Motion for Sanctions is scheduled before the undersigned in Courtroom 1 on Dec. 3, 2007 at 11:00 a.m. By The Court, /s/ Fredric J. Ammerman. Pres. Judge. 1CC Atty. Gailey	Fredric Joseph Ammerman
11/7/2007	Certificate of Service, filed. Served this 5th day of November 2007 the Answ to Request for Production of Documents to Matthew D. Gailey Esq by US Mail Express, filed by s/ Ronald L. Collins Esq. NO CC.	Fredric Joseph Ammerman
	Certificate of Service, filed. Served this 5th day of November 2007 the Answ to First Set of Interrogatories to Matthew D. Gailey Esq. by US mail express filed by s/ Ronald L. Collins Esq. NO CC.	Fredric Joseph Ammerman
	Certificate of Service, filed. Served this 5th day of November 2007 the Answ to Request for Admissions to Matthew D. Gailey Esq. by US Mail express filed by s/ Ronald L. Collins Esq. NO CC.	Fredric Joseph Ammerman
12/15/2008	Motion For Summary Judgment, filed by s/ Matthew D. Gailey, Esquire. No CC	Fredric Joseph Ammerman
12/16/2008	Order, Dec. 16, 2008, the Court hereby schedules plaintiff's Motion for Summary Judgment for argument on Feb. 5, 2009 at 2:30 p.m. courtroom 1 by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Gailey	Fredric Joseph Ammerman

03-1350 CD

4. Defendant, BRUNIE HORCHEN, is an adult individual with a business mailing address of 305 Aspen Way, DuBois, Clearfield County, Pennsylvania, 15801.

5. Defendants collectively due business as HORCHEN'S CABINETRY AND FINE WOODWORK.

6. On June 3, 2003, Defendants executed a Judgment Cognovit Note in favor of Plaintiff. A true and correct copy of said Note is attached hereto and marked as Exhibit "A".

7. By the terms of said Note, Defendants were required to pay Plaintiff Forty-two Thousand and 00/100 ($42,000.00) Dollars payable in 21 consecutive monthly installments of Two Thousand and 00/100 ($2,000.00) Dollars.

8. Said Note provided for acceleration of debt and confession of judgment upon Defendants' default of thirty (30) days in making the required payments to Plaintiff.

9. Defendants made one payment of Two Thousand and 00/100 ($2,000.00) Dollars when they executed the Note.

10. The next payment was due July 1, 2003. Defendants have failed to make this or any other further payment.

11. Judgment is not being entered by confession against a natural person in connection with a consumer credit transaction.

12. Judgment has not been entered on the attached Note in any other jurisdiction.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL DIVISION

No.: 03-798-CD

COMPLAINT IN CIVIL ACTION

Code: _____

Filed on Behalf Of: PLAINTIFF UTICA MUTUAL INSURANCE COMPANY

Counsel of Record for This Party:

PAUL K. VEY, ESQUIRE
Pa. I.D. No. 30824

PIETRAGALLO, BOSICK & GORDON
Firm I.D. No. 834
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

(412) 263-2000

FILED

JUN 0 2 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY,	**CIVIL DIVISION**
Plaintiff,	**No.:** _____
v.	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

JURY TRIAL IS DEMANDED

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint 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.

LAWYER REFERRAL SERVICE
Clearfield County
PA Bar Association
P.O. Box 186
Harrisburg, PA 17108
TELEPHONE: (800) 692-7375

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No.: _____

v.

HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual,

Defendants.

COMPLAINT

AND NOW, comes the Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon and files the within Complaint in Civil Action averring as follows:

1. Plaintiff, Utica Mutual Insurance Company, (hereinafter "Utica") is a New York corporation licensed to do business in Pennsylvania with its principal place of business at 180 Genessee Street, New Hartford, New York, 13413.

2. Defendant, Hamilton Brothers Coal, Inc., is a Pennsylvania corporation with its principal place of business at R.D. Box 184, Coalport, Pennsylvania 16627.

3. Defendants, Robert E. Hamilton and Anna Marie Hamilton are individuals with a last known address of R.D. No. 1, Box No. 16, Irvona, Pennsylvania 16656.

4. Defendants, James E. Hamilton and Ethel M. Hamilton are individuals with a last known address of Box 134, R.D. #1, Coalport, Pennsylvania, 16627.

5. Plaintiff Utica was in the business of issuing surety bonds for surface mining operations in Pennsylvania.

6. At all times relevant hereto, defendants conducted surface mining activities in Beccaria Township, Clearfield County, Pennsylvania pursuant to Commonwealth of Pennsylvania Department of Environmental Protection Permit Nos. 17880122, 17910122 and 17930116.

7. In connection with the execution of these contracts, defendants were required to post surety bonds.

8. Pursuant to that requirement, defendants contacted plaintiff Utica which in turn issued surety bonds SU1524284, SU1545137, SU1554222, SU1635674 and SU042849 for permit numbers 17880122, 17910122 and 17930116.

9. Prior to the execution of the surety bonds, the defendants executed an indemnity agreement with plaintiff Utica pursuant to which defendants individually agreed to indemnify plaintiff Utica for any losses sustained by plaintiff Utica with regard to the surety bonds issued, including attorneys' fees and costs. (A copy of the indemnity agreement is attached hereto and made a part hereof as Exhibit "A").

10. After being awarded the contract and obtaining the surety bonds and other required liability insurance, defendants commenced work on permit numbers 17880122, 17910122 and 17930116. Plaintiff Utica subsequently learned that the defendants were defaulting on their obligations under all three permits.

11. As a result of Defendants' actions, plaintiff Utica was required to make payment on the referenced bonds to the Department of Environmental Protection and did so on January 12, 2000.

12. Pursuant to the indemnity agreement signed in their individual capacities, the defendants are required to indemnify plaintiff Utica for attorneys' fees and costs expended by plaintiff Utica to insure compliance with the Department of Environmental Protection 's regulations and/or responding to or defending claims arising out of such action, and in pursuing this action.

13. Presently, defendants owe plaintiff Utica $149,254.59 for the costs associated with payment to the Department of Environmental Protection and with attorneys' fees incurred to date with respect to pursuing this action.

14. Defendants failure to pay plaintiff Utica the $149,254.59 plus ongoing attorneys' fees owed is a material breach of the indemnity agreement entered into by and between plaintiff Utica and defendants.

15. Defendants breach, as aforesaid, has caused plaintiff injury in excess of $149,254.59 exclusive of interest, plus services rendered and expenses advanced up to the time of trial.

WHEREFORE, plaintiff Utica Mutual Insurance Company demands judgment against defendants in the amount of $149,254.59, plus attorney fees, together with interest, plus services rendered and expenses advanced up to the time of trial.

JURY TRIAL DEMANDED

Respectfully submitted,

By: _____

Paul K. Vey, Esquire
Pa. I. D. No. 30824

PIETRAGALLO, BOSICK & GORDON
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

Attorneys for Plaintiff, Utica Mutual
Insurance Company

VERIFICATION

I, **Frank L. Madia,** verify that I am a representative of **Utica Mutual Insurance Company**, the Plaintiff in the within action, that I am authorized to file the foregoing **Complaint in Civil Action** on its behalf, and that the statements and averments of fact contained therein are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa. C.S.A. Section 4904.

Dated: 4/28/03

Frank L. Madia

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

GENERAL AGREEMENT OF INDEMNITY

This Agreement entered into by and between the undersigned, herein called the Indemnitors, and the Utica Mutual Insurance Company of New Hartford, New York, herein called the Company, witnesseth:

WHEREAS, in the transaction of business certain bonds, undertakings and other writings obligatory in the nature of a bond have heretofore been, and may hereafter be, required by, for, or on behalf of the Indemnitors or any one or more of the parties included in the designation Indemnitors, and application has been made and will hereafter be made to the Company to execute such bonds, and as a prerequisite to the execution of such bond or bonds, the Company requires complete indemnification.

NOW, THEREFORE, in consideration of the premises, and the payment by the Company of the sum of One ($1.00) Dollar to each of the Indemnitors, receipt whereof is hereby acknowledged, and for other good and valuable considerations, the Indemnitors do, for themselves, their heirs, executors, administrators and assigns, jointly and severally, agree with the Company as follows:

1. The Indemnitors will pay to the Company, at its Home Office in the Town of New Hartford, New York, premiums and charges at the rates, and at the times specified in respect to each such bond in the Company's schedule of rates, which, with any additions or amendments thereto, is by reference made a part hereof, and will continue to pay the same where such premium or charge is annual, until the Company shall be discharged and released from any and all liability and responsibility upon and from each such bond or matters arising therefrom, and until the Indemnitors shall deliver to the Company at its Home Office in New Hartford, New York, competent written evidence satisfactory to the Company of its discharge from all liability on such bond or bonds.

2. The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of, such bonds, or any renewals or continuations thereof or substitutes therefor, including fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. In the event of payments by the Company, the Indemnitors agree to accept the voucher or other evidence of such payments as prima facie evidence of the propriety thereof, and of the Indemnitors' liability therefor to the Company.

3. If the Company shall set up a reserve to cover any claim, suit or judgment under any such bond, the Indemnitors will, immediately upon demand, deposit with the Company a sum of money equal to such reserve, such sum to be held by the Company as collateral security on such bond, and such sum and any other money or property which shall have been, or shall hereafter be, pledged as collateral security on any such bond shall, unless otherwise agreed in writing by the Company, be available, in the discretion of the Company, as collateral security on any other or all bonds coming within the scope of this Agreement.

4. The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability with which the Company may be subsequently charged under any such bond, shall notify the Company thereof in writing at its Home Office in the Town of New Hartford, New York.

5. The Company shall have the exclusive right to determine for itself and the Indemnitors whether any claim or suit brought against the Company or the Principal upon any such bond shall be settled or defended and its decision shall be binding and conclusive upon the Indemnitors.

6. The Company, and its designated agents, shall, at any and all reasonable times, have free access to the books and records of the Indemnitors.

7. If such bond be given in connection with a contract, the Company is hereby authorized, but not required, to consent to any change in the contract or in the plans or specifications relating thereto; to make or guarantee advances or loans for the purpose of the contract without necessity of seeing to the application thereof, it being understood that the amount of all such advances or loans, unless repaid with legal interest by the Contractor to the Company when due, shall be conclusively presumed to be a loss hereunder; in the event the Indemnitors, or any of them, shall fail to pay any premium charge when due; or abandon, forfeit or breach such contract; or breach any bond given in connection therewith; or fail, neglect or refuse to pay for any labor or materials used in the prosecution of such contract; or have proceedings instituted against them, or any of them, alleging that they are insolvent, or for the appointment of a receiver or trustee for the benefit of creditors, whether such Indemnitor(s) are insolvent or not; or have proceedings instituted against them, or any of them, the effect of which may be to deprive any of them of the use of any part of the equipment used in connection with the work under the contract so as to hinder, delay or impede the normal and satisfactory progress of the work, the Company shall have the right, but not the obligation, to take possession of the work under the contract and under any other contract in connection with which the Company has given its bond or bonds within the purview of this General Agreement of Indemnity and, at the expense of the Indemnitors, to complete the contract(s), or cause, or consent, to the completion thereof. The Indemnitors hereby assign, transfer, and set over to the Company (to be effective as of the date of such bond or bonds, but only in the event of a default as aforesaid), all of their rights under the contract(s), including their right, title and interest in and to all subcontracts let in connection therewith; all machinery, plant, equipment, tools and materials which shall be upon the site of the work or elsewhere for the purposes of the contract(s), including all materials ordered for the contract(s), any and all sums due under the contract(s) at the time of such default, or which may thereafter become due, and the Indemnitors hereby authorize the Company to endorse in the name of the payee, and to receive and collect any check, draft, warrant or other instrument made or issued in payment of any such sum, and to disburse the proceeds thereof.

8. That it shall not be necessary for the Company to give the Indemnitors, or any one or more of them, notice of the execution of any such bonds, nor of any fact or information coming to the notice or knowledge of the Company affecting its rights or liabilities, or the rights or liabilities of the Indemnitors under any such bond executed by it, notice of all such being hereby expressly waived.

9. In the event of any claim or demand being made by the Company against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of a bond or bonds, the Company is hereby expressly authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and we hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

10. The Company is not required, by reason of any applications for a bond or by reason of having issued a previous bond or bonds or otherwise, to execute or procure the execution of or participate in the execution of any such bond or bonds and the Company, at its option, may decline to execute or to participate in or procure the execution of any such bond without impairing the validity of this General Agreement of Indemnity.

11. If the Company procures the execution of such bonds by other companies, or executes such bonds with cosureties, or reinsures any portions of such bonds with reinsuring companies, then all the terms and conditions of this Agreement shall apply and operate for the benefit of such other companies, cosureties and reinsurers as their interest may appear.

12. The liability of the Indemnitors hereunder shall not be affected by the failure of the Principal to sign any such bond, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

13. These covenants herein and also all collateral security, if any, at any time deposited with the Company concerning the said bond or bonds and any other former or subsequent bonds executed for the Indemnitors at their instance shall, at the option of the Company, be available in its behalf and for its benefit as well concerning any bond or undertaking applied for, and also concerning all other former or subsequent bonds and undertakings, executed for the Indemnitors or for others at their request.

14. This Agreement may be terminat[illegible] the Indemnitors, or any one or more of t[illegible]ies so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days; but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force.

15. Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee.

16. THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF.

17. This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of Hamilton Brothers Coal Inc.

18. IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of 19

HAMILTON BROTHERS COAL INC.

Thomas C Johnson
Witness

Robert E. Hamilton (L. S.)
Robert E. Hamilton, President

Box 157 Irvona Pa
Street or P. O. Box City State

Box 134, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Robert E. Hamilton (L. S.)
Robert E. Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

Anna Marie Hamilton (L. S.)
Anna Marie Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

James E. Hamilton Jr (L. S.)
James E. Hamilton, Jr., Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Ethel M. Hamilton (L. S.)
Ethel M. Hamilton, Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE.

14. This Agreement may be terminat[ed] the Indemnitors, or any one or more of th[em] ies so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force.

15. Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee.

16. THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF.

17. This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of Hamilton Brothers Coal Inc.

18. IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of 19

HAMILTON BROTHERS COAL INC.

Thomas C Johnson
Witness

Robert E Hamilton (L. S.)
Robert E. Hamilton, President

Box 157 Irvona Pa
Street or P. O. Box City State

Box 134, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Robert E Hamilton (L. S.)
Robert E. Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

Anna Marie Hamilton (L. S.)
Anna Marie Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

James E Hamilton Jr (L. S.)
James E. Hamilton, Jr., Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Ethel M Hamilton (L. S.)
Ethel M. Hamilton, Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE.

Individual Acknowledgment

STATE OF Pennsylvania }
COUNTY OF Clearfield } ss:

On this 3 day of June 19 47, before me personally came

Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton

to me known, and known to me to be the individual who executed the foregoing instrument, and acknowledged that he executed the same.

Honora Ann Johnson N.P.

HONORA ANN JOHNSON, NOTARY P
IRVONA BOROUGH, CLEARFIELD CO
MY COMMISSION EXPIRES APRIL 26
Member, Pennsylvania Association of

Co-partnership Acknowledgment

STATE OF Pen }
COUNTY OF } ss:

On this day of 19, before me personally came

to me known, and known to me to be one of the firm of

and acknowledged that he executed the foregoing instrument as the act of the said firm.

Corporation Acknowledgment

STATE OF Pennsylvania }
COUNTY OF Clearfield } ss:

On this 3 day of June 19 47, before me personally came

Robert E. Hamilton

to me known, who, being by me duly sworn, did depose and say that he resides in R.D. #1, Box #16,

Irvona, PA 16656

that he is the President of the

Hamilton Brothers Coal Inc. the corporation

which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order.

Honora Ann Johnson N.P.

HONORA ANN JOHNSON, NOTARY PUBLIC
IRVONA BOROUGH, CLEARFIELD COUNTY
MY COMMISSION EXPIRES APRIL 26
Member, Pennsylvania

FILED Atty pd. 85.00
m/9:56 BH
JUN 02 2003 5 cc Sheff

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

UTICA MUTUAL INSURANCE COMPANY

VS.

HAMILTON BROTHERS COAL, INC. al

COMPLAINT

Sheriff Docket # 14142

03-798-CD

SHERIFF RETURNS

NOW JUNE 4, 2003 AT 11:50 AM SERVED THE WITHIN COMPLAINT ON HAMILTON BROTHERS COAL, INC., DEFENDANT AT RESIDENCE, RD 1, BOX 16, IRVONA, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ROBERT HAMILTON, PIC, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

NOW JUNE 4, 2003 AT 11:50 AM SERVED THE WITHIN COMPLAINT ON ROBERT E. HAMILTON, DEFENDANT AT RESIDENCE, RD 1, BOX 16, IRVONA, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ROBERT HAMILTON A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

NOW JUNE 4, 2003 AT 11:50 AM SERVED THE WITHIN COMPLAINT ON ANNA MARIE HAMILTON, DEFENDANT AT RESIDENCE, RD 1, BOX 16, IRVONA, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ROBERT HAMILTON, DEFENDANT/HUSBAND, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

NOW JUNE 4, 2003 AT12:05 PM SERVED THE WITHIN COMPLAINT ON JAMES E. HAMILTON, DEFENDANT AT EMPLOYMENT, MAIN ST., COALPORT, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JAMES HAMILTON A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

NOW JUNE 4, 2003 AT 12:05 PM SERVED THE WITHIN COMPLAINT ON ETHEL M. HAMILTON, DEFENDANT AT EMPLOYMENT, MAIN ST., COALPORT, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ETHEL HAMILTON A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

Return Costs

Cost	Description
62.53	SHERIFF HAWKINS PAID BY: ATTY CK# 2834
50.00	SURCHARGE PAID BY: ATTY CK#2835

In The Court of Common Pleas of Clearfield County, Pennsylvania

UTICA MUTUAL INSURANCE COMPANY

VS.

HAMILTON BROTHERS COAL, INC. al

COMPLAINT

Sheriff Docket # 14142

03-798-CD

SHERIFF RETURNS

Sworn to Before Me This

10 **Day Of** June **2003**

So Answers,

Chester A. Hawkins by Marilyn Hamm

Chester A. Hawkins
Sheriff

FILED
10 1:45 cr
JUN 10 2003

William A. Shaw
Prothonotary

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff vs. HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	No. 03-798-CD Type of Case: Civil Type of Pleading: Preliminary Objections to Plaintiff's Complaint Filed on Behalf of: Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, Defendants Counsel of Record for this Party: F. Cortez Bell, III, Esquire I.D. #30183 Bell, Silberblatt & Wood 318 East Locust Street P.O. Box 670 Clearfield, PA 16830 Telephone: (814)765-5537

FILED

JUL 16 2003

William A. Shaw
Prothonotary

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

NOTICE TO PLEAD

TO THE WITHIN Plaintiff, UTICA MUTUAL INSURANCE COMPANY:

You are hereby notified to file a written response to the enclosed Preliminary Objections pursuant to Pa. R.C.P. Rule 1028(a)(1)(5) filed on behalf of Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, within twenty (20) days from service hereof or a judgment may be entered against you.

BELL, SILBERBLATT & WOOD
By,

Date: July 16, 2003

F. Cortez Bell, III, Esquire
Attorney for Defendants Hamiltons

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

NOW comes the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, by and through their attorney, F. Cortez Bell, III, Esquire, who for their Preliminary Objections to Plaintiff's Complaint would respectfully set forth and aver as follows:

1. That the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, would respectfully set forth a Preliminary Objection pursuant to Pa. R.C.P. Rule 1028(a)(1) in that at the time that the individual Defendants set forth within this paragraph were served with the instant Complaint, the Sheriff's Deputy additionally served upon them a Complaint intended to be served on the Defendant, Hamilton Brothers Coal, Inc..

2. That the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E.

Hamilton, Jr., and Ethel M. Hamilton, advised the Sheriff's Deputy that none of the individuals being served were in any fashion currently associated with or owners of Hamilton Brothers Coal, Inc. with said corporation having been sold by the Defendants Robert E. Hamilton and James E. Hamilton, Jr., pursuant to an Agreement of Sale dated on or about June 25, 1996 to Fred Kuzemchak of R.D. #2, Box 563, Clymer, Pennsylvania, 15728.

3. That the Sheriff's Deputy making service indicated that the Defendants Hamilton were on his papers for service of the Complaint as to Hamilton Brothers Coal, Inc. and that based upon the same he was leaving said Complaint with them and deemed that he had properly serviced Hamilton Brothers Coal, Inc. at that point in time.

4. That the Defendants Hamilton by way of Preliminary Objection would raise the issue as to the improper service of the Complaint as to Hamilton Brothers Coal, Inc. such that the Plaintiff is made aware of the improper service of said Complaint.

5. That the Defendants Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton would raise a Preliminary Objection pursuant to the provisions of Pa. R.C.P. Rule 1028(a)(5) on the basis of the nonjoinder of necessary parties in that Fred Kuzemchak has not been served or individually named as a party to the instant proceeding as well as that the Commonwealth of Pennsylvania, Department of Environmental Protection has not been named as a party to the instant proceedings.

6. That Fred Kuzemchak and the Commonwealth of Pennsylvania, Department of Environmental Protection are necessary parties to the instant proceeding as a result of the modification of the bonding on the premises set forth within the Plaintiff's Complaint by said Fred Kuzemchak either individually or on behalf of Hamilton Brothers Coal, Inc. with the consent and/or

knowledge of the Commonwealth of Pennsylvania, Department of Environmental Protection without first having obtained the consent of the Defendants Hamilton to said modification or transfer.

7. That failure of said Kuzemchak and/or the Commonwealth of Pennsylvania, Department of Environmental Protection to obtain said consents of the Defendants Hamilton to the modification and/or transfer of the bonds resulted in an increase in the liability exposure of the Defendants Hamilton in violation of the Indemnity Agreement as well as resulted in a violation of the provisions of the Environmental Protection Regulations and Statutes such that the modifications and/or transfers were improper and could not be legally done.

8. That the joinder of Fred Kuzemchak and the Commonwealth of Pennsylvania, Department of Environmental Protection is necessary such that the Defendants Hamilton would be in a position to fully and completely respond to the Complaint filed by the Plaintiff in the above captioned matter.

WHEREFORE, it is respectfully requested that your Honorable Court grant the Preliminary Objections of the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, and that the Plaintiff be directed to file an Amended Complaint within twenty (20) days from the date of the Court Order.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By,

F. Cortez Bell, III, Esquire
Attorney for Defendants Hamilton

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the Preliminary Objections to Plaintiff's Complaint upon the following person by mailing such copy regular mail, postage prepaid to:

Mr. Paul K. Vey, Esquire
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

F. Cortez Bell, III, Esquire
Attorney for Defendants William B. Kinderman and Roberta A. Kinderman

DATED: July 16, 2003

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 03-798-CD

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

vs.

HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,
Defendants

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

FILED
01:26 BA 5cc to Atty
JUL 16 2003
William A. Shaw
Prothonotary

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03-798-CD

PRAECIPE TO PLACE CASE ON ARGUMENT LIST

To: Clearfield County Prothonotary

Kindly place the above-captioned case on the next available argument list for purposes of hearing the Preliminary Objections filed by Plaintiff, Utica Mutual Insurance Company.

Date: August 6, 2003

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: William J. Wyrick/E.M.Y.
William J. Wyrick, Esquire
Elizabeth M. Yanelli, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
412-263-2000

FILED

AUG 0 8 2003

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PRAECIPE TO PLACE CASE ON ARGUMENT LIST,** filed on behalf of Plaintiff, Utica Mutual Insurance Company was served via U.S. first-class mail, postage prepaid, upon plaintiff's counsel, and all known counsel of record was advised of such filing, this 6th day of August, 2003, addressed as follows:

F. Cortez Bell, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

FILED no cc
m/10:30 BL
AUG 08 2003
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03-798-CD

PRELIMINARY OBJECTIONS TO DEFNDANTS' PRELIMINARY OBJECTIONS, BRIEF IN SUPPORT AND PROPOSED ORDER OF COURT

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED

AUG 0 8 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03-798-CD

NOTICE TO PLEAD

TO: DEFENDANTS

You are hereby notified to file a written response to the attached Preliminary Objections to Preliminary Objections within twenty (20) days from service hereof or a judgment may be entered against you.

William J. Wagner, Esq.
Attorney for Plaintiff

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03-798-CD

PRELIMINARY OBJECTIONS TO DEFENDANTS' PRELIMINARY OBJECTIONS

AND NOW, comes Plaintiff, Utica Mutual Insurance Company ("UMIC"), by and through its attorneys, Pietragallo, Bosick & Gordon, and files the following Preliminary Objections to Defendants' Preliminary Objections as follows:

I. FACTUAL BACKGROUND

A. Plaintiff UMIC's Complaint.

1. This action arises from defendants' material breach of an indemnity agreement.

2. Defendants executed an indemnity agreement in favor of UMIC pertaining to surety bonds that UMIC provided to defendants and to defendants' business, Hamilton Brothers Coal, Inc. in connection with surface mining activities. (Complaint, ¶ 9, Exhibit A).

3. Under the terms of the indemnity agreement, which Defendants signed in their individual capacities, defendants agreed to indemnify UMIC for any losses sustained by UMIC in connection with the surety bonds issued, including attorneys' fees and costs. (Complaint, ¶ 9, Exhibit A).

4. Thereafter, Defendants obtained three permits from the Commonwealth of Pennsylvania Department of Environmental Protection ("DEP") to conduct surface mining activities in Clearfield County. (Complaint, ¶ 6).

5. Sometime after the Defendants had commenced their surface mining operations under the permits, UMIC learned that the defendants were defaulting on obligations associated with the three permits. (Complaint, ¶ 10).

6. As a result of the defendants' defaulting on their obligations to the DEP, UMIC was forced to make payment on the surety bonds to the DEP on January 12, 2000. (Complaint, ¶ 11).

7. UMIC has filed the instant action to recover $149,254.59, plus ongoing attorneys' fees, which constitute the fees and costs associated with UMIC's obtaining compliance with the DEP's regulations and/or in responding to or defending claims arising out of such action, as well as fees and costs in pursuing this action.

B. <u>The Individual Defendants' Improper Preliminary Objections to UMIC's Complaint.</u>

8. On July 16, 2003, Defendants Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel Hamilton filed Preliminary Objections to UMIC's Complaint.

9. Defendants object to the Complaint on the grounds that the corporate defendant, Hamilton Brothers Coal, Inc., was improperly served with the Complaint (See Preliminary Objections, ¶ 4).

10. Defendants aver that they advised the Sheriff's Deputy at the time of service that none of the individuals being served "were in any fashion currently associated with or owners of Hamilton Brothers Coal, Inc. with said corporation having been sold...to Fred Kuzemchak." (Preliminary Objections, ¶ 2).

11. In addition to Defendants' objection based on improper service upon the corporate defendant, Defendants further object to UMIC's Complaint on the basis that Fred Kuzemchak and the DEP are necessary parties to the instant breach of contract action. (Preliminary Objections, ¶ 8).

12. Despite the fact that neither Mr. Kuzemchak, nor the DEP, was a party to the contract between UMIC and the Defendants, Defendants aver that Mr. Kuzemchak and the DEP are necessary parties as a result of Mr. Kuzemchak's "modification of the bonding on the premises set forth within the Plaintiff's Complaint" with the "DEP's knowledge, and without Defendants' consent to this modification." (Preliminary Objections at ¶ 6).

13. For the reasons set forth in detail below, Defendants' Preliminary Objections should be overruled because the individual Defendants lack the requisite legal standing to assert any objection on behalf of the corporate defendant, Hamilton Brothers Coal, Inc.

14. In addition, Defendants have failed to aver sufficient facts that would demonstrate that either the DEP or Mr. Kuzemchak are necessary parties to the instant

breach of contract action. Accordingly, Defendants' Preliminary Objections to UMIC's Complaint should be stricken.

II. ARGUMENT

A. The Individual Defendants Lack the Requisite Legal Standing to Assert Any Objection Whatsoever on Behalf of Corporate Defendant, Hamilton Brothers Coal, Inc.

15. UMIC is entitled to have Defendants' Preliminary Objection on the basis of purported improper service of the Complaint upon the corporate defendant, Hamilton Brothers Coal, Inc., stricken pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2).

16. The Pennsylvania Supreme Court has held that to have standing, "one must plead facts which establish a direct, immediate and substantial injury." William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975).

17. To that end, an aggrieved party "must show causation of the harm to his interest by the matter of which he complains." Id. at 195, 346 A.2d at 282.

18. A "substantial" interest is an interest that clearly demonstrates a "discernable adverse effect to some interest other than the abstract interest of all citizens." Id.

19. The requirement that the interest be present or immediate and not remote or speculative involves the "nature of the causal connection between the action complained of and the injury to the person challenging it." Id. at 173, 346 A.2d at 283.

20. Thus, as the causal connection becomes more remote, there is less likelihood that a party will have standing. Id.

21. In the instant action, Defendants have not, and cannot, plead any facts that would conceivably demonstrate that any purported improper service upon Hamilton Brothers Coal, Inc. has resulted in any direct, substantial or immediate harm to them.

22. Rather, Defendants have, by their very own pleading, admitted that they have not suffered any substantial, direct, or immediate harm as a result of any improper service upon the corporate defendant.

23. In Paragraph 2 of Defendants' Preliminary Objections, Defendants acknowledge that "***none of the individuals being served [with the Complaint] were in any fashion currently associated with or owners of Hamilton Brothers Coal, Inc.,*** with said corporation having been sold by Defendants Robert E. Hamilton and James E. Hamilton, Jr., pursuant to an Agreement of Sale." (Preliminary Objections at ¶ 2) (emphasis added).

24. Thus, Defendants own pleading contains averments which, if taken as true, confirm that Defendants have no adverse interest as a result of any improper service upon the corporate defendant and, consequently, Defendants have no standing to object on that basis.

25. Simply put, Defendants have not, and indeed, cannot plead facts that would demonstrate that any improper service upon Hamilton Brothers Coal, Inc. has caused them direct, immediate or substantial harm.

26. Therefore, Defendants lack the requisite legal standing to object on that basis, and Defendants' objection to UMIC's Complaint due to improper service of Defendant Hamilton Brothers Coal, Inc. must be stricken.

B. Defendants Have Not and Cannot Plead Sufficient Facts That Would Demonstrate Failure to Join the DEP and Mr. Kuzemchak as Necessary Parties to UMIC's Breach of Contract Action.

27. In addition to lacking legal standing to assert a defense of improper service on behalf of Hamilton Brothers Coal, Inc., Defendants have not pleaded, and are incapable of pleading, sufficient facts that would demonstrate a failure to join necessary parties.

28. The Pennsylvania Superior Court has held that an "indispensable party is one whose rights or interests are so pervasively connected with the claims of the litigants that no relief can be granted without infringing on those rights or interests." Hubert v. Greenwald, 743 A.2d 977, 979 (Pa. Super. 1999), citing, CRY Inc. v. Mill Service Inc., 536 Pa. 462, 468, 640 A.2d 372, 375 (1994).

29. Absent an indispensable party, any decree or order rendered in a matter is void for lack of jurisdiction. Hubert, supra, at 980.

30. The Pennsylvania Superior Court has listed the following four factors for determining whether a party is indispensable: (1) Do the absent parties have a right or interest related to the claim? (2) If, so, what is the nature of that right or interest? (3) Is that right or interest essential to the merits of the issue? (4) Can justice be afforded without violating the due process rights of absent parties? Id. (citation omitted).

31. In making this determination, the court must focus on "whether justice can be done" in the absence of the non-joined party and must consider the nature of the claim and the relief sought. Id.

32. A party may be deemed "necessary," if not indispensable, if its presence is essential if the court is to resolve completely a controversy and to render complete

relief. Pennsylvania Human Relations Comm'n v. School District of Philadelphia, 167 Pa. Commw. 1, 14, 651 A.2d 177, 184 (1994).

33. Contrary to the Defendants' contentions, none of the allegations contained in their Preliminary Objections indicate that the rights of Mr. Kuzemchak and the DEP are so affected that a disposition on the merits of UMIC's breach of contract claim would be void absent Mr. Kuzemchak's and the DEP's presence.

34. Rather, the focus of UMIC's Complaint is that the Defendants executed a contract, pursuant to which they agreed to indemnify UMIC for any losses sustained by UMIC in connection with the surety bonds issued, including attorneys' fees and costs. (Complaint, ¶ 9; Exhibit A).

35. The basis of this action is the indemnity agreement between UMIC and Defendants, which Defendants signed in their individual capacities.

36. The parties that Defendants contend should be joined, the DEP and Mr. Kuzemchak, are not parties to that contract and have nothing to do with the contract between the parties.

37. Neither Mr. Kuzemchak, nor the DEP, have any contractual interest in Defendants' performance under the indemnity agreement they had with UMIC. The contract was executed because the Defendants were required to post surety bonds in connection with the three permits that they secured from the DEP. (Complaint, ¶¶ 7-8).

39. Clearly, neither Mr. Kuzemchak, nor the DEP is a necessary or indispensable party to this action in that their rights and interests would otherwise be so

intimately connected with UMIC's breach of contract claim that no relief could be granted without infringing upon the rights of Mr. Kuzemchak and the DEP.[1]

40. Accordingly, Defendants' Preliminary Objection or failure to join an indispensable party should be stricken.

WHEREFORE, Plaintiff, Utica Mutual Insurance Company respectfully request that this Honorable Court enter an Order sustaining Plaintiff's Preliminary Objections and striking Defendants' Preliminary Objections to Plaintiff's Complaint.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: _____

William J. Wyrick, Esquire
Elizabeth M. Yanelli, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

[1] Moreover, to the extent defendants have a concern as to the involvement of either the DEP or Mr. Kuzemchak in this action or to the extent they may be deemed property parties to this action, which is not conceded, Defendants may join both as additional defendants pursuant to Pa R.C.P. 2252, rendering Defendants' Preliminary Objections meritless.

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

UTICA MUTUAL INSURANCE COMPANY	:	
	:	
-vs-	:	No. 03 – 798 – CD
	:	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual	:	

ORDER

NOW, this 20th day of November, 2003, upon consideration of Preliminary Objections filed on behalf of Defendants above-named, and argument and briefs thereon, it is the ORDER of this Court that Preliminary Objection alleging Plaintiff's improper service of Complaint against the corporation defendant shall be and is hereby dismissed as objectors have no basis to raise this issue.

Defendants' Preliminary Objection seeking to require Plaintiff to join the Department of Environmental Protection and Fred Kuzemchak as necessary parties defendant shall be and is hereby dismissed as Defendants may accomplish the same objective by joining said parties as additional defendants.

By the Court,

President Judge

FILED

NOV 21 2003

William A. Shaw
Prothonotary/Clerk of Courts

FILED
02:54 2011
NOV 21 2003
William A. Shaw
Prothonotary/Clerk of Courts

1CC Atty Vey
1CC Atty Bell
1CC Hamilton Brothers Coal, Inc.
RD 1, Box 116
Indiana, PA 16656

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

CONSENTED MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Robert J. Monahan, Esquire
Pa. I. D. #90975

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED

MAR 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

MOTION FOR LEAVE TO AMEND COMPLAINT

AND NOW, comes Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon and files the following Motion for Leave to Amend Complaint and in support thereof avers the following:

1. The purpose of the Amended Complaint is to more accurately reflect the facts of the case. (The Amended Complaint is attached hereto and labeled as Exhibit "A".)

2. The Amended Complaint does not in any way allege any new causes of action, but merely clarifies the facts of the case.

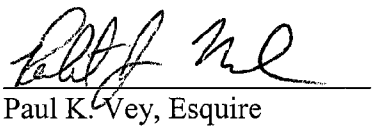
3. The granting of this motion will not prejudice any party to this lawsuit or delay the trial of the case.

4. Defense counsel, F. Cortez Bell, III, Esquire, consented to Plaintiff's Motion for Leave to Amend the Complaint per agreement by telephone conversation held on March 22, 2004.

WHEREFORE, plaintiff requests this court to enter an order permitting the filing of the attached Amended Complaint.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON



Paul K. Vey, Esquire
Robert J. Monahan Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

NOTICE TO DEFENDANTS:
YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ATTACHED COMPLAINT WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Attorney for Plaintiff

CIVIL ACTION

No. 03 – 798 - CD

AMENDED COMPLAINT IN CIVIL ACTION

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

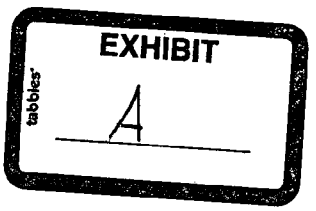
Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Robert J. Monahan, Esquire
Pa. I. D. #90975

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000



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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint 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.

LAWYER REFERRAL SERVICE
Clearfield County
PA Bar Association
P.O. Box 186
Harrisburg, PA 17108
TELEPHONE: (800) 692-7375

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

COMPLAINT

AND NOW, comes the plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon and files the within Complaint in Civil Action averring as follows:

1. Plaintiff, Utica Mutual Insurance Company, (hereinafter "Utica") is a New York corporation licensed to do business in Pennsylvania with its principal place of business at 180 Genessee Street, New Hartford, New York, 13413.

2. Defendant, Hamilton Brothers Coal, Inc., is a Pennsylvania corporation with its principal place of business at R.D. Box 184, Coalport, Pennsylvania 16627.

3. Defendants, Robert E. Hamilton and Anna Marie Hamilton are individuals with a last known address of R.D. No. 1, Box No. 16, Irvona, Pennsylvania 16656.

4. Defendants, James E. Hamilton and Ethel M. Hamilton are individuals with a last known address of Box 134, R.D. #1, Coalport, Pennsylvania, 16627.

5. Plaintiff Utica is in the business of issuing surety bonds for surface mining operations in Pennsylvania.

6. At all times relevant hereto, defendants conducted surface mining activities in Beccaria Township, Clearfield County, Pennsylvania pursuant to Commonwealth of Pennsylvania Department of Environmental Protection Permit Nos. 17880122, 17910122 and 17930116.

7. In connection with the execution of these contracts, defendants were required to post surety bonds.

8. Pursuant to that requirement, defendants contacted plaintiff Utica which in turn issued surety bonds SU1524284, SU1545137, SU1554222, SU1635674, SU1700538, and SU1700550 for permit numbers 17880122, 17910122 and 17930116.

9. Prior to the execution of the surety bonds, the defendants executed an indemnity agreement with plaintiff Utica pursuant to which defendants individually agreed to indemnify plaintiff Utica for any losses sustained by plaintiff Utica with regard to the surety bonds issued, including attorneys' fees and costs. (A copy of the indemnity agreement is attached hereto and made a part hereof as Exhibit "A".)

10. After being awarded the contract and obtaining the surety bonds and other required liability insurance, defendants commenced work on permit numbers 17880122, 17910122 and 17930116. Plaintiff Utica subsequently learned that the defendants were defaulting on their obligations under all three permits.

11. As a result of defendants actions, plaintiff Utica was required to make payment on the referenced bonds to the Department of Environmental Protection and did so on January 12, 2000.

12. Pursuant to the indemnity agreement signed in their individual capacities, the defendants are required to indemnify plaintiff Utica for attorneys' fees and costs expended by plaintiff Utica to insure compliance with the Department of Environmental Protection 's regulations and/or responding to or defending claims arising out of such action, and in pursuing this action.

13. Presently, defendants owe plaintiff Utica $149,254.59 for the costs associated with payment to the Department of Environmental Protection and with attorneys' fees incurred to date with respect to pursuing this action.

14. Defendants failure to pay plaintiff Utica the $149,254.59 plus ongoing attorneys' fees owed is a material breach of the indemnity agreement entered into by and between plaintiff Utica and defendants.

15. Defendants breach, as aforesaid, has caused plaintiff injury in excess of $149,254.59 exclusive of interest, plus services rendered and expenses advanced up to the time of trial.

WHEREFORE, plaintiff Utica Mutual Insurance Company demands judgment against defendants in the amount of $149,254.59, plus attorneys fees, together with interest, plus services rendered and expenses advanced up to the time of trial.

JURY TRIAL DEMANDED

Respectfully submitted,
PIETRAGALLO, BOSICK & GORDON

By:_____

Paul K. Vey, Esquire
Robert J. Monahan, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

GENERAL AGREEMENT OF INDEMNITY

This Agreement entered into by and between the undersigned, herein called the Indemnitors, and the Utica Mutual Insurance Company of New Hartford, New York, herein called the Company, witnesseth:

WHEREAS, in the transaction of business certain bonds, undertakings and other writings obligatory in the nature of a bond have heretofore been, and may hereafter be, required by, for, or on behalf of the Indemnitors or any one or more of the parties included in the designation Indemnitors, and application has been made and will hereafter be made to the Company to execute such bonds, and as a prerequisite to the execution of such bond or bonds, the Company requires complete indemnification.

NOW, THEREFORE, in consideration of the premises, and the payment by the Company of the sum of One ($1.00) Dollar to each of the Indemnitors, receipt whereof is hereby acknowledged, and for other good and valuable considerations, the Indemnitors do, for themselves, their heirs, executors, administrators and assigns, jointly and severally, agree with the Company as follows:

1. The Indemnitors will pay to the Company, at its Home Office in the Town of New Hartford, New York, premiums and charges at the rates, and at the times specified in respect to each such bond in the Company's schedule of rates, which, with any additions or amendments thereto, is by reference made a part hereof, and will continue to pay the same where such premium or charge is annual, until the Company shall be discharged and released from any and all liability and responsibility upon and from each such bond or matters arising therefrom, and until the Indemnitors shall deliver to the Company at its Home Office in New Hartford, New York, competent written evidence satisfactory to the Company of its discharge from all liability on such bond or bonds.

2. The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of, such bonds, or any renewals or continuations thereof or substitutes therefor, including fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. In the event of payments by the Company, the Indemnitors agree to accept the voucher or other evidence of such payments as prima facie evidence of the propriety thereof, and of the Indemnitors' liability therefor to the Company.

3. If the Company shall set up a reserve to cover any claim, suit or judgment under any such bond, the Indemnitors will, immediately upon demand, deposit with the Company a sum of money equal to such reserve, such sum to be held by the Company as collateral security on such bond, and such sum and any other money or property which shall have been, or shall hereafter be, pledged as collateral security on any such bond shall, unless otherwise agreed in writing by the Company, be available, in the discretion of the Company, as collateral security on any other or all bonds coming within the scope of this Agreement.

4. The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability with which the Company may be subsequently charged under any such bond, shall notify the Company thereof in writing at its Home Office in the Town of New Hartford, New York.

5. The Company shall have the exclusive right to determine for itself and the Indemnitors whether any claim or suit brought against the Company or the Principal upon any such bond shall be settled or defended and its decision shall be binding and conclusive upon the Indemnitors.

6. The Company, and its designated agents, shall, at any and all reasonable times, have free access to the books and records of the Indemnitors.

EXHIBIT

tabbies

A

7. If such bond be given in connection with a contract, the Company is hereby authorized, but not required, to consent to any change in the contract or in the plans or specifications relating thereto; to make or guarantee advances or loans for the purpose of the contract without necessity of seeing to the application thereof, it being understood that the amount of all such advances or loans, unless repaid with legal interest by the Contractor to the Company when due, shall be conclusively presumed to be a loss hereunder; in the event the Indemnitors, or any of them, shall fail to pay any premium charge when due; or abandon, forfeit or breach such contract; or breach any bond given in connection therewith; or fail, neglect or refuse to pay for any labor or materials used in the prosecution of such contract; or have proceedings instituted against them, or any of them, alleging that they are insolvent, or for the appointment of a receiver or trustee for the benefit of creditors, whether such Indemnitor(s) are insolvent or not; or have proceedings instituted against them, or any of them, the effect of which may be to deprive any of them of the use of any part of the equipment used in connection with the work under the contract so as to hinder, delay or impede the normal and satisfactory progress of the work, the Company shall have the right, but not the obligation, to take possession of the work under the contract and under any other contract in connection with which the Company has given its bond or bonds within the purview of this General Agreement of Indemnity and, at the expense of the Indemnitors, to complete the contract(s), or cause, or consent, to the completion thereof. The Indemnitors hereby assign, transfer, and set over to the Company (to be effective as of the date of such bond or bonds, but only in the event of a default as aforesaid), all of their rights under the contract(s), including their right, title and interest in and to all subcontracts let in connection therewith; all machinery, plant, equipment, tools and materials which shall be upon the site of the work or elsewhere for the purposes of the contract(s), including all materials ordered for the contract(s), any and all sums due under the contract(s) at the time of such default, or which may thereafter become due, and the Indemnitors hereby authorize the Company to endorse in the name of the payee, and to receive and collect any check, draft, warrant or other instrument made or issued in payment of any such sum, and to disburse the proceeds thereof.

8. That it shall not be necessary for the Company to give the Indemnitors, or any one or more of them, notice of the execution of any such bonds, nor of any fact or information coming to the notice or knowledge of the Company affecting its rights or liabilities, or the rights or liabilities of the Indemnitors under any such bond executed by it, notice of all such being hereby expressly waived.

9. In the event of any claim or demand being made by the Company against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of a bond or bonds, the Company is hereby expressly authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and we hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

10. The Company is not required, by reason of any applications for a bond or by reason of having issued a previous bond or bonds or otherwise, to execute or procure the execution of or participate in the execution of any such bond or bonds and the Company, at its option, may decline to execute or to participate in or procure the execution of any such bond without impairing the validity of this General Agreement of Indemnity.

11. If the Company procures the execution of such bonds by other companies, or executes such bonds with cosureties, or reinsures any portions of such bonds with reinsuring companies, then all the terms and conditions of this Agreement shall apply and operate for the benefit of such other companies, cosureties and reinsurers as their interest may appear.

12. The liability of the Indemnitors hereunder shall not be affected by the failure of the Principal to sign any such bond, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

13. These covenants herein and also all collateral security, if any, at any time deposited with the Company concerning the said bond or bonds and any other former or subsequent bonds executed for the Indemnitors at their instance shall, at the option of the Company, be available in its behalf and for its benefit as well concerning any bond or undertaking applied for, and also concerning all other former or subsequent bonds and undertakings, executed for the Indemnitors or for others at their request.

14. This Agreement may be terminat[ed] the Indemnitors, or any one or more of th[em] ies so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force.

15. Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee.

16. THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF.

17. This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of Hamilton Brothers Coal Inc.

18. IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of 19

HAMILTON BROTHERS COAL INC.

Thomas C Johnson
Witness

Robert E. Hamilton (L. S.)
Robert E. Hamilton, President

Box 157 Irvona Pa
Street or P. O. Box City State

Box 134, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Robert E. Hamilton (L. S.)
Robert E. Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

Anna Marie Hamilton (L. S.)
Anna Marie Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

James E. Hamilton, Jr. (L. S.)
James E. Hamilton, Jr., Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

Thomas C. Johnson
Witness

Ethel M. Hamilton (L. S.)
Ethel M. Hamilton, Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE.

Individual Acknowledgment

STATE OF Pennsylvania }
COUNTY OF Clearfield } ss:

On this 3 day of June 19 47, before me personally came

Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton

to me known, and known to me to be the individual who executed the foregoing instrument, and acknowledged that he executed the same.

Honora Ann Johnson N.P.

HONORA ANN JOHNSON, NOTARY P
IRVONA BOROUGH, CLEARFIELD CO
MY COMMISSION EXPIRES APRIL 26
Member, Pennsylvania Association of

Co-partnership Acknowledgment

STATE OF Pa }
COUNTY OF } ss:

On this day of 19, before me personally came

me known, and known to me to be one of the firm of

and acknowledged that he executed the foregoing instrument as the act of the said firm.

Corporation Acknowledgment

STATE OF Pennsylvania }
COUNTY OF Clearfield } ss:

On this 3 day of June 19 47, before me personally came

Robert E. Hamilton

to me known, who, being by me duly sworn, did depose and say that he resides in R.D. #1, Box #16, Irvona, PA 16656

that he is the President of the Hamilton Brothers Coal Inc. the corporation which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order.

Honora Ann Johnson N.P.

HONORA ANN JOHNSON, NOTARY PUBLIC
IRVONA BOROUGH, CLEARFIELD COUNTY
MY COMMISSION EXPIRES

VERIFICATION

I, Robert J. Monahan, Esquire, being counsel of record for Plaintiff Utica Mutual Insurance Company, have read the foregoing **Consented Motion for Leave of Court to Amend Complaint**. The statements therein are correct based on information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

This verification is made pursuant to Rule 1024(c) by the undersigned who has sufficient knowledge or information based upon the investigation conducted in this case to complete this verification. The source of the information contained in the foregoing Consented Motion for Leave of Court to Amend Complaint is information gathered and received by counsel, and is being submitted in lieu of a verification under Rule 1024(a) of the Pennsylvania Rules of Civil Procedure.

Robert J. Monahan, Esquire

Dated: March 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Consented Motion for Leave of Court to Amend Complaint was served on the following by first class mail, postage pre-paid, this 24 day of March, 2004:

F. Cortez Bell, III, Esquire
Bell, Siberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Robert J. Monahan, Esquire
Attorney for Plaintiff

FILED
MAR 25 2004
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2004, it is hereby ORDERED, ADJUDGED and DECREED that, after presentation of the within Motion, the Plaintiff's Motion for Leave to Amend Complaint is hereby GRANTED.

_____ *J.*

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

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

PRAECIPE TO PLACE CASE ON ARGUMENT LIST

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Robert J. Monahan, Esquire
Pa. I. D. #90975

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED

MAR 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

PRAECIPE TO PLACE CASE ON ARGUMENT LIST

To: Clearfield County Prothonotary

Kindly place the above-captioned case on the next available argument list for purposes of hearing the Consented Motion for Leave to Amend Complaint filed by Plaintiff, Utica Mutual Insurance Company.

Date: March 24, 2004

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: _____

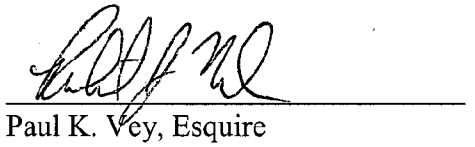
Paul K. Vey, Esquire
Robert J. Monahan, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
412-263-2000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PRAECIPE TO PLACE CASE ON ARGUMENT LIST,** filed on behalf of Plaintiff, Utica Mutual Insurance Company was served via U.S. first-class mail, postage prepaid, upon plaintiff's counsel, and all known counsel of record was advised of such filing, this 24th day of March, 2004, addressed as follows:

F. Cortez Bell, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830



Paul K. Vey, Esquire
Robert J. Monahan, Esquire
Attorneys for Plaintiff

FILED
m/ 10:30 BOH
MAR 25 2004
William A. Shaw
Prothonotary/Clerk of Courts

1cc Atty Vey
Copy To CA

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

UTICA MUTUAL INSURANCE COMPANY	:	
vs.	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, al individual	:	

ORDER

NOW, this 25th day of March, 2004, upon consideration of Plaintiff's Consented Motion for Leave of Court to Amend Complaint, a Rule is hereby issued upon the Defendants to Appear and Show Cause why the Motion should not be granted. Argument is scheduled the 20 day of April, 2004, at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

MAR 25 2004

William A Shaw
Prothonotary/Clerk of Courts

FILED 3cc
013:09 BY Atty Vey w/memo re: Rule
MAR 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

STIPULATION FOR CONSENT FOR PLAINTIFF'S MOTION FOR LEAVE OF COURT TO FILE AMENDED COMPLAINT

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Robert J. Monahan, Esquire
Pa. I. D. #90975

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED

APR 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff,	CIVIL ACTION No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	

STIPULATION FOR CONSENT FOR PLAINTIFF'S MOTION FOR LEAVE OF COURT TO FILE AMENDED COMPLAINT

By signing below I, F. Cortez Bell, III, Esquire, counsel for Defendants in the above-captioned matter do hereby consent to Plaintiff filing an Amended Complaint.

Date: April 8, 2004

Consented By:

By: F. Cortez Bell III
F. Cortez Bell, III, Esquire
Counsel for Defendants

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

Paul K. Vey, Esquire
Robert J. Monahan, Esquire
Attorneys for Plaintiff

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
412-263-2000

FILED 3cc Atty Bell
01 12:37 BL
APR 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

NOTICE TO DEFENDANTS:
YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ATTACHED COMPLAINT WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Attorney for Plaintiff

CIVIL ACTION

No. 03 – 798 - CD

AMENDED COMPLAINT IN CIVIL ACTION

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Robert J. Monahan, Esquire
Pa. I. D. #90975

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED

JUN 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint 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.

LAWYER REFERRAL SERVICE
Clearfield County
PA Bar Association
P.O. Box 186
Harrisburg, PA 17108
TELEPHONE: (800) 692-7375

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

COMPLAINT

AND NOW, comes the plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon and files the within Complaint in Civil Action averring as follows:

1. Plaintiff, Utica Mutual Insurance Company, (hereinafter "Utica") is a New York corporation licensed to do business in Pennsylvania with its principal place of business at 180 Genessee Street, New Hartford, New York, 13413.

2. Defendant, Hamilton Brothers Coal, Inc., is a Pennsylvania corporation with its principal place of business at R.D. Box 184, Coalport, Pennsylvania 16627.

3. Defendants, Robert E. Hamilton and Anna Marie Hamilton are individuals with a last known address of R.D. No. 1, Box No. 16, Irvona, Pennsylvania 16656.

4. Defendants, James E. Hamilton and Ethel M. Hamilton are individuals with a last known address of Box 134, R.D. #1, Coalport, Pennsylvania, 16627.

5. Plaintiff Utica is in the business of issuing surety bonds for surface mining operations in Pennsylvania.

6. At all times relevant hereto, defendants conducted surface mining activities in Beccaria Township, Clearfield County, Pennsylvania pursuant to Commonwealth of Pennsylvania Department of Environmental Protection Permit Nos. 17880122, 17910122 and 17930116.

7. In connection with the execution of these contracts, defendants were required to post surety bonds.

8. Pursuant to that requirement, defendants contacted plaintiff Utica which in turn issued surety bonds SU1524284, SU1545137, SU1554222, SU1635674, SU1700538, and SU1700550 for permit numbers 17880122, 17910122 and 17930116.

9. Prior to the execution of the surety bonds, the defendants executed an indemnity agreement with plaintiff Utica pursuant to which defendants individually agreed to indemnify plaintiff Utica for any losses sustained by plaintiff Utica with regard to the surety bonds issued, including attorneys' fees and costs. (A copy of the indemnity agreement is attached hereto and made a part hereof as Exhibit "A".)

10. After being awarded the contract and obtaining the surety bonds and other required liability insurance, defendants commenced work on permit numbers 17880122, 17910122 and 17930116. Plaintiff Utica subsequently learned that the defendants were defaulting on their obligations under all three permits.

11. As a result of defendants actions, plaintiff Utica was required to make payment on the referenced bonds to the Department of Environmental Protection and did so on January 12, 2000.

12. Pursuant to the indemnity agreement signed in their individual capacities, the defendants are required to indemnify plaintiff Utica for attorneys' fees and costs expended by plaintiff Utica to insure compliance with the Department of Environmental Protection 's regulations and/or responding to or defending claims arising out of such action, and in pursuing this action.

13. Presently, defendants owe plaintiff Utica $149,254.59 for the costs associated with payment to the Department of Environmental Protection and with attorneys' fees incurred to date with respect to pursuing this action.

14. Defendants failure to pay plaintiff Utica the $149,254.59 plus ongoing attorneys' fees owed is a material breach of the indemnity agreement entered into by and between plaintiff Utica and defendants.

15. Defendants breach, as aforesaid, has caused plaintiff injury in excess of $149,254.59 exclusive of interest, plus services rendered and expenses advanced up to the time of trial.

WHEREFORE, plaintiff Utica Mutual Insurance Company demands judgment against defendants in the amount of $149,254.59, plus attorneys fees, together with interest, plus services rendered and expenses advanced up to the time of trial.

JURY TRIAL DEMANDED

Respectfully submitted,
PIETRAGALLO, BOSICK & GORDON

By: _____

Paul K. Vey, Esquire
Robert J. Monahan, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

VERIFICATION

I, **Frank L. Madia,** verify that I am a representative of **Utica Mutual Insurance Company**, the Plaintiff in the within action, that I am authorized to file the foregoing **Complaint in Civil Action** on its behalf, and that the statements and averments of fact contained therein are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa C S A Section 4904

Dated 6/2/04

Frank L Madia

[redacted]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Consented motion for Leave of Court to Amend Complaint was served on the following by first class mail, postage pre-paid, this 7 day of June, 2004:

F. Cortez Bell, III, Esquire
Bell, Siberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Robert J. Monahan, Esquire
Attorney for Plaintiff

FILED NO CC
m 10:38 BK
JUN 09 2004
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

NOTICE OF PRAECIPE TO ENTER DEFAULT JUDGMENT

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED
JAN 12 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

NOTICE OF PRAECIPE TO ENTER DEFAULT JUDGMENT

To: Hamilton Brothers Coal, Inc.
Robert E. Hamilton, Anna Marie Hamilton,
James E. Hamilton, Jr. and Ethel M. Hamilton (Defendants)
C/o: F. Cortez Bell, III, Esquire
Bell, Siberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Date: January 10, 2006

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE:

LAWYER REFERRAL SERVICE
Clearfield County
PA Bar Association
P.O. Box 186
Harrisburg, PA 17108
TELEPHONE: (800) 692-7375

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

Dated: 1/10/06

By: Matthew D. Gailey

Paul K. Vey, Esq.
Pa. I.D. #30824
Matthew D. Gailey, Esq.
Pa. I.D. #90920
Attorneys for Plaintiff
The 38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF PRAECIPE TO ENTER DEFAULT JUDGMENT was made on all known parties of record this 10 day of January, 2006, via First Class Mail, postage prepaid, and addressed as follows:

F. Cortez Bell, III, Esquire
Bell, Siberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Matthew D. Gailey

CA

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	No. 03-798-CD
vs.	:	Type of Case: Civil
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	Type of Pleading: Preliminary Objections to Plaintiff's Amended Complaint Filed on Behalf of: Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, Defendants Counsel of Record for this Party: F. Cortez Bell, III, Esquire I.D. #30183 318 East Locust Street P.O. Box 1088 Clearfield, PA 16830 Telephone: (814)765-5537

FILED 4cc Atty Bell
03:27 BK
JAN 19 2006 GR

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

PRELIMINARY OBJECTIONS TO PLAINTIFF'S AMENDED COMPLAINT

NOW comes the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, by and through their attorney, F. Cortez Bell, III, Esquire, who for their Preliminary Objections to Plaintiff's Amended Complaint would respectfully set forth and aver as follows:

1. That the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, would respectfully set forth a Preliminary Objection pursuant to Pa. R.C.P. Rule 1028(a)(3) in that the Amended Complaint does not contain the specific information required from which an appropriate response on behalf of the Defendants can be made. The Complaint sets forth within Paragraph Nine thereof that an Indemnity Agreement is attached as Exhibit A of the Amended Complaint and no such attachment has been made. Additionally within

Paragraphs Six, Eight and Ten of the Complaint certain Environmental Protection Permits, Surety Bonds and Permit Numbers, totaling twelve items, are referenced all of which are not attached to the Amended Complaint. The Defendants need copies of all such items in order to effectively and completely form their response to the allegations set forth in the Amended Complaint. The Defendants divested themselves of any interest, ownership or otherwise, in Hamilton Brothers Coal, Inc. long before the dates specified in the Complaint and as a result thereof do not physically have sufficient records available such that a response can be forthcoming without complete copies of said items. In fact, the Defendants had sold their interest in the Company by Agreement of Sale dated June 25, 1996 and the date referenced in the Plaintiff's Amended Complaint is January 12, 2000.

2. That the Defendants Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton would raise a Preliminary Objection pursuant to the provisions of Pa. R.C.P. Rule 1028(a)(5) on the basis of the nonjoinder of necessary parties in that Fred Kuzemchak has not been served or individually named as a party to the instant proceeding as well as that the Commonwealth of Pennsylvania, Department of Environmental Protection has not been named as a party to the instant proceedings.

3. That the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, advised the Sheriff's Deputy that none of the individuals being served were in any fashion currently associated with or owners of Hamilton Brothers Coal, Inc. with said corporation having been sold by the Defendants Robert E. Hamilton and James E. Hamilton, Jr., pursuant to an Agreement of Sale dated on or about June 25, 1996 to Fred Kuzemchak of R.D. #2, Box 563, Clymer, Pennsylvania, 15728.

4. That the Sheriff's Deputy making service indicated that the Defendants Hamilton were on his papers for service of the Complaint as to Hamilton Brothers Coal, Inc. and that based upon the same he was leaving said Complaint with them and deemed that he had properly serviced Hamilton Brothers Coal, Inc. at that point in time.

5. That the Defendants Hamilton by way of Preliminary Objection would raise the issue as to the improper service of the Complaint as to Hamilton Brothers Coal, Inc. such that the Plaintiff is made aware of the improper service of said Complaint.

6. That Fred Kuzemchak and the Commonwealth of Pennsylvania, Department of Environmental Protection are necessary parties to the instant proceeding as a result of the modification of the bonding on the premises set forth within the Plaintiff's Complaint by said Fred Kuzemchak either individually or on behalf of Hamilton Brothers Coal, Inc. with the consent and/or knowledge of the Commonwealth of Pennsylvania, Department of Environmental Protection without first having obtained the consent of the Defendants Hamilton to said modification or transfer.

7. That failure of said Kuzemchak and/or the Commonwealth of Pennsylvania, Department of Environmental Protection to obtain said consents of the Defendants Hamilton to the modification and/or transfer of the bonds resulted in an increase in the liability exposure of the Defendants Hamilton in violation of the Indemnity Agreement as well as resulted in a violation of the provisions of the Environmental Protection Regulations and Statutes such that the modifications and/or transfers were improper and could not be legally done.

8. That the joinder of Fred Kuzemchak and the Commonwealth of Pennsylvania, Department of Environmental Protection is necessary such that the Defendants Hamilton would be in a position to fully and completely respond to the Complaint filed by the Plaintiff in the above

captioned matter.

9. That this matter was previously raised by way of Preliminary Objection to the Plaintiff's Complaint and was dealt with by the Court however the Default Notice that has been served by Counsel for the Plaintiff upon the Defendants at this time is still carrying Hamilton Brothers Coal, Inc. as a Defendant in conjunction with the other Defendants and instant Counsel does not represent Hamilton Brothers Coal, Inc. Likewise the docket in the matter should not reflect any service upon Hamilton Brother Coal, Inc by way of service of the Complaint or the Default Notice. The Defendants would respectfully request that the Court issue an Order striking any purported service upon the Defendant Hamilton Brothers Coal, Inc. as well as strike that portion of the Default Notice filed of record as being given upon Hamilton Brothers Coal, Inc.

WHEREFORE, it is respectfully requested that your Honorable Court grant the Preliminary Objections of the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, and that the Plaintiff Complaint be dismissed or in the alternative the Plaintiff be directed to file an Amended Complaint within twenty (20) days from the date of the Court Order.

Respectfully submitted,

F. Cortez Bell, III, Esquire
Attorney for Defendants Robert E. Hamilton
Anna Marie Hamilton, James E. Hamilton, Jr.
And Ethel M. Hamilton

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the Preliminary Objections to Plaintiff's Amended Complaint upon the following person by mailing such copy regular mail, postage prepaid to:

Mr. Paul K. Vey, Esquire
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
301 Grant Street
Pittsburgh, PA 15219

F. Cortez Bell, III, Esquire
Attorney for Defendants Robert E. Hamilton
Anna Marie Hamilton, James E. Hamilton, Jr.
And Ethel M. Hamilton

DATED: January 19, 2006

CA

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

UTICA MUTUAL INSURANCE COMPANY	:	
vs.	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, al individual	:	

ORDER

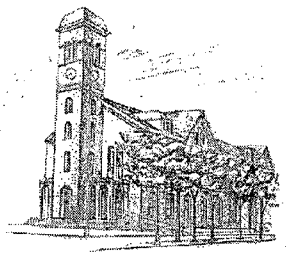
NOW, this 20th day of January, 2006, upon consideration of Defendants' Preliminary Objections to Plaintiff's Amended Complaint filed by Attorney F. Cortez Bell, III, in the above matter, it is the Order of the Court that argument has been scheduled for the 24th day of February, 2006, at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED
01 2:18 BOI
JAN 20 2006
William A. Shaw
Prothonotary/Clerk of Courts

1cc Atty Vey
1cc Atty Bell
1cc Hamilton Bros.
RD Box 184
Coalport, PA 16627
(GK) and
1cc Hamilton Bros.
Fred Kuzemchak
RD 2 Box 563
Clymer, PA 15728



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
David S. Ammerman Solicitor
Jacki Kendrick Deputy Prothonotary
Bonnie Hudson Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 1/20/06

_____ You are responsible for serving all appropriate parties.

__X__ The Prothonotary's office has provided service to the following parties:

__X__ Plaintiff(s)/Attorney(s)

__X__ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

CA

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	No. 03-798-CD
vs.	:	Type of Case: Civil
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	Type of Pleading: Motion to Withdraw as Counsel
	:	Filed on Behalf of: Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, Defendants
	:	Counsel of Record for this Party: F. Cortez Bell, III, Esquire I.D. #30183
	:	318 East Locust Street P.O. Box 1088 Clearfield, PA 16830 Telephone: (814)765-5537

FILED
FEB 17 2006
William A. Shaw
Prothonotary/Clerk of Courts

5 cent to Atty

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

MOTION TO WITHDRAW AS COUNSEL

NOW comes the Petitioner, F. Cortez Bell, III, Esquire, Counsel for the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton who for his Motion to Withdraw as Counsel would respectfully set forth and aver as follows:

1. That the above captioned matter is currently scheduled for argument on Preliminary Objections to the Amended Complaint which have been filed on behalf of the Defendants on Friday, February 24, 2006 at 1:30 P.M..

2. That current Counsel is prepared to appear on behalf of the Defendants at said argument and complete any argument and/or briefs which may be required in order to adequately address the Preliminary Objections.

3. That no matter what the ruling of the Court is as to the Preliminary Objections

there will no doubt in the future be additional pleadings required prior to the case proceeding according to the Rules of Civil Procedure to an ultimate disposition.

4. That Counsel for the Defendants has since the case began become employed full time as the First Assistant District Attorney for Clearfield County with that position commencing as of January 5, 2004.

5. That Counsel for the Defendants additionally is employed and has been employed for the past approximate fifteen years as Solicitor for Clearfield Borough which has recently undertaken a Borough wide Sewer Rehabilitation project which is requiring extensive time of Counsel in the preparation of the Easement/Right-of-Way documents as well as financing documents in order to obtain the Pennvest funding needed for the project.

6. That Counsel for the Defendants does not have the time that will be necessary to devote to the instant matter in order to adequately prepare the Defendant's defense and position in the matter.

7. That Counsel for the Defendants has fully discussed the contents of this Motion with the Defendants and they are aware of the need to find substitute Counsel.

WHEREFORE, it is respectfully requested that your Honorable Court grant the Motion to Withdraw as Counsel.

Respectfully submitted,

F. Cortez Bell, III, Esquire
Attorney for Defendants Robert E. Hamilton
Anna Marie Hamilton, James E. Hamilton, Jr.
And Ethel M. Hamilton

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the Motion to Withdraw as Counsel upon the following persons by mailing such copy certified mail, postage prepaid, return receipt requested to:

Mr. and Mrs. Robert E. Hamilton
R.D. # 1, Box 16
Irvona, Pa. 16656

Mr. and Mrs. James E. Hamilton, Jr.
262 Market Street
Coalport, PA. 16627

F. Cortez Bell, III, Esquire
Attorney for Defendants Robert E. Hamilton
Anna Marie Hamilton, James E. Hamilton, Jr.
And Ethel M. Hamilton

DATED: February 17, 2006

CA

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	No. 03-798-CD

FILED
9/1:37 cm
FEB 22 2006
3cc Atty Bell

William A. Shaw
Prothonotary

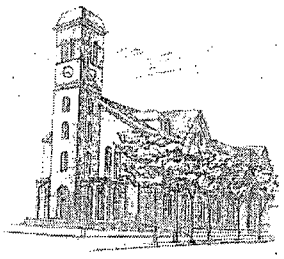
RULE TO SHOW CAUSE

AND NOW, this 21 day of February, 2006, upon consideration of the Motion to Withdraw as Counsel filed in the above captioned matter, Rule is hereby granted on the Defendants to show cause why said Motion should not be granted. Rule returnable for Answer by the Defendants and hearing on said Motion to be held on the 20th day of March, 2006, at 9:00 o'clock A.M., in Courtroom No. 1.

BY THE COURT,

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
PRESIDENT JUDGE



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 02-22-06

____X____You are responsible for serving all appropriate parties.

_____The Prothonotary's office has provided service to the following parties:

_____Plaintiff(s)/Attorney(s)

_____Defendant(s)/Attorney(s)

_____Other

_____Special Instructions:

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

FILED
01:11eBA
MAR 01 2006
William A. Shaw
Prothonotary/Clerk of Courts
Copies see attached

ORDER

NOW this 28 day of February, 2006 upon consideration of the Preliminary Objections to Plaintiff's Amended Complaint filed by the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton and the Court having held argument thereon it is the ORDER of this Court that said Preliminary Objection be and are hereby granted as follows:

1. The Plaintiff is directed to file an Amended Complaint and attach thereto complete copies of all documents by way of Indemnity Agreements, Surety Bonds and/or Permits which are the basis for the claim asserted by the Plaintiffs against the Defendants.
2. The Plaintiff is directed to make service of said Amended Complaint upon each of the specific Defendants named to include specifically service upon the Defendant

Hamilton Brothers Coal, Inc. which service as to Hamilton Brothers Coal, Inc. is not to be made upon Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr and/or Ethel M. Hamilton.

BY THE COURT

Fredric J. Ammerman
President Judge

03-798-CD
Utica Mutual Insurance vs. Hamilton Brothers et al

1CC Paul K. Vey, Esq.
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

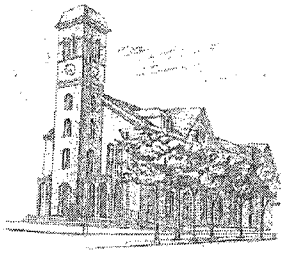
1CC Hamilton Brothers Coal, Inc.
RD Box 184
Coalport, PA 16627

1CC Hamilton Brothers Coal, Inc.
C/o Fred Kuzemachak
RD 2 Box 563
Clymer, PA 15728

1CC Robert Hamilton
Anna Marie Hamilton
RD 1, Box 16
Irvona, PA 16656

1CC James E. Hamilton, Jr.
Ethel M. Hamilton
RD 1 Box 134
Coalport, PA 16627

1CC Atty Bell



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
David S. Ammerman Solicitor
Jacki Kendrick Deputy Prothonotary
Bonnie Hudson Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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Sincerely,

William A. Shaw
Prothonotary

DATE: 3/1/06

_____ You are responsible for serving all appropriate parties.

__X__ The Prothonotary's office has provided service to the following parties:

__X__ Plaintiff(s)/Attorney(s)

__X__ Defendant(s)/Attorney(s)

_____ Other

* Note to Atty Bell only

__X__ Special Instructions:
Please Note: Copies also went to each defendant.

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

ORDER

NOW this 28 day of Feb, 2006 upon consideration of the Motion to Withdraw as Counsel filed by F. Cortez Bell, III, Esquire in regard to his representation as to certain of the Defendants in the above captioned matter and the Court having held hearing thereon on Friday, February 24, 2006, it is the ORDER of this Court that said Motion to Withdraw as Counsel be and is hereby granted and the appearance of F. Cortez Bell, III, Esquire as Counsel for the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton be and is withdrawn.

BY THE COURT

Fredric J. Ammerman
President Judge

FILED
01:50 PM
MAR 01 2006

William A. Shaw
Prothonotary/Clerk of Courts

CC-see attached

03-798-CD
Utica Mutual Insurance vs. Hamilton Brothers et al

1CC Paul K. Vey, Esq.
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

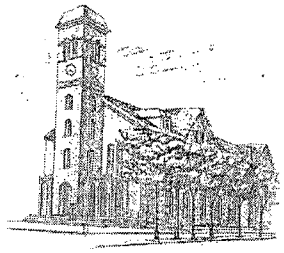
1CC Hamilton Brothers Coal, Inc.
RD Box 184
Coalport, PA 16627

1CC Hamilton Brothers Coal, Inc.
C/o Fred Kuzemachak
RD 2 Box 563
Clymer, PA 15728

1CC Robert Hamilton
Anna Marie Hamilton
RD 1, Box 16
Irvona, PA 16656

1CC James E. Hamilton, Jr.
Ethel M. Hamilton
RD 1 Box 134
Coalport, PA 16627

1CC Atty Bell



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
David S. Ammerman Solicitor
Jacki Kendrick Deputy Prothonotary
Bonnie Hudson Administrative Assistant

To: All Concerned Parties

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Sincerely,

William A. Shaw
Prothonotary

DATE: 3/1/06

_____You are responsible for serving all appropriate parties.

__X__The Prothonotary's office has provided service to the following parties:

__X__Plaintiff(s)/Attorney(s)

__X__Defendant(s)/Attorney(s)

_____Other

Note on Bell's only __X__Special Instructions:
Please file a Praecipe to Withdraw Appearance.
Thank you

PO Box 549, Clearfield, PA 16830 ▪ Phone: (814) 765-2641 Ext. 1330 ▪ Fax: (814) 765-7659

CA

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY	:	
-vs-	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. Hamilton, an individual	:	

O R D E R

NOW, this 24th day of February, 2006, following argument on Defendants' Preliminary Objections to Plaintiff's Amended Complaint, it is the ORDER of this Court that counsel for Defendants supply the Court and counsel for Plaintiff with proposed Order by no later than February 28, 2006.

BY THE COURT,

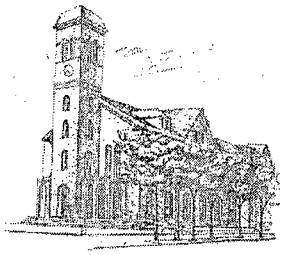
President Judge

FILED 2cc Attys: Vey
09:35 BA F. Cortez Bell III
MAR 01 2006

William A. Shaw
Prothonotary/Clerk of Courts

1cc Hamilton Brothers Coal Inc.
RD Box 184
Coalport, PA 16627
and
do Fred Kuzemachak
RD2 Box 563
Clymer, PA 15728

GK



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts | **David S. Ammerman** Solicitor | **Jacki Kendrick** Deputy Prothonotary | **Bonnie Hudson** Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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Sincerely,

William A. Shaw
Prothonotary

DATE: 3/1/06

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__X__The Prothonotary's office has provided service to the following parties:

__X__Plaintiff(s)/Attorney(s)

__X__Defendant(s)/Attorney(s)

_____Other

_____Special Instructions:

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

FILED
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MAR 0 6 2006
William A. Shaw
Prothonotary

No further address in file

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Hamilton Brothers Coal, Inc.
RD Box 184
Coalport, PA 16627

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☐ ATTEMPTED NOT KNOWN
☐ NO SUCH NUMBER/ STREET
☑ NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD
☐ OTHER

RTS
RETURN TO SENDER

16830/0543

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY	:	
-vs-	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. Hamilton, an individual	:	

O R D E R

NOW, this 24th day of February, 2006, following argument on Defendants' Preliminary Objections to Plaintiff's Amended Complaint, it is the ORDER of this Court that counsel for Defendants supply the Court and counsel for Plaintiff with proposed Order by no later than February 28, 2006.

BY THE COURT,

/s/ Fredric J. Ammerman

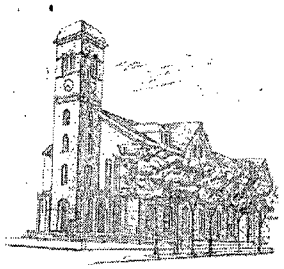
President Judge

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

MAR 01 2006

Attest.

Prothonotary/
Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
David S. Ammerman Solicitor
Jacki Kendrick Deputy Prothonotary
Bonnie Hudson Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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Sincerely,

William A. Shaw
Prothonotary

DATE: 3/1/06

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__X__The Prothonotary's office has provided service to the following parties:

__X__Plaintiff(s)/Attorney(s)

__X__Defendant(s)/Attorney(s)

_____Other

_____Special Instructions:

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

FILED
m/2:37cm
MAR 0 6 2006
William A. Shaw
Prothonotary

No further address in Life

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Hasler
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03/01/2006
Mailed From 16830
US POSTAGE

Hamilton Brothers Coal, Inc.
RD Box 184
Coalport, PA 16627

A ☐ INSUFFICIENT ADDRESS
C ☐ ATTEMPTED NOT KNOWN ☐ OTHER
S ☐ NO SUCH NUMBER/ STREET
☑ NOT DELIVERABLE AS ADDRESSED
☐ UNABLE TO FORWARD

16830/0549

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

ORDER

NOW this 28 day of Feb., 2006 upon consideration of the Motion to Withdraw as Counsel filed by F. Cortez Bell, III, Esquire in regard to his representation as to certain of the Defendants in the above captioned matter and the Court having held hearing thereon on Friday, February 24, 2006, it is the ORDER of this Court that said Motion to Withdraw as Counsel be and is hereby granted and the appearance of F. Cortez Bell, III, Esquire as Counsel for the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton be and is withdrawn.

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

MAR 01 2006

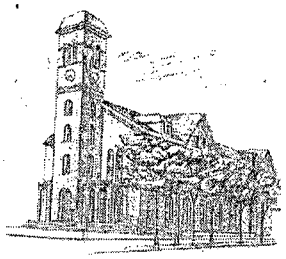
Attest

Prothonotary/
Clerk of Courts

BY THE COURT

/s/ Fredric J. Ammerman

Fredric J. Ammerman
President Judge



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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Sincerely,

William A. Shaw
Prothonotary

DATE: 3/1/06

_____You are responsible for serving all appropriate parties.

__X__The Prothonotary's office has provided service to the following parties:

__X__Plaintiff(s)/Attorney(s)

__X__Defendant(s)/Attorney(s)

_____Other

_____Special Instructions:

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

ORDER

NOW this 28 day of February, 2006 upon consideration of the Preliminary Objections to Plaintiff's Amended Complaint filed by the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton and the Court having held argument thereon it is the ORDER of this Court that said Preliminary Objection be and are hereby granted as follows:

1. The Plaintiff is directed to file an Amended Complaint and attach thereto complete copies of all documents by way of Indemnity Agreements, Surety Bonds and/or Permits which are the basis for the claim asserted by the Plaintiffs against the Defendants.
2. The Plaintiff is directed to make service of said Amended Complaint upon each of the specific Defendants named to include specifically service upon the Defendant

Hamilton Brothers Coal, Inc. which service as to Hamilton Brothers Coal, Inc. is not to be made upon Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr and/or Ethel M. Hamilton.

BY THE COURT

/s/ Fredric J. Ammerman

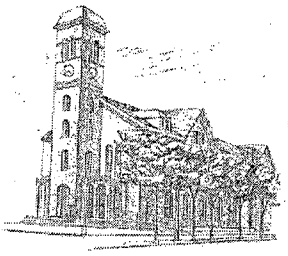
Fredric J. Ammerman
President Judge

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

MAR 01 2006

Attest.

Prothonotary/
Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
David S. Ammerman Solicitor
Jacki Kendrick Deputy Prothonotary
Bonnie Hudson Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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Sincerely,

William A. Shaw
Prothonotary

DATE: 3/1/06

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__X__The Prothonotary's office has provided service to the following parties:

__X__Plaintiff(s)/Attorney(s)

__X__Defendant(s)/Attorney(s)

_____Other

_____Special Instructions:

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Utica Mutual Insurance Co. CIVIL ACTION
(Plaintiff)

(Street Address)

(City, State ZIP)

No. 03-798-CD.

Type of Case: Civil

Type of Pleading: Petition for Judgement of Nonpros.

Filed on Behalf of:

Defendant.
(Plaintiff/Defendant)

VS.
Robert E. Hamelton
James E. Hamelton Jr
(Defendant)

262 Market St
(Street Address)

Coalport PA 16627
(City, State ZIP)

FILED
MAY 24 2006
0 9:45/cw
William A. Shaw
Prothonotary/Clerk of Courts
5 CERT TO
JAMES HAMILTON JR

James E Hamelton Jr
(Filed by)

262 Market St Coalport PA 16627
(Address)

814-672-5896 - 672-5664
(Phone)

James E Hamelton Jr
(Signature)

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants	:	

PETITION FOR JUDGMENT OF NON PROS

Defendants, Robert E. Hamilton, an individual, Anna Marie Hamilton, an individual, James E. Hamilton, Jr., an individual and Ethel M. Hamilton, an individual, Pro-Se, petitions this Court pursuant to Pa. R.C. P. No. 1037(c) for the entry of judgment of non pros, with prejudice, against the Plaintiff, Utica Mutual Insurance Company, and represents as follows:

1. Plaintiff commenced this civil action by complaint filed on June 2, 2003.

2. Defendants filed preliminary objections to plaintiff's complaint on July 16, 2003.

3. That the preliminary objections were dismissed by the Court on November 20, 2003, however the plaintiffs on their own accord filed a petition seeking to amend the complaint on March 25, 2004 which was agreed to by the defendants on or about April 19, 2004.

4. That the plaintiffs filed an amended complaint on June 9, 2004.

5. Defendants filed preliminary objections to the plaintiffs amended complaint on January 19, 2006.

6. By order dated February 28, 2006, this Court directed plaintiff to file an amended complaint to which was to be attached complete copies of all documents including the Indemnity Agreements, the surety bonds and/or permits which were the basis for their Complaint. A copy of the Order is attached as Exhibit A.

7. Plaintiff has failed to file an amended complaint in accordance with the Order as well as in accord with the provisions of the Pennsylvania Rules of Civil Procedure, Rule 1028(e).

WHEREFORE, defendants respectfully request that this Court enter judgment of non pros against the plaintiff with prejudice and in favor of the defendants.

Robert E. Hamilton

Anna Marie Hamilton

James E. Hamilton, Jr.

Ethel M. Hamilton

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

ORDER

NOW this 28 day of February, 2006 upon consideration of the Preliminary Objections to Plaintiff's Amended Complaint filed by the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton and the Court having held argument thereon it is the ORDER of this Court that said Preliminary Objection be and are hereby granted as follows:

1. The Plaintiff is directed to file an Amended Complaint and attach thereto complete copies of all documents by way of Indemnity Agreements, Surety Bonds and/or Permits which are the basis for the claim asserted by the Plaintiffs against the Defendants.
2. The Plaintiff is directed to make service of said Amended Complaint upon each of the specific Defendants named to include specifically service upon the Defendant

Hamilton Brothers Coal, Inc. which service as to Hamilton Brothers Coal, Inc. is not to be made upon Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr and/or Ethel M. Hamilton.

BY THE COURT

/s/ Fredric J. Ammerman

Fredric J. Ammerman
President Judge

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

MAR 01 2006

Attest.

Prothonotary/
Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants	:	

VERIFICATION

We, the undersigned, verify that the statements made in the foregoing Petition for Judgment of Non Pros are true and correct to the best of our knowledge, information and belief and are made subject to the penalties of 18 Pa. C.S.A. 4904.

Robert E. Hamilton

Robert E. Hamilton

Anna Marie Hamilton

Anna Marie Hamilton

James E. Hamilton Jr.

James E. Hamilton, Jr.

Ethel M. Hamilton

Ethel M. Hamilton

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants	:	

PROOF OF SERVICE

I hereby certify this date serving a copy of the foregoing Petition for Judgment of Non Pros upon the person and in the manner indicated below:

Service by First Class Mail, Postage Pre-Paid

Mr. Matthew D. Gailey, Esquire
Pietragallo, Bosick & Gordan, LLP
38th Floor, One Oxford Centre
Pittsburgh, Pa. 15219

Robert E. Hamilton

Anna Marie Hamilton

James E. Hamilton, Jr.

Ethel M. Hamilton

Dated: 5/24/06

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, Jr., an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants	:	

ORDER

AND NOW, this _____day of May, 2006, upon consideration of Defendants petition of judgment of non pros, it is thereby ORDERED that defendant's petition is granted and that judgment of non pros be entered against the plaintiff, Utica Insurance Company, in the above captioned matter, with prejudice.

BY THE COURT,

_____

Honorable Fredric J. Ammerman
President Judge

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

UTICA MUTUAL INSURANCE COMPANY	:	
vs.	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, JR., an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	:	

ORDER

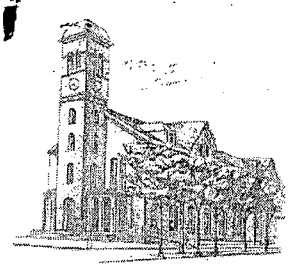
AND NOW, this 24th day of May, 2006, upon consideration of Defendant's Petition for Judgment of Non Pros filed in the above matter, it is the Order of the Court that argument has been scheduled for the **14th day of July, 2006, at 9:00 A.M.,** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

It is the responsibility of the Defendant's to serve certified copies of said Motion and scheduling Order on the Plaintiff.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED 3cc
014:00BH James Hamilton Jr.
MAY 25 2006 262 Market St.
Coalport, PA 16627
William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
David S. Ammerman Solicitor
Jacki Kendrick Deputy Prothonotary
Bonnie Hudson Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 5/25/06

__X__ You are responsible for serving all appropriate parties.

_____ The Prothonotary's office has provided service to the following parties:

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	CIVIL ACTION No. 03 – 798 - CD SECOND AMENDED COMPLAINT IN CIVIL ACTION Filed on behalf of plaintiff: UTICA MUTUAL INSURANCE COMPANY Counsel of record for this party: Paul K. Vey, Esquire Pa. I. D. #30824 Matthew D. Gailey, Esquire Pa. I. D. #90920 PIETRAGALLO, BOSICK & GORDON Firm I.D. #834 38th Floor, One Oxford Centre Pittsburgh, PA 15219 (412) 263-2000

NOTICE TO DEFENDANTS:

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ATTACHED COMPLAINT WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Matthew D. Gailey

Attorney for Plaintiff

FILED
m/10:24 BY
MAY 31 2006 NO CC
(LM)

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint 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.

LAWYER REFERRAL SERVICE
Clearfield County
PA Bar Association
P.O. Box 186
Harrisburg, PA 17108
TELEPHONE: (800) 692-7375

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

SECOND AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP and files the within Second Amended Complaint in Civil Action averring as follows:

1. Plaintiff, Utica Mutual Insurance Company, (hereinafter "Utica") is a New York corporation licensed to do business in Pennsylvania with its principal place of business at 180 Genessee Street, New Hartford, New York, 13413.

2. Defendant, Hamilton Brothers Coal, Inc., is a Pennsylvania corporation with its principal place of business at R.D. Box 184, Coalport, Pennsylvania 16627.

3. Defendants, Robert E. Hamilton and Anna Marie Hamilton are individuals with a last known address of R.D. No. 1, Box No. 16, Irvona, Pennsylvania 16656.

4. Defendants, James E. Hamilton and Ethel M. Hamilton are individuals with a last known address of Box 134, R.D. #1, Coalport, Pennsylvania, 16627.

5. Plaintiff Utica is in the business of issuing surety bonds for surface mining operations in Pennsylvania.

6. At all times relevant hereto, defendants conducted surface mining activities in Beccaria Township, Clearfield County, Pennsylvania pursuant to Commonwealth of Pennsylvania Department of Environmental Protection Permit Nos. 17880122, 17910122 and 17930116.

7. In connection with the execution of these contracts, defendants were required to post surety bonds.

8. Pursuant to that requirement, defendants contacted plaintiff Utica which in turn issued surety bonds SU1524284, SU1545137, SU1554222, SU1635674, SU1700538, SU1700550, SU1366516, SU1635678, SU44373, SU44374 and SU44375 for permit numbers 17880122, 17910122 and 17930116. (Copies of these surety bonds are attached hereto as Exhibit "A").

9. Prior to the execution of the surety bonds, the Defendants executed an indemnity agreement with Plaintiff Utica pursuant to which Defendants individually agreed to indemnify Utica for any losses sustained by Utica with regard to the surety bonds issued, including attorneys' fees and costs. (A copy of the indemnity agreement is attached hereto and made a part hereof as Exhibit "B").

10. After being awarded the contract and obtaining the surety bonds and other required liability insurance, Defendants commenced work on permit numbers 17880122, 17910122 and 17930116. Plaintiff Utica subsequently learned that the Defendants were defaulting on their obligations under all three permits.

11. As a result of Defendants' actions, Plaintiff Utica was required to make payment on the referenced bonds to the Department of Environmental Protection, and did so on January 12, 2000.

12. As a result of Defendants' actions, Plaintiff Utica was required to make payment on the referenced bonds to the Department of Environmental Protection, and did so on May 8, 2001 for bonds listed on permit number 17880122.

13. Pursuant to the indemnity agreement signed in their individual capacities, the Defendants are required to indemnify Utica for attorneys' fees and costs expended by Utica to ensure compliance with the Department of Environmental Protection 's regulations and/or responding to or defending claims arising out of such action, and in pursuing this action.

14. Presently, Defendants owe Plaintiff Utica $155,458.09 for the costs associated with payment to the Department of Environmental Protection and with attorneys' fees incurred to date with respect to pursuing this action.

15. Defendants failure to pay Plaintiff Utica the $155,458.09 plus ongoing attorneys' fees owed is a material breach of the indemnity agreement entered into by and between Plaintiff Utica and Defendants.

16. Defendants breach, as aforesaid, has caused Plaintiff injury in excess of $155,458.09 exclusive of interest, plus services rendered and expenses advanced up to the time of trial.

WHEREFORE, Plaintiff, Utica Mutual Insurance Company, demands judgment against Defendants in the amount of $155,458.09 plus attorneys fees, together with interest, plus services rendered and expenses advanced up to the time of trial.

JURY TRIAL DEMANDED

Respectfully submitted,
PIETRAGALLO, BOSICK & GORDON

By: _____

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Second Amended Complaint in Civil Action was served on the following by first class mail, postage pre-paid, this 26th day of May, 2006:

Hamilton Brothers Coal, Inc., c/o
Robert E. Hamilton
James E. Hamilton, Jr.
Anna Marie Hamilton
Ethel M. Hamilton
262 Market Street
Coalport, PA 16627

Defendants

Matthew D. Gailey

Matthew D. Gailey, Esq.
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUR
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: _____

Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

[x] (a) Original Application for Permit;

[ ] (b) Additional Bond;

[ ] (c) Replacement Bond;

[ ] (d) Transfer of Permit;

(3) Name of Operation Facility: _____

Hamilton #3

(4) Type of Mineral: Bituminous Coal

(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1524284

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

EXHIBIT
tabbies
A

WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 134. Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [x] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 137 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Twenty Thousand Nine Hundred and no/100---------- Dollars ($ 20,900.00----------), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~xxx (10)~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one or ***more, if applicable):***

☐ (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

originally issued on _____.

This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit):

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the [illegible] and [illegible] have executed [illegible] and seals, intending to be legally bound hereby, as of the 18th day of February, 1992.

OPERATOR:

Hamilton Brothers Coal, Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____
(Signature and Title) (Seal)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Shuhayda
Lori Jo Shuhayda

By: _____
(Signature and Title)
Joseph Imler, Attorney-In-Fact

By: _____
(Signature and Title) (Seal)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

ER–MR–405: 6/85

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUR
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #3

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1545137

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 184, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [x] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 137 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Two Thousand Two Hundred and no/100---------- Dollars ($ 2,200.00----------), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations [illegible] or hereafter promulgated under the [illegible]
(j) the terms and condition[illegible] the Permit, and all amendments or ad[illegible]ons thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~ten (10)~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one or ***more, if applicable):***

[X] (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17910122, originally issued on 3-27-92. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____ _____ _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit):

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and s any and all liability and obligations ad on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the [illegible]al and surety have hereunto set the [illegible]ds and seals, intending to be legally bound hereby, as of the 19th day of May, 1992.

OPERATOR:

Hamilton Brothers Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____
(Signature and Title) (Seal)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Shuhayda

By: _____
(Signature and Title)
Joseph Imler, Attorney-In-Fact

By: _____
(Signature and Title) (Seal)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

ER—MR—405: 6/85

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUR
BUREAU OF MINING AND RECLAMATION

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SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: _____

Hamilton Bros. Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: _____

Hamilton #3

(4) Type of Mineral: Bituminous Coal

(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1554222

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Bros. Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 184, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [X] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 137 acres of land
(Number of acres)
in Beccaria Township, Clearfield County,
Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Fifty Eight Thousand and no/100 Dollars ($ 58,500.00),
to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Act;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5)~~ten (10)~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one or *more, if applicable):

[x] (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17910122 originally issued on 3-27-92. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit):

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and cov[illegible] any and all liability and obligations acc[illegible]d on the former operator's mining permit and to be accrued o[illegible] Operator's Mining Permit under the L[illegible] from the date of issuance of the former operator's permit unti[illegible]ch time as the Department shall release, [illegible] writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one or more, if applicable):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 16th day of October, 1992.

OPERATOR:

Hamilton Bros. Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____
(Signature and Title) (Seal)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:
Lori Jo Perrine
Lori Jo Perrine

By: _____
(Signature and Title)
Attorney-In-Fact

By: _____
(Signature and Title) (Seal)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be completed by Operator:

(1) Name of Operator: Hamilton Bros. Coal Inc.

(2) Purpose (check only one):

- ☐ (a) Original Application for Permit;
- ☒ (b) Additional Bond;
- ☐ (c) Replacement Bond;
- ☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #3

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be completed by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of (Bond Rollover:)

_____

_____

To be completed by Surety Company:

Bond No. SU 1635674

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

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WHEREAS, Hamilton Bros. Coal, Inc. ("Operator")
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 184, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [x] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 137 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Thirteen Thousand Nine Hundred and no/100 Dollars ($ 13,900.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the operator shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulatic now or hereafter promulgated under th gs;
(j) the terms and conditi f the Permit, and all amendments or s ons thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. *Amount and Duration of Bond Liability.* Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of mining activity, including its reclamation as provided in the law, the regulations adopted thereunder and the conditions of the permit, at the operation conducted hereunder and for a period of five (5) ~~xxxxx~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law. Liability under this bond is not affected by the operator not renewing this permit.

3. *Default, Cessation In Business, Insolvency, List of Assets.* The surety and operator hereby agree that any collateral held by the surety for its indemnification with respect to this bond is held by the surety as a trust on behalf of the Department to assure the liabilities and obligations secured by this bond will be performed, fulfilled and complied with. The surety and operator agree to provide the Department, upon written request, a list of such collateral to the extent allowed by law. The surety further agrees that, upon its cessation in business or insolvency, all of its right, title and interest in such collateral shall immediately vest in the Department such that the Department has full ownership thereof. Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the operator and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the operator and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The operator and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the operator and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. *Events Not Affecting Bond Liability.* The operator and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. *Waiver of Surety Right to Cover.* The surety hereby waives any right to cover or perform the obligations of the operator upon the operator's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. *Additional Bond.* The Department reserves the right to require additional bonding from the operator, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. *Remedies.* Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

3. *Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability* (check one or *more, if applicable*):

☒ (a) *Additional Bond.* This bond is submitted pursuant to Mining Permit No. 17910122, originally issued on 3-27-92. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) *Replacement Bond.* This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) *Transfer of Permit.* This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit);

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mini permit and to be accr[illegible] the Operator's Mining Permit unde[illegible]aw from the date of issuance of th former operator's permit u[illegible]il such time as the Department shall rele[illegible], in writing, this bond of such liabilit and obligations. In consideration of the pledge and deposit of this bond, the Department will release the abo listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under th Law which accured on the site prior to the issuance of Mining Permit No. _____ at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The paragraph headings herein are for descriptive purposes only and are intended to have no lega force or effect.

IN WITNESS WHEREOF, the operator and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 24th day of May, 1993.

OPERATOR:

Hamilton Bros. Coal, Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____
(Signature and Title) (Seal)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Perrine

Lori Jo Perrine

By: _____
(Signature and Title)
Joseph Imler, Attorney-In-Fact

By: _____
(Signature and Title) (Seal)

Approved as to legality and form:

PRE-APPROVED OAG 10/15/92
Office of Attorney General

(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUF
BUREAU OF MINING AND RECLAMATION

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SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Bros. Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #3

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1700538

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, _____ nilton Bros. Coal, Inc. _____ ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 184, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [x] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 501.1 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Twenty Five Thousand Five Hundred and no/100 Dollars ($ 25,500.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and conditions of the Permit, and all amendments or revisions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. *Amount and Duration of Bond Liability.* Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~xxxxxx~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. *Default.* Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. *Events Not Affecting Bond Liability.* The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. *Waiver of Surety Right to Cover.* The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. *Additional Bond.* The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. *Remedies.* Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. *Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability* (check one or *more, if applicable):*

[X] (a) *Additional Bond.* This bond is submitted pursuant to Mining Permit No. 17910122 originally issued on 3-27-92. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This b is submitted pursuant to Mining P No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit):

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and co[illegible] any and all liability and obligations a[illegible]ued on the former operator's mining permit and to be accrued o[illegible] Operator's Mining Permit under the [illegible] from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one or more, if applicable):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the prin and surety have hereunto set their h and seals, intending to be legally bound hereby, as of the 5th day of November, 1993.

OPERATOR:

Hamilton Bros. Coal, Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____
(Signature and Title) (Seal)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Perrine

Lori Jo Perrine

By: _____
(Signature and Title)
Joseph Imler, Attorney-In-Fact

By: _____
(Signature and Title) (Seal)

Approved as to legality and form:

(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

(Bureau of Mining and Reclamation)

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SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Bros. Coal Inc.

(2) Purpose (check only one):

[X] (a) Original Application for Permit;

[ ] (b) Additional Bond;

[ ] (c) Replacement Bond;

[ ] (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #4

(4) Type of Mineral: Bituminous Coal
(If applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1700550

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

Hamilton Bros. Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

principal place of business at R.D. Box 184, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [x] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 148 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Seventy Eight Thousand and no/100 Dollars ($78,000.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. *Amount and Duration of Bond Liability.* Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~ten (10)~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. *Default.* Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. *Events Not Affecting Bond Liability.* The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. *Waiver of Surety Right to Cover.* The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. *Additional Bond.* The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. *Remedies.* Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. *Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability* (check one or *more, if applicable):*

☐ (a) *Additional Bond.* This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) *Replacement Bond.* This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) *Transfer of Permit.* This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit):

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one or more, if applicable):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

NESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally by, as of the 23rd day of November, 1993.

OPERATOR:

Hamilton Bros. Coal, Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____
(Signature and Title) (Seal)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:
Lori Jo Perrine
Lori Jo Perrine

By: _____
(Signature and Title)
Joseph Imler, Attorney-In-Fact

By: _____
(Signature and Title) (Seal)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

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ER–MR–405: 6/85

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #2

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1366516

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 134, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

☒ (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;

☐ (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;

☐ (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or

☐ (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 501.1 acres of land
(Number of acres)
in Beccaria Township, Clearfield County,
Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Fifty Seven Thousand Seven Hundred Twenty and no/100 Dollars ($ 57,720.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and condition f the Permit, and all amendments or ad ons thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ten (10) (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one ***or more, if applicable***):

☒ (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17880122, originally issued on 4-7-89. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and cove ny and all liability and obligations accru and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit);

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued the Operator's Mining Permit under the w from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 13t day of July, 19 90.

OPERATOR:

Hamilton Brothers Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

Anna M. Hamilton

By: _____
(Signature and Title)
Robert E. Hamilton, President

Anna M. Hamilton

By: _____ (Seal)
(Signature and Title)
James E. Hamilton Jr., Sec/Tres.

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Shuhayda

By: _____
(Signature and Title)
David M. Champe, Attorney-In-Fact

By: _____ (Seal)
(Signature and Title)

Approved as to legality and form:

(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

(Bureau of Mining and Reclamation)

SURETY BOND-MINING (GENERAL)

To be completed by Operator:

(1) Name of Operator: Hamilton Bros. Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #3

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be completed by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of (Bond Rollover:)

_____

_____

To be completed by Surety Company:

Bond No. SU 1635678

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

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WHEREAS, Hamilton Bros. Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 184, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [x] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 501.1 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Three Thousand Five Hundred Twenty and no/100 Dollars ($ 3,520.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regul[illegible]ns now or hereafter promulgated under [illegible] Acts;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. *Amount and Duration of Bond Liability.* Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of mining activity, including its reclamation as provided in the law, the regulations adopted thereunder and the conditions of the permit, at the operation conducted hereunder and for a period of five (5) ~~xxxxx~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law. Liability under this bond is not affected by the operator not renewing this permit.

3. *Default, Cessation In Business, Insolvency, List of Assets.* The surety and operator hereby agree that any collateral held by the surety for its indemnification with respect to this bond is held by the surety as a trust on behalf of the Department to assure the liabilities and obligations secured by this bond will be performed, fulfilled and complied with. The surety and operator agree to provide the Department, upon written request, a list of such collateral to the extent allowed by law The surety further agrees that, upon its cessation in business or insolvency, all of its right, title and interest in such collateral shall immediately vest in the Department such that the Department has full ownership thereof. Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the operator and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the operator and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The operator and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the operator and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. *Events Not Affecting Bond Liability.* The operator and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. *Waiver of Surety Right to Cover.* The surety hereby waives any right to cover or perform the obligations of the operator upon the operator's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. *Additional Bond.* The Department reserves the right to require additional bonding from the operator, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. *Remedies.* Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

applicable):

☒ (a) *Additional Bond.* This bond is submitted pursuant to Mining Permit No. 17910122 originally issued on 3-27-92. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) *Replacement Bond.* This bond is submitted pursuant to Mining Permit No. _____ originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) *Transfer of Permit.* This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit):

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) *Pre-Existing Mining Liability.* This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. *Attachments* (check one or more, if applicable):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. *Headings.* The paragraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

ER–MR–405: 6/85

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUR
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #2

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 44373

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 134, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [X] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 501.0 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Thirty Thousand Two Hundred and 00/100 Dollars ($ 30,200.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~years~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one or ***more, if applicable***):

[X] (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17880122, originally issued on 4-7-89. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____ _____ _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit);

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 8th day of December, 19 89.

OPERATOR:

Hamilton Brothers Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

Anna M. Hamilton

By: _____
(Signature and Title)
Robert E. Hamilton, President

Anna M. Hamilton

By: _____ (Seal)
(Signature and Title)
James E. Hamilton Jr., Sec/Tres.

SURETY:

Utica Mutual Insurance Company -
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Shuhayda

By: David M. Champe
(Signature and Title)
David M. Champe, Attorney-In-Fact

_____

By: _____ (Seal)
(Signature and Title)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

ER—MR—405: 6/85

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUR
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #2

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 44374

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 134 Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [x] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 501.0 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Nine Thousand Nine Hundred and 00/100 Dollars ($9,900.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Act;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~ten~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one ***or more, if applicable):***

[X] (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17880122, originally issued on 4-7-89. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____ _____ _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit);

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 8th day of December, 19 89.

OPERATOR:

Hamilton Brothers Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

Anna M. Hamilton

By: _____
(Signature and Title)
Robert E. Hamilton, President

Anna M. Hamilton

By: _____ (Seal)
(Signature and Title)
James E. Hamilton Jr., Sec/Tres.

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Shuhayda

By: _____
(Signature and Title)
David M. Champe, Attorney-In-Fact

By: _____ (Seal)
(Signature and Title)

Approved as to legality and form:

(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

(Bureau of Mining and Reclamation)

ER–MR–405: 6/85

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUR
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #2

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by
Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 44375

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 134, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- ☒ (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- ☐ (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- ☐ (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- ☐ (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- ☐ (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- ☐ (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 501.0 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Eleven Thousand Nine Hundred and 00/100 Dollars ($ 11,900.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and conditions of the Permit, and all amendments or alterations thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~XXXX~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one **or *more, if applicable)*:**

☒ (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17880122, originally issued on 4-7-89. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit);

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one or more, if applicable):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 8th day of December, 19 89.

OPERATOR:

Hamilton Brothers Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

Anna M. Hamilton

By: _____
(Signature and Title)
Robert E. Hamilton, President

Anna M. Hamilton

By: _____ (Seal)
(Signature and Title)
James E. Hamilton Jr., Sec/Tres.

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Shuhayda

By: David M. Champe
(Signature and Title)
David M. Champe, Attorney-In-Fact

By: _____ (Seal)
(Signature and Title)

Approved as to legality and form:

(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

(Bureau of Mining and Reclamation)

HO CLAIMS SERVICE
APR 21 2000

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

GENERAL AGREEMENT OF INDEMNITY

This Agreement entered into by and between the undersigned, herein called the Indemnitors, and the Utica Mutual Insurance Company of New Hartford, New York, herein called the Company, witnesseth:

WHEREAS, in the transaction of business certain bonds, undertakings and other writings obligatory in the nature of a bond have heretofore been, and may hereafter be, required by, for, or on behalf of the Indemnitors or any one or more of the parties included in the designation Indemnitors, and application has been made and will hereafter be made to the Company to execute such bonds, and as a prerequisite to the execution of such bond or bonds, the Company requires complete indemnification.

NOW, THEREFORE, in consideration of the premises, and the payment by the Company of the sum of One ($1.00) Dollar to each of the Indemnitors, receipt whereof is hereby acknowledged, and for other good and valuable considerations, the Indemnitors do, for themselves, their heirs, executors, administrators and assigns, jointly and severally, agree with the Company as follows:

1. The Indemnitors will pay to the Company, at its Home Office in the Town of New Hartford, New York, premiums and charges at the rates, and at the times specified in respect to each such bond in the Company's schedule of rates, which, with any additions or amendments thereto, is by reference made a part hereof, and will continue to pay the same where such premium or charge is annual, until the Company shall be discharged and released from any and all liability and responsibility upon and from each such bond or matters arising therefrom, and until the Indemnitors shall deliver to the Company at its Home Office in New Hartford, New York, competent written evidence satisfactory to the Company of its discharge from all liability on such bond or bonds.

2. The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of, such bonds, or any renewals or continuations thereof or substitutes therefor, including fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. In the event of payments by the Company, the Indemnitors agree to accept the voucher or other evidence of such payments as prima facie evidence of the propriety thereof, and of the Indemnitors' liability therefor to the Company.

3. If the Company shall set up a reserve to cover any claim, suit or judgment under any such bond, the Indemnitors will, immediately upon demand, deposit with the Company a sum of money equal to such reserve, such sum to be held by the Company as collateral security on such bond, and such sum and any other money or property which shall have been, or shall hereafter be, pledged as collateral security on any such bond shall, unless otherwise agreed in writing by the Company, be available, in the discretion of the Company, as collateral security on any other or all bonds coming within the scope of this Agreement.

4. The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability with which the Company may be subsequently charged under any such bond, shall notify the Company thereof in writing at its Home Office in the Town of New Hartford, New York.

5. The Company shall have the exclusive right to determine for itself and the Indemnitors whether any claim or suit brought against the Company or the Principal upon any such bond shall be settled or defended and its decision shall be binding and conclusive upon the Indemnitors.

6. The Company, and its designated agents, shall, at any and all reasonable times, have free access to the books and records of the Indemnitors.

EXHIBIT

tabbies

B

7. If such bond be given in connection with a contract, the Company is hereby authorized, but not required, to consent to any change in the contract or in the plans or specifications relating thereto; to make or guarantee advances or loans for the purpose of the contract without necessity of seeing to the application thereof, it being understood that the amount of all such advances or loans, unless repaid with legal interest by the Contractor to the Company when due, shall be conclusively presumed to be a loss hereunder; in the event the Indemnitors, or any of them, shall fail to pay any premium charge when due; or abandon, forfeit or breach such contract; or breach any bond given in connection therewith; or fail, neglect or refuse to pay for any labor or materials used in the prosecution of such contract; or have proceedings instituted against them, or any of them, alleging that they are insolvent, or for the appointment of a receiver or trustee for the benefit of creditors, whether such Indemnitor(s) are insolvent or not; or have proceedings instituted against them, or any of them, the effect of which may be to deprive any of them of the use of any part of the equipment used in connection with the work under the contract so as to hinder, delay or impede the normal and satisfactory progress of the work, the Company shall have the right, but not the obligation, to take possession of the work under the contract and under any other contract in connection with which the Company has given its bond or bonds within the purview of this General Agreement of Indemnity and, at the expense of the Indemnitors, to complete the contract(s), or cause, or consent, to the completion thereof. The Indemnitors hereby assign, transfer, and set over to the Company (to be effective as of the date of such bond or bonds, but only in the event of a default as aforesaid), all of their rights under the contract(s), including their right, title and interest in and to all subcontracts let in connection therewith; all machinery, plant, equipment, tools and materials which shall be upon the site of the work or elsewhere for the purposes of the contract(s), including all materials ordered for the contract(s), any and all sums due under the contract(s) at the time of such default, or which may thereafter become due, and the Indemnitors hereby authorize the Company to endorse in the name of the payee, and to receive and collect any check, draft, warrant or other instrument made or issued in payment of any such sum, and to disburse the proceeds thereof.

8. That it shall not be necessary for the Company to give the Indemnitors, or any one or more of them, notice of the execution of any such bonds, nor of any fact or information coming to the notice or knowledge of the Company affecting its rights or liabilities, or the rights or liabilities of the Indemnitors under any such bond executed by it, notice of all such being hereby expressly waived.

9. In the event of any claim or demand being made by the Company against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of a bond or bonds, the Company is hereby expressly authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and we hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

10. The Company may decline to execute any Bond applied for without incurring any liability whatever and without impairing the validity of this General Agreement of Indemnity. If the Company shall execute a bid or proposal bond, or any similar undertaking, it may nevertheless decline to execute any and all Bonds that may be required in connection with any award made on the proposal for which the bond or undertaken is given.

11. If the Company procures the execution of such bonds by other companies, or executes such bonds with cosureties, or reinsures any portions of such bonds with reinsuring companies, then all the terms and conditions of this Agreement shall apply and operate for the benefit of such other companies, cosureties and reinsurers as their interest may appear.

12. The liability of the Indemnitors hereunder shall not be affected by the failure of the Principal to sign any such bond, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

13. These covenants herein and also all collateral security, if any, at any time deposited with the Company concerning the said bond or bonds and any other former or subsequent bonds executed for the Indemnitors at their instance shall, at the option of the Company, be available in its behalf and for its benefit as well concerning any bond or undertaking applied for, and also concerning all other former or subsequent bonds and undertakings, executed for the Indemnitors or for others at their request.

14. This Agreement may be terminated the Indemnitors, or any one or more of the ies so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force.

15. Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee.

16. THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF.

17. This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of Hamilton Brothers Coal Inc.

18. IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of 19

HAMILTON BROTHERS COAL INC.

Thomas C Johnson
Witness

Robert E. Hamilton (L. S.)
Robert E. Hamilton, President

Box 157 Irvona Pa
Street or P. O. Box City State

Box 134, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Robert E. Hamilton (L. S.)
Robert E. Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

Anna Marie Hamilton (L. S.)
Anna Marie Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

James E. Hamilton Jr. (L. S.)
James E. Hamilton, Jr., Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Ethel M. Hamilton (L. S.)
Ethel M. Hamilton, Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE.

Individual Acknowledgment

STATE OF Pennsylvania }
COUNTY OF Clearfield } ss:

On this 3 day of June 19 87, before me personally came

Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton

to me known, and known to me to be the individual who executed the foregoing instrument, and acknowledged that he executed the same.

Honora Ann Johnson N.P.

HONORA ANN JOHNSON, NOTARY P
IRVONA BOROUGH, CLEARFIELD CO
MY COMMISSION EXPIRES APRIL 26
Member, Pennsylvania Association of

Co-partnership Acknowledgment

STATE OF Pe }
COUNTY OF } ss:

On this day of 19, before me personally came

me known, and known to me to be one of the firm of

and acknowledged that he executed the foregoing instrument as the act of the said firm.

Corporation Acknowledgment

STATE OF Pennsylvania }
COUNTY OF Clearfield } ss:

On this 3 day of June 19 87 before me personally came

Robert E. Hamilton

to me known, who, being by me duly sworn, did depose and say that he resides in R.D. #1, Box #16,

Irvona, PA 16656

that he is the President of the

Hamilton Brothers Coal Inc. the corporation

ich executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order.

Honora Ann Johnson N.P.

HONORA ANN JOHNSON, NOTARY PUBLIC
IRVONA BOROUGH, CLEARFIELD COUNTY
MY COMMISSION EXPIRES

VERIFICATION

I, Jason Jaskolka, Esq., verify that I am a representative of **Utica Mutual Insurance Company**, the Plaintiff in the within action, that I am authorized to file the foregoing **Second Amended Complaint in Civil Action** on its behalf, and that the statements and averments of fact contained therein are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa. C.S.A. Section 4904.

Dated: May 26, 2006

Jason Jaskolka, Esq.

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	No. 03-798-CD
vs.	:	Type of Case: Civil
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	Type of Pleading: Preliminary Objections to Plaintiff's Second Amended Complaint
	:	Filed on Behalf of: Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, Defendants
	:	Counsel of Record for this Party: Pro-Se

FILED 3cc deft.
9/10:00 cm
JUN 06 2006

William A. Shaw
Prothonotary

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

NOTICE TO PLEAD

TO THE WITHIN PLAINTIFF, UTICA MUTUAL INSURANCE COMPANY:

You are hereby notified to file a written response to the enclosed Preliminary Objections pursuant to Pa. R.C.P. Rule 1028(a)(1)(5) filed on behalf of Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, within twenty (20) days from service hereof or a judgment may be entered against you.

By,

Date: June 6, 2006

Robert E. Hamilton

Anna Marie Hamilton

James E. Hamilton, Jr.

Ethel M. Hamilton

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

PRELIMINARY OBJECTIONS TO PLAINTIFF'S SECOND AMENDED COMPLAINT

NOW comes the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, Pro-Se, who for their Preliminary Objections to Plaintiff's Second Amended Complaint would respectfully set forth and aver as follows:

1. That the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, would respectfully set forth a Preliminary Objection pursuant to Pa. R.C.P. Rule 1028(a)(3) in that the Second Amended Complaint does not contain the specific information required from which an appropriate response on behalf of the Defendants can be made. Paragraphs Six, Eight and Ten of the Complaint make reference to certain Environmental Protection Permits, Surety Bonds and Permit Numbers, totaling twelve items, which although attached to the Second

Amended Complaint are not complete copies as none of the items exhibit the signatures of any of the Defendants signing these Preliminary Objections to the Second Amended Complaint. The Defendants need complete copies of all such items in order to effectively and completely form their response to the allegations set forth in the Second Amended Complaint. The Defendants divested themselves of any interest, ownership or otherwise, in Hamilton Brothers Coal, Inc. long before the dates specified in the Complaint and as a result thereof do not physically have sufficient records available such that a response can be forthcoming without complete copies of said items.In fact, the Defendants had sold their interest in the Company by Agreement of Sale dated June 25, 1996 and the date referenced in the Plaintiff's Second Amended Complaint is January 12, 2000.

2. That the Defendants Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton would raise a Preliminary Objection pursuant to the provisions of Pa. R.C.P. Rule 1028(a)(5) on the basis of the nonjoinder and/or improper service of necessary parties in that Fred Kuzemchak and/or Hamilton Brothers Coal, Inc. has not been served or individually named as a party to the instant proceeding as well as that the Commonwealth of Pennsylvania, Department of Environmental Protection has not been named as a party to the instant proceedings.

3. That the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, advised the Sheriff's Deputy that none of the individuals being served were in any fashion currently associated with

or owners of Hamilton Brothers Coal, Inc. with said corporation having been sold by the Defendants Robert E. Hamilton and James E. Hamilton, Jr., pursuant to an Agreement of Sale dated on or about June 25, 1996 to Fred Kuzemchak of R.D. #2, Box 563, Clymer, Pennsylvania, 15728.

4. That the Sheriff's Deputy making service of the original Complaint indicated that the Defendants Hamilton were on his papers for service of the Complaint as to Hamilton Brothers Coal, Inc. and that based upon the same he was leaving said Complaint with them and deemed that he had properly serviced Hamilton Brothers Coal, Inc. at that point in time.

5. That the Defendants Hamilton by way of previous Preliminary Objections on at least two prior occasions as well as herein would raise the issue as to the improper service of the Complaint as to Hamilton Brothers Coal, Inc..

6. That Fred Kuzemchak and the Commonwealth of Pennsylvania, Department of Environmental Protection are necessary parties to the instant proceeding as a result of the modification of the bonding on the premises set forth within the Plaintiff's Complaint by said Fred Kuzemchak either individually or on behalf of Hamilton Brothers Coal, Inc. with the consent and/or knowledge of the Commonwealth of Pennsylvania, Department of Environmental Protection without first having obtained the consent of the Defendants Hamilton to said modification or transfer.

7. That failure of said Kuzemchak either individually or on behalf of Hamilton Brothers Coal Co., Inc. and/or the Commonwealth of Pennsylvania, Department of Environmental Protection to obtain said consents of the

Defendants Hamilton to the modification and/or transfer of the bonds resulted in an increase in the liability exposure of the Defendants Hamilton in violation of the Indemnity Agreement as well as resulted in a violation of the provisions of the Environmental Protection Regulations and Statutes such that the modifications and/or transfers were improper and could not be legally done.

8. That the joinder of Fred Kuzemchak individually and/or Hamilton Brothers Coal, Inc. and the Commonwealth of Pennsylvania, Department of Environmental Protection is necessary such that the Defendants Hamilton would be in a position to fully and completely respond to the Complaint filed by the Plaintiff in the above captioned matter.

9. That this matter was previously raised by way of Preliminary Objection to the Plaintiff's Complaint and was dealt with by the Court however the Default Notice that has been served by Counsel for the Plaintiff upon the Defendants at this time is still carrying Hamilton Brothers Coal, Inc. as a Defendant in conjunction with the other Defendants. Likewise the docket in the matter should not reflect any service upon Hamilton Brother Coal, Inc by way of service of the Complaint or the Default Notice. The Defendants would respectfully request that the Court issue an Order striking any purported service upon the Defendant Hamilton Brothers Coal, Inc. as well as strike that portion of the Default Notice filed of record as being given upon Hamilton Brothers Coal, Inc.

10. That Preliminary Objections were previously filed by former counsel for the Defendants, Hamiltons, which were heard by the Court on February 24, 2006.

11. That pursuant to a Court Order dated February 28, 2006, the Plaintiff was directed to file and Amended Complaint attaching thereto complete copies of all documents by way of Indemnity Agreements, Surety Bonds and/or Permits which were the basis for the claim asserted by the Plaintiff against the Defendants. That Order further directed that service upon Hamilton Brothers Coal, Inc. was not to be made upon Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and/or Ethel M. Hamilton.

12. That the Plaintiff has on or about May 30, 2006 filed a Second Amended Complaint with the Prothonotary of Clearfield County and attempted to make service upon all parties including Hamilton Brothers Coal, Inc. by letter enclosing a copy of the Second Amended Complaint.

13. That as Hamilton Brothers Coal, Inc. has never been served in the course of this proceeding with any prior documents or pleadings said attempted service upon Hamilton Brothers Coal, Inc. is ineffective as not complying with the provisions of the Pennsylvania Rules of Civil Procedure requiring that initial service must be made by the Sheriff of that jurisdiction in which the Defendant Hamilton Brothers Coal, Inc. can be found.

14. That the documents mailed to the individual Defendants Hamilton and the Certificate of Service thereon indicate that once again service is attempting to be made on Hamilton Brothers Coal, Inc. by serving the same upon Robert E. Hamilton, James E. Hamilton, Jr., Anna Marie Hamilton and Ethel M.

Hamilton at the personal address of James E. Hamilton, Jr. and Ethel M. Hamilton.

15. That said attempt to make service is in direct violation and contrary to the specific provisions of the Court Order dated February 28, 2006. This is the third time that the Court has had to deal with the improper service of Hamilton Brothers Coal, Inc. and yet the Plaintiff continues to still fail to comply with the Court's direction in that regard.

16. That the Court Order of February 28, 2006 directed that complete copies be attached to the Amended Complaint and the copies which have been attached to the Second Amended Complaint filed by the Plaintiff are not complete in that none of said copies have been signed by the Defendant Hamilton.

WHEREFORE, it is respectfully requested that your Honorable Court grant the Preliminary Objections of the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, and that the Court dismiss with prejudice the Plaintiff's Second Amended Complaint.

Respectfully submitted,

Date: June 6, 2006

Robert E. Hamilton

Anna Marie Hamilton

James E. Hamilton, Jr.

Ethel M. Hamilton

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the Preliminary Objections to Plaintiff's Second Amended Complaint upon the following person by mailing such copy regular mail, postage prepaid to:

Mr. Matthew D. Gailey, Esquire
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
301 Grant Street
Pittsburgh, PA 15219

Date: June 6, 2006

Robert E. Hamilton

Anna Marie Hamilton

James E. Hamilton, Jr.

Ethel M. Hamilton

FILED

JUN 0 6 2006

William A. Shaw
Prothonotary

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

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

RESPONSE TO DEFENDANTS' PRELIMINARY OBJECTIONS TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED No CC
m/10:58/BK
JUN 23 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

RESPONSE TO DEFENDANTS' PRELIMINARY OBJECTIONS TO PLAINTIFF'S SECOND AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo Bosick & Gordon LLP, and files the within Response to the Defendants' Preliminary Objections to Plaintiff's Second Amended Complaint, averring as follows:

1. The averments contained in paragraph 1 of Defendants' Preliminary Objections are denied. The Plaintiff has provided to the Defendants all information necessary to respond to Plaintiff's Second Amended Complaint. This case centers on the breach of an indemnification agreement, a signed copy of which was attached to Plaintiff's Complaint. The remainder of paragraph 1 contains conclusions of law, and therefore no response is required.

2. The averments contained in paragraph 2 of Defendants' Preliminary Objections are admitted in part and denied in part. It is admitted that Hamilton Brothers Coal, Inc. was not properly served. However, as of the date of this filing, the Sheriff of Indiana County has been deputized and instructed to serve Hamilton Brothers Coal, Inc., c/o Fred Kuzemchak at R. D. #2,

Clymer, PA 15728. It is denied that the Commonwealth of Pennsylvania, Department of Environmental Protection, is a necessary party to the instant proceeding.

3. The Plaintiff is without information sufficient to either admit or deny the averments contained in paragraph 3 of Defendants' Preliminary Objections. Moreover, the averments therein are irrelevant to any Preliminary Objection associated with the Second Amended Complaint, as they are factual defenses regarding initial service of the original Complaint. In addition, the filing of these Preliminary Objections is merely a dilatory tactic. This Honorable Court overruled the identical Preliminary Objection stating that the Plaintiff could achieve the same objective of bringing Mr. Kozemchak into the suit by joining him as an additional Defendant. The November 21, 2003 Order of President Judge Reilly overruling the Defendants' identical objections is attached hereto as Exhibit "A".

4. The Plaintiff is without information sufficient to either admit or deny the averments contained in paragraph 4 of Defendants' Preliminary Objections. Moreover, the averments therein are irrelevant to any Preliminary Objection associated with the Second Amended Complaint, as they are factual defenses regarding initial service of the original Complaint.

5. The averments contained in paragraph 5 of Defendants' Preliminary Objections are admitted; however, the Court overruled the first Preliminary Objections concerning service. As stated above, President Judge Reilly advised the Defendants to join additional parties as additional Defendants, which they have failed to do.

6. The averments contained in paragraph 6 of Defendants' Preliminary Objections are denied. However, as of the date of this filing, the Sheriff of Indiana County has been deputized and instructed to serve Hamilton Brothers Coal, Inc., c/o Fred Kuzemchak at R. D. #2,

Clymer, PA 15728. The Commonwealth of Pennsylvania, Department of Environmental Protection, is not a necessary party. In addition, the averments contained in paragraph 6 of Plaintiff's Preliminary Objections are conclusions of law to which no response is required. To the extent a response is deemed necessary, said averments are denied.

7. The averments contained in paragraph 7 of Defendants' Preliminary Objections are conclusions of law to which no response is required. If a response is deemed necessary, said averments are denied.

8. The averments contained in paragraph 8 of Defendants' Preliminary Objections are denied. The Sheriff of Indiana County, Pennsylvania, has been deputized and instructed to serve Fred Kuzemchak, as required by the Order of Court dated February 28, 2006. In addition, the Preliminary Objections a put forward are merely a dilatory tactic as the Defendants can join any party they wish as an additional Defendant.

9. The averments contained in paragraph 9 of Defendants' Preliminary Objections are conclusions of law to which no response is required. If a response is deemed necessary, said averments are denied.

10. The averments contained in paragraph 10 of Defendants' Preliminary Objections are admitted.

11. The averments contained in paragraph 11 of Defendants' Preliminary Objections are admitted; however, the oversight, which initially led to the failure of service on Hamilton Brothers Coal, Inc., has since been corrected, and no prejudice has resulted therefrom.

12. The averments contained in paragraph 12 of Defendants' Preliminary Objections are admitted; however, the oversight, which initially led to the failure of service on Hamilton Brothers Coal, Inc., has since been corrected, and no prejudice has resulted therefrom.

13. The averments contained in paragraph 13 of Defendants' Preliminary Objections contain conclusions of law to which no response is required. If a response is deemed necessary, said averments are denied.

14. The averments contained in paragraph 14 of Defendants' Preliminary Objections are admitted; however, the oversight, which initially led to the failure of service on Hamilton Brothers Coal, Inc., has since been corrected, and no prejudice has resulted therefrom.

15. The averments contained in paragraph 15 of Defendants' Preliminary Objections are denied. The Preliminary Objections to the original Complaint were denied. The Defendants are engaging in dilatory conduct by their failure to join additional Defendants. In addition, any oversight, which initially led to the failure of service on Hamilton Brothers Coal, Inc., has since been corrected, and no prejudice has resulted therefrom.

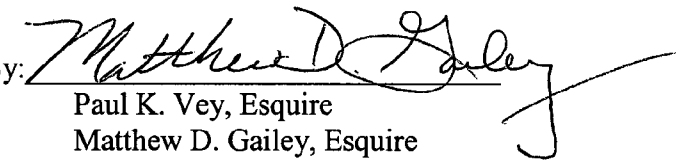
16. The averments contained in paragraph 16 of Defendants' Preliminary Objections are denied. Complete copies of the necessary documents were attached to Plaintiff's Second Amended Complaint that was served on the Defendants.

WHEREFORE, the Plaintiff, Utica Mutual Insurance Company, respectfully requests that this Honorable Court deny Defendants Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton's Preliminary Objections to Plaintiff's Second Amended Complaint.

JURY TRIAL DEMANDED

Respectfully submitted,

PIETRAGALLO BOSICK & GORDON LLP

By: 

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Attorneys for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Response to Defendants' Preliminary Objections to Plaintiff's Second Amended Complaint** was served on the following by first class mail, postage pre-paid, this 20th day of June, 2006:

Hamilton Brothers Coal, Inc.
C/o Fred Kuzemchak
R. D. #2, Box 563
Clymer, PA 15728

Robert E. Hamilton
James E. Hamilton, Jr.
Anna Marie Hamilton
Ethel M. Hamilton
262 Market Street
Coalport, PA 16627
Defendants, Pro Se

Matthew D. Gailey

Matthew D. Gailey, Esq.
Attorney for Plaintiff

UM 40122

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

UTICA MUTUAL INSURANCE COMPANY	:	
	:	
-vs-	:	No. 03 – 798 – CD
	:	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual	:	

ORDER

NOW, this 20th day of November, 2003, upon consideration of Preliminary Objections filed on behalf of Defendants above-named, and argument and briefs thereon, it is the ORDER of this Court that Preliminary Objection alleging Plaintiff's improper service of Complaint against the corporation defendant shall be and is hereby dismissed as objectors have no basis to raise this issue.

Defendants' Preliminary Objection seeking to require Plaintiff to join the Department of Environmental Protection and Fred Kuzemchak as necessary parties defendant shall be and is hereby dismissed as Defendants may accomplish the same objective by joining said parties as additional defendants.

By the Court,

/s/ JOHN K. REILLY, JR.

President Judge

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

NOV 21 2003

Attest. William L. Shaw
Prothonotary/
Clerk of Courts

NOV 22 2003

EXHIBIT
tabbies
A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101631
NO: 03-798-CD
SERVICE # 1 OF 1
SECOND AMENDED COMPLAINT

PLAINTIFF: UTICA MUTUAL INSURANCE COMPANY
vs.
DEFENDANT: HAMILTON BROTHERS COAL, INC. al

SHERIFF RETURN

NOW, June 15, 2006, SHERIFF OF INDIANA COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN SECOND AMENDED COMPLAINT ON HAMILTON BROTHERS COAL, INC. c/o Fred Kozemchak.

NOW, June 26, 2006 ATTEMPTED TO SERVE THE WITHIN SECOND AMENDED COMPLAINT ON HAMILTON BROTHERS COAL, INC. c/o Fred Kozemchak, DEFENDANT. THE RETURN OF INDIANA COUNTY IS HERETO **ATTACHED** AND MADE PART OF THIS RETURN MARKED "NOT FOUND".

FILED
013:1603
JUL 13 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101631
NO: 03-798-CD
SERVICES 1
SECOND AMENDED COMPLAINT

PLAINTIFF: UTICA MUTUAL INSURANCE COMPANY
vs.
DEFENDANT: HAMILTON BROTHERS COAL, INC. al

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	PIETRAGALLO	120997	10.00
SHERIFF HAWKINS	PIETRAGALLO	120997	21.00
INDIANA CO.	PIETRAGALLO	121061	50.00

Sworn to Before Me This

_____ Day of _____ 2006

_____

So Answers,

Chester A. Hawkins
Sheriff

INDIANA COUNTY SHERIFF'S OFFICE

PLAINTIFF UTICA MUTUAL

VS

DEFENDANT HAMILTON BRO

date received: 6/12/2006 **status:** C

case number: 003798CD

paper type: COMPLAINT

ATTORNEY'S NAME: PIETRAGALLO BOSICK ETAL

ATTORNEY'S ADDRESS: ONE OXFORD CTR
PITTSBURGH PA 15219

LAST DAY OF SERVICE: 7/11/2006

# of services: 1

ADVANCE CHARGED: $100.00

RECEIVING DOCKETING:	$9.00	**SURCHARGE:**	$0.00
FOUND SERVICE:	$0.00	**NOTARY FEE:**	$5.00
NOT FOUND	$5.00	**MILEAGE:**	$22.00
ADDITIONAL DEFENDANTS SERVED	$0.00	**POSTAGE:**	$0.00
DEPUTIZATION	$9.00		

TOTAL COSTS: $50.00

REFUND DUE: $50.00

RETURN OF SERVICE:

NOW 6/26/06 AT 8:45AM UNABLE TO LOCATE HAMILTON BROS COAL (NOTE: CORRECTED ADDRESS)

AT 4724 LAUREL RUN RD CLYMER PA REASON: PER BECKY KUZEMCHAK

HAMILTON BROS SOLD TO FRED KUZEMCHAK-FRED KUZEMCHAK FILED BANKRUPTCY AND IS IN FLORIDA-TJ CAMPISANO

SWORN AND SUBSCRIBED BEFORE ME
THIS 27 **DAY OF** June 2006

Loretta J Wissinger

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
LORETTA J. WISSINGER, NOTARY PUBLIC
INDIANA, INDIANA CO
MY COMMISSION EXPIRES MAR. 15, 2010

Robert E. Fyock

ROBERT E. FYOCK, SHERIFF

BY:
DEPUTY THOMAS J CAMPISANO

CHESTER A. HAWKINS
SHERIFF

Sheriff's Office
Clearfield County

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

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

ROBERT SNYDER
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 101631

TERM & NO. 03-798-CD

UTICA MUTUAL INSURANCE COMPANY

SECOND AMENDED COMPLAINT

vs.

HAMILTON BROTHERS COAL, INC. al

SERVE BY: 06/30/06

MAKE REFUND PAYABLE TO PIETRAGALLO, BOSICK & GORDON

SERVE: HAMILTON BROTHERS COAL, INC. c/o Fred Kozemchak

ADDRESS: RD#2 BOX 563, CLYMER, PA 15728 4724 Laurel Run Rd Clymer, PA

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF INDIANA COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, June 15, 2006.

RESPECTFULLY,

Chester A. Hawkins

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

2006 JUN 19 A 11:36
INDIANA COUNTY SHERIFF

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff,	CIVIL ACTION No. 03 – 798 - CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	SECOND AMENDED COMPLAINT IN CIVIL ACTION Filed on behalf of plaintiff: UTICA MUTUAL INSURANCE COMPANY Counsel of record for this party: Paul K. Vey, Esquire Pa. I. D. #30824 Matthew D. Gailey, Esquire Pa. I. D. #90920 PIETRAGALLO, BOSICK & GORDON Firm I.D. #834 38th Floor, One Oxford Centre Pittsburgh, PA 15219 (412) 263-2000

NOTICE TO DEFENDANTS:

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ATTACHED COMPLAINT WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Matthew D. Gailey

Attorney for Plaintiff

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

JUN 12 2006

Attest.

Prothonotary/
Clerk of Courts

2006 JUN 19 A 11:36

INDIANA COUNTY SHERIFF

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff,	)	No.
vs.	)	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint 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.

LAWYER REFERRAL SERVICE
Clearfield County
PA Bar Association
P.O. Box 186
Harrisburg, PA 17108
TELEPHONE: (800) 692-7375

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff,	)	No. 03 – 798 - CD
vs.	)	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	

SECOND AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP and files the within Second Amended Complaint in Civil Action averring as follows:

1. Plaintiff, Utica Mutual Insurance Company, (hereinafter "Utica") is a New York corporation licensed to do business in Pennsylvania with its principal place of business at 180 Genessee Street, New Hartford, New York, 13413.

2. Defendant, Hamilton Brothers Coal, Inc., is a Pennsylvania corporation with its principal place of business at R.D. Box 184, Coalport, Pennsylvania 16627.

3. Defendants, Robert E. Hamilton and Anna Marie Hamilton are individuals with a last known address of R.D. No. 1, Box No. 16, Irvona, Pennsylvania 16656.

4. Defendants, James E. Hamilton and Ethel M. Hamilton are individuals with a last known address of Box 134, R.D. #1, Coalport, Pennsylvania, 16627.

5. Plaintiff Utica is in the business of issuing surety bonds for surface mining operations in Pennsylvania.

6. At all times relevant hereto, defendants conducted surface mining activities in Beccaria Township, Clearfield County, Pennsylvania pursuant to Commonwealth of Pennsylvania Department of Environmental Protection Permit Nos. 17880122, 17910122 and 17930116.

7. In connection with the execution of these contracts, defendants were required to post surety bonds.

8. Pursuant to that requirement, defendants contacted plaintiff Utica which in turn issued surety bonds SU1524284, SU1545137, SU1554222, SU1635674, SU1700538, SU1700550, SU1366516, SU1635678, SU44373, SU44374 and SU44375 for permit numbers 17880122, 17910122 and 17930116. (Copies of these surety bonds are attached hereto as Exhibit "A").

9. Prior to the execution of the surety bonds, the Defendants executed an indemnity agreement with Plaintiff Utica pursuant to which Defendants individually agreed to indemnify Utica for any losses sustained by Utica with regard to the surety bonds issued, including attorneys' fees and costs. (A copy of the indemnity agreement is attached hereto and made a part hereof as Exhibit "B").

10. After being awarded the contract and obtaining the surety bonds and other required liability insurance, Defendants commenced work on permit numbers 17880122, 17910122 and 17930116. Plaintiff Utica subsequently learned that the Defendants were defaulting on their obligations under all three permits.

11. As a result of Defendants' actions, Plaintiff Utica was required to make payment on the referenced bonds to the Department of Environmental Protection, and did so on January 12, 2000.

12. As a result of Defendants' actions, Plaintiff Utica was required to make payment on the referenced bonds to the Department of Environmental Protection, and did so on May 8, 2001 for bonds listed on permit number 17880122.

13. Pursuant to the indemnity agreement signed in their individual capacities, the Defendants are required to indemnify Utica for attorneys' fees and costs expended by Utica to ensure compliance with the Department of Environmental Protection 's regulations and/or responding to or defending claims arising out of such action, and in pursuing this action.

14. Presently, Defendants owe Plaintiff Utica $155,458.09 for the costs associated with payment to the Department of Environmental Protection and with attorneys' fees incurred to date with respect to pursuing this action.

15. Defendants failure to pay Plaintiff Utica the $155,458.09 plus ongoing attorneys' fees owed is a material breach of the indemnity agreement entered into by and between Plaintiff Utica and Defendants.

16. Defendants breach, as aforesaid, has caused Plaintiff injury in excess of $155,458.09 exclusive of interest, plus services rendered and expenses advanced up to the time of trial.

WHEREFORE, Plaintiff, Utica Mutual Insurance Company, demands judgment against Defendants in the amount of $155,458.09 plus attorneys fees, together with interest, plus services rendered and expenses advanced up to the time of trial.

JURY TRIAL DEMANDED

Respectfully submitted,
PIETRAGALLO, BOSICK & GORDON

By: _____

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Second Amended Complaint in Civil Action was served on the following by first class mail, postage pre-paid, this 26th day of May, 2006:

Hamilton Brothers Coal, Inc., c/o
Robert E. Hamilton
James E. Hamilton, Jr.
Anna Marie Hamilton
Ethel M. Hamilton
262 Market Street
Coalport, PA 16627

Defendants

Matthew D. Gailey

Matthew D. Gailey, Esq.
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

[x] (a) Original Application for Permit;

[ ] (b) Additional Bond;

[ ] (c) Replacement Bond;

[ ] (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #3

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1524284

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

EXHIBIT
tabbies
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WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 134. Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [x] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 137 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Twenty Thousand Nine Hundred and no/100---------- Dollars ($ 20,900.00----------), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~xxx(xx)~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one ***or more, if applicable):***

☐ (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

originally issued on _____.

This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit):

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued under the Operator's Mining Permit under the law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the [illegible] and seals, intending to be legally bound hereby, as of the 18th day of February, 1992.

OPERATOR:

Hamilton Brothers Coal, Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____
(Signature and Title) (Seal)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:
Lori Jo Shuhayda
Lori Jo Shuhayda

By: _____
(Signature and Title)
Joseph Imler, Attorney-In-Fact

By: _____
(Signature and Title) (Seal)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

ER–MR–405: 6/85

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUR
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #3

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1545137

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania , or
(Name of State)

(2) a(n) _____ ,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 184, Coalport, PA 16627
(Operator Address)

_____ , has filed with the Department of Environmental Resources ("Department" an application for (check only one)

☒ (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;

☐ (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;

☐ (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or

☐ (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 137 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company ,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503 ,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Two Thousand Two Hundred and no/100 Dollars ($ 2,200.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations [illegible] or hereafter promulgated under the A[illegible]
(j) the terms and condition[illegible] the Permit, and all amendments or ad[illegible]ons thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~ten (10)~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one or ***more, if applicable):***

[X] (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17910122, originally issued on 3-27-92.
This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____ _____ _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit):

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and s any and all liability and obligations ed on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the [illegible]oal and surety have hereunto set the [illegible]ds and seals, intending to be legally bound hereby, as of the 19th day of May, 1992.

OPERATOR:

Hamilton Brothers Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____ (Seal)
(Signature and Title)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Shuhayda

Lori Jo Shuhayda

By: _____
(Signature and Title)
Joseph Imler, Attorney-In-Fact

By: _____ (Seal)
(Signature and Title)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUR
BUREAU OF MINING AND RECLAMATION

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SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Bros. Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #3

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1554222

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Bros. Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 184, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [X] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 137 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Fifty Eight Thousand and no/100 Dollars ($ 58,500.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Act;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~ten (10)~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. *Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability* (check one or *more, if applicable):*

[x] (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17910122 originally issued on 3-27-92. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____ _____ _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit):

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one or more, if applicable):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 16th day of October, 1992.

OPERATOR:

Hamilton Bros. Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____
(Signature and Title) (Seal)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Perrine

Lori Jo Perrine

By: _____
(Signature and Title)
Attorney-In-Fact

By: _____
(Signature and Title) (Seal)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

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SURETY BOND-MINING (GENERAL)

To be completed by Operator:

(1) Name of Operator: Hamilton Bros. Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #3

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be completed by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of (Bond Rollover:)

_____

_____

To be completed by Surety Company:

Bond No. SU 1635674

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

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WHEREAS, Hamilton Bros. Coal, Inc. ("Operator")
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 184, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [x] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 137 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Thirteen Thousand Nine Hundred and no/100 Dollars ($ 13,900.00),
to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the operator shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulatic now or hereafter promulgated under th ;;;;
(j) the terms and conditi... f the Permit, and all amendments or ... ons thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. *Amount and Duration of Bond Liability.* Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of mining activity, including its reclamation as provided in the law, the regulations adopted thereunder and the conditions of the permit, at the operation conducted hereunder and for a period of five (5) ~~xxxxx~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law. Liability under this bond is not affected by the operator not renewing this permit.

3. *Default, Cessation In Business, Insolvency, List of Assets.* The surety and operator hereby agree that any collateral held by the surety for its indemnification with respect to this bond is held by the surety as a trust on behalf of the Department to assure the liabilities and obligations secured by this bond will be performed, fulfilled and complied with. The surety and operator agree to provide the Department, upon written request, a list of such collateral to the extent allowed by law. The surety further agrees that, upon its cessation in business or insolvency, all of its right, title and interest in such collateral shall immediately vest in the Department such that the Department has full ownership thereof. Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the operator and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the operator and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The operator and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the operator and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. *Events Not Affecting Bond Liability.* The operator and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. *Waiver of Surety Right to Cover.* The surety hereby waives any right to cover or perform the obligations of the operator upon the operator's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. *Additional Bond.* The Department reserves the right to require additional bonding from the operator, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. *Remedies.* Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

3. Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability (check one or more, if applicable):

☒ (a) *Additional Bond.* This bond is submitted pursuant to Mining Permit No. 17910122, originally issued on 3-27-92. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) *Replacement Bond.* This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) *Transfer of Permit.* This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit):

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mini permit and to be accr[illegible] the Operator's Mining Permit unde[illegible]aw from the date of issuance of th former operator's permit u[illegible]il such time as the Department shall rele[illegible], in writing, this bond of such liabili and obligations. In consideration of the pledge and deposit of this bond, the Department will release the abo listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under th Law which accured on the site prior to the issuance of Mining Permit No. _____ at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The paragraph headings herein are for descriptive purposes only and are intended to have no lega force or effect.

IN WITNESS WHEREOF, the operator and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 24th day of May, 1993.

OPERATOR:

Hamilton Bros. Coal, Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____
(Signature and Title) (Seal)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:
Lori Jo Perrine
Lori Jo Perrine

By: _____
(Signature and Title)
Joseph Imler, Attorney-In-Fact

By: _____
(Signature and Title) (Seal)

Approved as to legality and form:

PRE-APPROVED OAG 10/15/92
Office of Attorney General

(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION

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SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Bros. Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #3

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1700538

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, _____ nilton Bros. Coal, Inc. _____ ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

_____ Pennsylvania _____, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at _____ R.D. Box 184, Coalport, PA 16627 _____
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

☒ (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;

☐ (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;

☐ (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or

☐ (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect _____ 501.1 _____ acres of land
(Number of acres)
in _____ Beccaria _____ Township, _____ Clearfield _____ County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and _____ Utica Mutual Insurance Company _____,
(Name of Surety Company)
with its principal place of business at _____ P.O. Box 530, Utica, NY 13503 _____,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Twenty Five Thousand Five Hundred and no/100———— Dollars ($ 25,500.00————), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and conditions of the Permit, and all amendments or revisions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. *Amount and Duration of Bond Liability.* Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~xxxxxx~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. *Default.* Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. *Events Not Affecting Bond Liability.* The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. *Waiver of Surety Right to Cover.* The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. *Additional Bond.* The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. *Remedies.* Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. *Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability* (check one or *more, if applicable*):

☒ (a) *Additional Bond.* This bond is submitted pursuant to Mining Permit No. 17910122 originally issued on 3-27-92. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This b is submitted pursuant to Mining P No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit):

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and co[illegible] any and all liability and obligations a[illegible]ued on the former operator's mining permit and to be accrued o[illegible] Operator's Mining Permit under the [illegible] from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one or more, if applicable):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the prin and surety have hereunto set their l and seals, intending to be legally bound hereby, as of the 5th day of November, 1993.

OPERATOR:

Hamilton Bros. Coal, Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____
(Signature and Title) (Seal)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Perrine

Lori Jo Perrine

By: _____
(Signature and Title)
Joseph Imler, Attorney-In-Fact

By: _____
(Signature and Title) (Seal)

Approved as to legality and form:

(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

(Bureau of Mining and Reclamation)

Recycled Paper

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION

Recycled Paper

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Bros. Coal Inc.

(2) Purpose (check only one):

[X] (a) Original Application for Permit;

[ ] (b) Additional Bond;

[ ] (c) Replacement Bond;

[ ] (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #4

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal")

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1700550

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" 35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

Hamilton Bros. Coal Inc. ("Operator").
(Name of Mine Operator)

Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

principal place of business at R.D. Box 184, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [x] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

which the Operator proposed to affect 148 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Seventy Eight Thousand and no/100 Dollars ($78,000.00), for the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. *Amount and Duration of Bond Liability.* Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~ten (10)~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. *Default.* Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. *Events Not Affecting Bond Liability.* The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. *Waiver of Surety Right to Cover.* The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. *Additional Bond.* The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. *Remedies.* Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. *Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability* (check one or *more, if applicable):*

☐ (a) *Additional Bond.* This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) *Replacement Bond.* This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) *Transfer of Permit.* This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit);

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one or more, if applicable):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

NESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally by, as of the 23rd day of November, 1993.

OPERATOR:

Hamilton Bros. Coal, Inc.
(Print Operator Name)

ATTEST OR WITNESS:

By: _____
(Signature and Title)

By: _____
(Signature and Title) (Seal)

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:
Lori Jo Perrine
Lori Jo Perrine

By: _____
(Signature and Title)
Joseph Imler, Attorney-In-Fact

By: _____
(Signature and Title) (Seal)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

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ER–MR–405: 6/85

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #2

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 1366516

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 134, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

☒ (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;

☐ (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;

☐ (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or

☐ (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 501.1 acres of land
(Number of acres)
in Beccaria Township, Clearfield County,
Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Fifty Seven Thousand Seven Hundred Twenty and no/100 Dollars ($ 57,720.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and condition f the Permit, and all amendments or ad' ons thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ten (10) (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one or ***more, if applicable***):

☒ (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17880122, originally issued on 4-7-89. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and cove ny and all liability and obligations accru and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit);

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued the Operator's Mining Permit under the w from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 13t day of July, 19 90.

OPERATOR:

Hamilton Brothers Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

Anna M. Hamilton

By: _____
(Signature and Title)
Robert E. Hamilton, President

Anna M. Hamilton

By: _____ (Seal)
(Signature and Title)
James E. Hamilton Jr., Sec/Tres.

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Shuhayda

By: _____
(Signature and Title)
David M. Champe, Attorney-In-Fact

_____

By: _____ (Seal)
(Signature and Title)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

SURETY BOND-MINING (GENERAL)

To be completed by Operator:

(1) Name of Operator: Hamilton Bros. Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #3

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be completed by Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of (Bond Rollover:)

_____

_____

To be completed by Surety Company:

Bond No. SU 1635678

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

Recycled Paper

WHEREAS, _____ Hamilton Bros. Coal Inc. _____ ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 184, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

☒ (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
☐ (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
☐ (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
☐ (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
☐ (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
☐ (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 501.1 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Three Thousand Five Hundred Twenty and no/100 Dollars ($ 3,520.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regul: ns now or hereafter promulgated under ' Acts;
(j) the terms and conditions of the Permit, and all amendments c. additions thereto; and
(k) all Department order sued relating to Operator conduct und(ne Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. *Amount and Duration of Bond Liability*. Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of mining activity, including its reclamation as provided in the law, the regulations adopted thereunder and the conditions of the permit, at the operation conducted hereunder and for a period of five (5) ~~XXXXX~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law. Liability under this bond is not affected by the operator not renewing this permit.

3. *Default, Cessation In Business, Insolvency, List of Assets*. The surety and operator hereby agree that any collateral held by the surety for its indemnification with respect to this bond is held by the surety as a trust on behalf of the Department to assure the liabilities and obligations secured by this bond will be performed, fulfilled and complied with. The surety and operator agree to provide the Department, upon written request, a list of such collateral to the extent allowed by law The surety further agrees that, upon its cessation in business or insolvency, all of its right, title and interest in such collateral shall immediately vest in the Department such that the Department has full ownership thereof. Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the operator and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the operator and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The operator and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the operator and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. *Events Not Affecting Bond Liability*. The operator and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. *Waiver of Surety Right to Cover*. The surety hereby waives any right to cover or perform the obligations of the operator upon the operator's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. *Additional Bond*. The Department reserves the right to require additional bonding from the operator, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. *Remedies*. Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

applicable):

☒ (a) *Additional Bond.* This bond is submitted pursuant to Mining Permit No. 17910122 originally issued on 3-27-92
This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) *Replacement Bond.* This bond is submitted pursuant to Mining Permit No. _____ originally issued on _____
This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) *Transfer of Permit.* This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit).

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) *Pre-Existing Mining Liability*. This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. *Attachments* (check one or more, if applicable):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. *Headings*. The paragraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

ER—MR—405: 6/85

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUR
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #2

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by Department of Environmental Resources
License No.
Permit No.
Date(s) and Amount(s) of Bond Release:
Date(s) and Amount(s) of Bond Rollover:

To be filled in by Surety Company:

Bond No. SU 44373

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 134, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

☒ (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;

☐ (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;

☐ (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or

☐ (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 501.0 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Thirty Thousand Two Hundred and 00/100 Dollars ($ 30,200.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~YEARS~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one or ***more, if applicable***):

[X] (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17880122 originally issued on 4-7-89. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit);

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 8th day of December, 19 89.

OPERATOR:

Hamilton Brothers Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

Anna M. Hamilton

By: _____
(Signature and Title)
Robert E. Hamilton, President

Anna M. Hamilton

By: _____ (Seal)
(Signature and Title)
James E. Hamilton Jr., Sec/Tres.

SURETY:

Utica Mutual Insurance Company -
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Shuhayda

By: David M. Champe
(Signature and Title)
David M. Champe, Attorney-In-Fact

_____

By: _____ (Seal)
(Signature and Title)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

ER–MR–405: 6/85

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUR
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #2

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by
Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 44374

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 134 Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

- [x] (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;
- [ ] (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;
- [ ] (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;
- [ ] (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or
- [ ] (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 501.0 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)

with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)

licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Nine Thousand Nine Hundred and 00/100 Dollars ($9,900.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Act;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~years~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one or ***more, if applicable):***

☒ (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17880122, originally issued on 4-7-89. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____ _____ _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit);

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one or more, if applicable):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 8th day of December, 19 89.

OPERATOR:

Hamilton Brothers Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

Anna M. Hamilton

By: _____
(Signature and Title)
Robert E. Hamilton, President

Anna M. Hamilton

By: _____ (Seal)
(Signature and Title)
James E. Hamilton Jr., Sec/Tres.

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Shuhayda

By: _____
(Signature and Title)
David M. Champe, Attorney-In-Fact

By: _____ (Seal)
(Signature and Title)

Approved as to legality and form:

(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

(Bureau of Mining and Reclamation)

ER–MR–405: 6/85

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOUR
BUREAU OF MINING AND RECLAMATION

SURETY BOND-MINING (GENERAL)

To be filled in by Operator:

(1) Name of Operator: Hamilton Brothers Coal Inc.

(2) Purpose (check only one):

☐ (a) Original Application for Permit;

☒ (b) Additional Bond;

☐ (c) Replacement Bond;

☐ (d) Transfer of Permit;

(3) Name of Operation Facility: Hamilton #2

(4) Type of Mineral: Bituminous Coal
(if applying for an underground mining permit, indicate "anthracite coal" or "bituminous coal"

To be filled in by
Department of Environmental Resources

License No. _____

Permit No. _____

Date(s) and Amount(s) of Bond Release:

_____

_____

Date(s) and Amount(s) of Bond Rollover:

_____

_____

To be filled in by Surety Company:

Bond No. SU 44375

WHEREAS, reference is made to the following statutes herein:

(1) The Act of June 22, 1937, P.L. 1987, as amended, known and referred to herein as the "Clean Streams Law" (35 P.S. §691.1 *et seq.*);

(2) The Act of May 31, 1945, P.L. 1198, as amended, known and referred to herein as the "Surface Mining Conservation and Reclamation Act" (52 P.S. §1396.1 *et seq.*);

(3) The Act of January 8, 1960, P.L. 2119, as amended, known and referred to herein as the "Air Pollution Control Act" (35 P.S. §4001 *et seq.*);

(4) The Act of September 24, 1968, P.L. 1040, as amended, known and referred to herein as the "Coal Refuse Disposal Control Act" (52 P.S. §30.51 *et seq.*);

(5) The Act of November 26, 1978, P.L. 1375, as amended, known and referred to herein as the "Dam Safety and Encroachments Act" (32 P.S. §693.1 *et seq.*);

(6) The Act of July 7, 1980, P.L. 380, known and referred to herein as the "Solid Waste Management Act" (35 P.S. §6018.101 *et seq.*); and

(7) The Act of December 19, 1984, P.L. 1093, known and referred to herein as the "Noncoal Surface Mining Conservation and Reclamation Act" (52 P.S. §3301 *et seq.*); and

WHEREAS, Hamilton Brothers Coal Inc. ("Operator"),
(Name of Mine Operator)

(1) a Corporation, incorporated under the laws of the State of

Pennsylvania, or
(Name of State)

(2) a(n) _____,
(Limited Partnership/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at R.D. Box 134, Coalport, PA 16627
(Operator Address)

_____, has filed with the Department of Environmental Resources ("Department" an application for (check only one)

☒ (1) a coal surface mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act;

☐ (2) a coal underground mining permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (3) a coal preparation plant permit ("Permit") under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law;

☐ (4) a coal refuse disposal control permit ("Permit") under the Coal Refuse Disposal Control Act;

☐ (5) a noncoal surface mining permit ("Permit") under the Noncoal Surface Mining Conservation and Reclamation Act; or

☐ (6) a noncoal underground mining permit ("Permit") under the Clean Streams Law;

in which the Operator proposed to affect 501.0 acres of land
(Number of acres)
in Beccaria Township, Clearfield County, Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we, the Operator, as principal, and Utica Mutual Insurance Company,
(Name of Surety Company)
with its principal place of business at P.O. Box 530, Utica, NY 13503,
(Surety Address)
licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, as surety, are held and firmly bound unto the Department, in the just and full sum of Eleven Thousand Nine Hundred and 00/100 Dollars ($ 11,900.00), to the payment whereof, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents:

1. ***Condition of the Obligation.*** If the principal shall faithfully perform and conform to all of the applicable requirements of the following:

(a) the Clean Streams Law;
(b) the Surface Mining Conservation and Reclamation Act;
(c) the Air Pollution Control Act;
(d) the Coal Refuse Disposal Control Act;
(e) the Dam Safety and Encroachments Act;
(f) the Noncoal Surface Mining Conservation and Reclamation Act (applicable only to applicants for noncoal surface mining permits);
(g) the Solid Waste Management Act

(the statutes described in (a) through (g), inclusive, immediately above, collectively called the "Acts");

(h) all amendments and additions hereafter made to the Acts and all statutes enacted as substitutes or replacement for the Acts;

(i) all rules and regulations now or hereafter promulgated under the Acts;
(j) the terms and conditions of the Permit, and all amendments or additions thereto; and
(k) all Department orders issued relating to Operator conduct under the Permit

(the requirements described in (a) through (k), inclusive, immediately above, collectively called the "Law");

then this obligation shall be null and void, otherwise to be and remain in full force and effect.

2. ***Amount and Duration of Bond Liability.*** Liability upon this bond shall be for the amount specified herein, and that amount shall become a part of the total bond for the acreage specified herein for the permit for which the total bond applies; such liability shall apply to that acreage for the permit, including any and all prior or subsequent authorizations to mine or otherwise operate under that permit. Liability upon this bond shall continue for the duration of permitted activity at the operation conducted hereunder and for a period of five (5) ~~years~~ (choose one, cross out the other) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto, as provided by the Law. Such amount released shall be a credit upon the total amount of the bond. It is hereby acknowledged and agreed by and among the parties that the liability upon this bond is a penal sum, and as such the Commonwealth retains a property interest in such surety guarantee, as provided by the law.

3. ***Default.*** Upon the happening of any default of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their heirs, executors, administrators, successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution, and with ten percent (10%) added for collection fees, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible. The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee, upon filing information in writing in the court where such judgment shall be entered.

4. ***Events Not Affecting Bond Liability.*** The principal and the surety agree that their liability hereunder shall not be impaired or affected by (1) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is based; or (2) any forbearance or delay in declaring this bond to be forfeit or in enforcing payment on this bond.

5. ***Waiver of Surety Right to Cover.*** The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default; provided, however, that the Department may authorize, in writing, the surety to cover or perform such defaulted obligations if the Department determines that it is in the Department's interest to do so.

6. ***Additional Bond.*** The Department reserves the right to require additional bonding from the principal, as provided by the Law, which shall be a supplement to and augment the bond liability provided herein.

7. ***Remedies.*** Nothing herein shall limit or preclude the Department from seeking any remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

8. ***Additional Bond/Replacement Bond/Transfer of Permit/Pre-Existing Mining Liability*** (check one ***or more, if applicable***):

[X] (a) ***Additional Bond.*** This bond is submitted pursuant to Mining Permit No. 17880122, originally issued on 4-7-89. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond is an additional bond, supplementing all other bonding posted or to be posted for the Permit.

☐ (b) ***Replacement Bond.*** This bond is submitted pursuant to Mining Permit No. _____, originally issued on _____. This bond assumes and covers any and all liability and obligations accrued and to be accrued under the Law from the above permit issuance date until such time as the Department shall release, in writing, this bond of such liability and obligations. This bond replaces the following existing bonds:

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the Law.

☐ (c) ***Transfer of Permit.*** This bond is submitted pursuant to Mining Permit No. _____, to replace the following existing bonds pledged and deposited with the Department by _____ (name of former operator) pursuant to Mining Permit No. _____ (former operator Mining Permit No.) issued on _____ (Date of issuance of former operator Mining Permit);

Date of Bond	Type of Bond (Surety/Collateral)	Name of Surety/Bank/ Govt. Issuer	Type of Collateral	Surety Bond No./ Collateral ID No.	Dollar Amount

This bond assumes and covers any and all liability and obligations accrued on the former operator's mining permit and to be accrued on the Operator's Mining Permit under the Law from the date of issuance of the former operator's permit until such time as the Department shall release, in writing, this bond of such liability and obligations. In consideration of the pledge and deposit of this bond, the Department will release the above listed existing bonds of all liability under the law.

☐ (d) ***Pre-Existing Mining Liability.*** This bond assumes and covers any and all liability and obligations under the Law which accured on the site prior to the issuance of Mining Permit No. _____, at any time, for any reason, and created by anyone, as well as any and all liability and obligations under the Law to be accured from the date of issuance of the Permit until such time as the Department shall release, in writing, such liability and obligations.

9. ***Attachments*** (check one **or more, if applicable**):

☒ (a) Surety Power of Attorney

☐ (b) Bond Amendment—Change in Permit Acreage

☐ (c) Other: _____

10. ***Headings.*** The pargraph headings herein are for descriptive purposes only and are intended to have no legal force or effect.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, as of the 8th day of December, 19 89.

OPERATOR:

Hamilton Brothers Coal Inc.
(Print Operator Name)

ATTEST OR WITNESS:

Anna M. Hamilton

By: _____
(Signature and Title)
Robert E. Hamilton, President

Anna M. Hamilton

By: _____ (Seal)
(Signature and Title)
James E. Hamilton Jr., Sec/Tres.

SURETY:

Utica Mutual Insurance Company
(Print Surety Name)

ATTEST OR WITNESS:

Lori Jo Shuhayda

By: David M. Champe
(Signature and Title)
David M. Champe, Attorney-In-Fact

_____

By: _____ (Seal)
(Signature and Title)

Approved as to legality and form:

_____
(Chief/Assistant Counsel,
Department of Environmental Resources)

Approved for the Department:

_____
(Bureau of Mining and Reclamation)

10 CLAIMS SERVICE
APR 21 2000

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

GENERAL AGREEMENT OF INDEMNITY

This Agreement entered into by and between the undersigned, herein called the Indemnitors, and the Utica Mutual Insurance Company of New Hartford, New York, herein called the Company, witnesseth:

WHEREAS, in the transaction of business certain bonds, undertakings and other writings obligatory in the nature of a bond have heretofore been, and may hereafter be, required by, for, or on behalf of the Indemnitors or any one or more of the parties included in the designation Indemnitors, and application has been made and will hereafter be made to the Company to execute such bonds, and as a prerequisite to the execution of such bond or bonds, the Company requires complete indemnification.

NOW, THEREFORE, in consideration of the premises, and the payment by the Company of the sum of One ($1.00) Dollar to each of the Indemnitors, receipt whereof is hereby acknowledged, and for other good and valuable considerations, the Indemnitors do, for themselves, their heirs, executors, administrators and assigns, jointly and severally, agree with the Company as follows:

1. The Indemnitors will pay to the Company, at its Home Office in the Town of New Hartford, New York, premiums and charges at the rates, and at the times specified in respect to each such bond in the Company's schedule of rates, which, with any additions or amendments thereto, is by reference made a part hereof, and will continue to pay the same where such premium or charge is annual, until the Company shall be discharged and released from any and all liability and responsibility upon and from each such bond or matters arising therefrom, and until the Indemnitors shall deliver to the Company at its Home Office in New Hartford, New York, competent written evidence satisfactory to the Company of its discharge from all liability on such bond or bonds.

2. The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of, such bonds, or any renewals or continuations thereof or substitutes therefor, including fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. In the event of payments by the Company, the Indemnitors agree to accept the voucher or other evidence of such payments as prima facie evidence of the propriety thereof, and of the Indemnitors' liability therefor to the Company.

3. If the Company shall set up a reserve to cover any claim, suit or judgment under any such bond, the Indemnitors will, immediately upon demand, deposit with the Company a sum of money equal to such reserve, such sum to be held by the Company as collateral security on such bond, and such sum and any other money or property which shall have been, or shall hereafter be, pledged as collateral security on any such bond shall, unless otherwise agreed in writing by the Company, be available, in the discretion of the Company, as collateral security on any other or all bonds coming within the scope of this Agreement.

4. The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability with which the Company may be subsequently charged under any such bond, shall notify the Company thereof in writing at its Home Office in the Town of New Hartford, New York.

5. The Company shall have the exclusive right to determine for itself and the Indemnitors whether any claim or suit brought against the Company or the Principal upon any such bond shall be settled or defended and its decision shall be binding and conclusive upon the Indemnitors.

6. The Company, and its designated agents, shall, at any and all reasonable times, have free access to the books and records of the Indemnitors.

EXHIBIT

tabbies

B

7. If such bond be given in connection with a contract, the Company is hereby authorized, but not required, to consent to any change in the contract or in the plans or specifications relating thereto; to make or guarantee advances or loans for the purpose of the contract without necessity of seeing to the application thereof, it being understood that the amount of all such advances or loans, unless repaid with legal interest by the Contractor to the Company when due, shall be conclusively presumed to be a loss hereunder; in the event the Indemnitors, or any of them, shall fail to pay any premium charge when due; or abandon, forfeit or breach such contract; or breach any bond given in connection therewith; or fail, neglect or refuse to pay for any labor or materials used in the prosecution of such contract; or have proceedings instituted against them, or any of them, alleging that they are insolvent, or for the appointment of a receiver or trustee for the benefit of creditors, whether such Indemnitor(s) are insolvent or not; or have proceedings instituted against them, or any of them, the effect of which may be to deprive any of them of the use of any part of the equipment used in connection with the work under the contract so as to hinder, delay or impede the normal and satisfactory progress of the work, the Company shall have the right, but not the obligation, to take possession of the work under the contract and under any other contract in connection with which the Company has given its bond or bonds within the purview of this General Agreement of Indemnity and, at the expense of the Indemnitors, to complete the contract(s), or cause, or consent, to the completion thereof. The Indemnitors hereby assign, transfer, and set over to the Company (to be effective as of the date of such bond or bonds, but only in the event of a default as aforesaid), all of their rights under the contract(s), including their right, title and interest in and to all subcontracts let in connection therewith; all machinery, plant, equipment, tools and materials which shall be upon the site of the work or elsewhere for the purposes of the contract(s), including all materials ordered for the contract(s), any and all sums due under the contract(s) at the time of such default, or which may thereafter become due, and the Indemnitors hereby authorize the Company to endorse in the name of the payee, and to receive and collect any check, draft, warrant or other instrument made or issued in payment of any such sum, and to disburse the proceeds thereof.

8. That it shall not be necessary for the Company to give the Indemnitors, or any one or more of them, notice of the execution of any such bonds, nor of any fact or information coming to the notice or knowledge of the Company affecting its rights or liabilities, or the rights or liabilities of the Indemnitors under any such bond executed by it, notice of all such being hereby expressly waived.

9. In the event of any claim or demand being made by the Company against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of a bond or bonds, the Company is hereby expressly authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and we hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

10. The Company may decline to execute any Bond applied for without incurring any liability whatever and without impairing the validity of this General Agreement of Indemnity. If the Company shall execute a bid or proposal bond, or any similar undertaking, it may nevertheless decline to execute any and all Bonds that may be required in connection with any award made on the proposal for which the bond or undertaken is given.

11. If the Company procures the execution of such bonds by other companies, or executes such bonds with cosureties, or reinsures any portions of such bonds with reinsuring companies, then all the terms and conditions of this Agreement shall apply and operate for the benefit of such other companies, cosureties and reinsurers as their interest may appear.

12. The liability of the Indemnitors hereunder shall not be affected by the failure of the Principal to sign any such bond, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

13. These covenants herein and also all collateral security, if any, at any time deposited with the Company concerning the said bond or bonds and any other former or subsequent bonds executed for the Indemnitors at their instance shall, at the option of the Company, be available in its behalf and for its benefit as well concerning any bond or undertaking applied for, and also concerning all other former or subsequent bonds and undertakings, executed for the Indemnitors or for others at their request.

14. This Agreement may be terminated the Indemnitors, or any one or more of the ies so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force.

15. Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee.

16. THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF.

17. This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of Hamilton Brothers Coal Inc.

18. IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of 19

HAMILTON BROTHERS COAL INC.

Thomas C Johnson
Witness

Robert E Hamilton (L. S.)
Robert E. Hamilton, President

Box 157 Irvona Pa
Street or P. O. Box City State

Box 134, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Robert E Hamilton (L. S.)
Robert E. Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

Anna Marie Hamilton (L. S.)
Anna Marie Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

James E Hamilton Jr (L. S.)
James E. Hamilton, Jr., Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Ethel M Hamilton (L. S.)
Ethel M. Hamilton, Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE.

Individual Acknowledgment

STATE OF Pennsylvania }
COUNTY OF Clearfield } ss:

On this 3 day of June 1987, before me personally came Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton

to me known, and known to me to be the individual who executed the foregoing instrument, and acknowledged that he executed the same.

Honora Ann Johnson N.P.

HONORA ANN JOHNSON, NOTARY P
IRVONA BOROUGH, CLEARFIELD CO
MY COMMISSION EXPIRES APRIL 26
Member, Pennsylvania Association of

Co-partnership Acknowledgment

STATE OF Pe }
COUNTY OF } ss:

On this day of 19, before me personally came

me known, and known to me to be one of the firm of

and acknowledged that he executed the foregoing instrument as the act of the said firm.

Corporation Acknowledgment

STATE OF Pennsylvania }
COUNTY OF Clearfield } ss:

On this 3 day of June 1987, before me personally came

Robert E. Hamilton

to me known, who, being by me duly sworn, did depose and say that he resides in R.D. #1, Box #16, Irvona, PA 16656

that he is the President of the Hamilton Brothers Coal Inc. the corporation

ch executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order.

Honora Ann Johnson N.P.

HONORA ANN JOHNSON, NOTARY PUBLIC
IRVONA BOROUGH, CLEARFIELD COUNTY
MY COMMISSION EXPIRES

VERIFICATION

I, Jason Jaskolka, Esq., verify that I am a representative of **Utica Mutual Insurance Company**, the Plaintiff in the within action, that I am authorized to file the foregoing **Second Amended Complaint in Civil Action** on its behalf, and that the statements and averments of fact contained therein are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa. C.S.A. Section 4904.

Dated: May 26, 2006

Jason Jaskolka, Esq.

UA

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	CIVIL ACTION No. 03 – 798 - CD **PRAECIPE TO WITHDRAW ARGUMENT** Filed on behalf of plaintiff: UTICA MUTUAL INSURANCE COMPANY Counsel of record for this party: Paul K. Vey, Esquire Pa. I. D. #30824 Matthew D. Gailey, Esquire Pa. I. D. #90920 PIETRAGALLO, BOSICK & GORDON Firm I.D. #834 38th Floor, One Oxford Centre Pittsburgh, PA 15219 (412) 263-2000

Argument was not cancelled - Cannot W/D on an action party did not file.
Please keep note w/file

FILED NO CC
m/10:30 BK
JUL 14 2006
GA
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

PRAECIPE TO WITHDRAW ARGUMENT

To: Prothonotary

Kindly withdraw the argument on the Defendants' Petition for Non Pros scheduled for July 14, 2006 at 9 o'clock a.m. in Courtroom No. 1. The argument is no longer necessary as the Plaintiff has filed a Second Amended Complaint within the time allotted, pursuant to the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

PIETRAGALLO BOSICK & GORDON LLP

By: Matthew D. Gailey

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Attorneys for Plaintiff, Utica Mutual Insurance Company

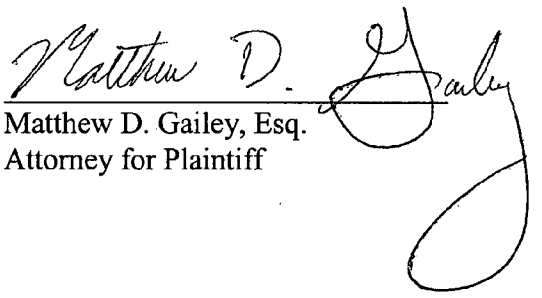
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Praecipe to Withdraw Argument was served on the following by first class mail, postage pre-paid, this 12th day of July, 2006:

Robert E. Hamilton
James E. Hamilton, Jr.
Anna Marie Hamilton
Ethel M. Hamilton
262 Market Street
Coalport, PA 16627
Defendants, Pro Se



Matthew D. Gailey, Esq.
Attorney for Plaintiff

CA

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

UTICA MUTUAL INSURANCE COMPANY,	:	
Plaintiff	:	
	:	
vs.	:	
	:	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, JR., an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual,	:	
Defendants	:	**NO. 2003 - 798 - CD**

ORDER OF COURT

AND NOW, this 14th day of July, 2006, following argument on the Defendants' pro se Petition Requesting Non Pros and Preliminary Objections to the Plaintiff's Second Amended Complaint and in consideration of the same, **IT IS THE ORDER OF THIS COURT** the Petition for Non Pros and Preliminary Objections To Plaintiff's Second Amended Complaint are hereby dismissed.

IT IS THE FURTHER ORDER OF THIS COURT that the Defendants, (with the exception of Hamilton Brothers Coal, Inc.) shall have forty-five (45) days from this date in which to file a responsive pleading to the Second Amended Complaint.

The 45-day period shall also apply to the Defendants filing a petition to join any additional defendants.

BY THE COURT:

FILED
01:00 BL
JUL 17 2006

William A. Shaw
Prothonotary/Clerk of Courts

Copies-see attached

FREDRIC J. AMMERMAN,
President Judge

DATE: 7/17/06

____You are responsible for serving all appropriate parties.

__X__The Prothonotay's office has provided service to the following parties:

____Plaintiff(s) __X__ Plaintiff(s) Attorney ____ Other

__X__ Defendant(s) ____Defendant(s) Attorney

____Special Instructions:

FILED
JUL 17 2006
William A. Shaw
Prothonotary/Clerk of Courts

03-798-CD
Utica Mutual Insurance vs. Hamilton Brothers et al

1CC: Paul K. Vey, Esq.
William Wyrick, Esq.
Robert J. Monahan, Esq.
Matthew D. Gailey, Esq.
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

1CC: Hamilton Brothers Coal, Inc.
C/o Fred Kuzemachak
RD 2 Box 563
Clymer, PA 15728

1CC: Robert Hamilton
Anna Marie Hamilton
RD 1, Box 16
Irvona, PA 16656

1CC: James E. Hamilton, Jr.
Ethel M. Hamilton
262 Market Street
Coalport, PA 16627

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

ALTOONA PA 166
18 JUL 2006 PM
07/18/2006
Mailed From 16830
US POSTAGE

FILED
JUL 21 2006
William A. Shaw
Prothonotary/Clerk of Courts

Hamilton Brothers Coal, Inc.
C/o Fred Kuzemachak
RD 2 Box 563

ACS
☐ INSUFFICIENT ADDRESS
☐ ATTEMPTED NOT KNOWN
☐ NO SUCH NUMBER/ STREET
☒ NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD
☐ OTHER

RTS
RETURN TO SENDER

16830/0543

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

UTICA MUTUAL INSURANCE COMPANY,	:	
Plaintiff	:	
	:	
vs.	:	
	:	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, JR., an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual,	:	
Defendants	:	**NO. 2003 - 798 - CD**

ORDER OF COURT

AND NOW, this 14th day of July, 2006, following argument on the Defendants' pro se Petition Requesting Non Pros and Preliminary Objections to the Plaintiff's Second Amended Complaint and in consideration of the same, **IT IS THE ORDER OF THIS COURT** the Petition for Non Pros and Preliminary Objections To Plaintiff's Second Amended Complaint are hereby dismissed.

IT IS THE FURTHER ORDER OF THIS COURT that the Defendants, (with the exception of Hamilton Brothers Coal, Inc.) shall have forty-five (45) days from this date in which to file a responsive pleading to the Second Amended Complaint.

The 45-day period shall also apply to the Defendants filing a petition to join any additional defendants.

BY THE COURT:

/s/ Fredric J. Ammerman

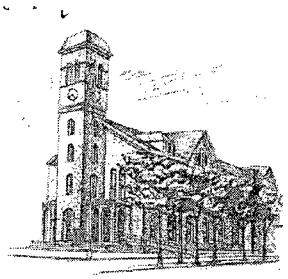
FREDRIC J. AMMERMAN,
President Judge

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

JUL 17 2006

Attest.

Prothonotary/
Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 7/17/06

_____You are responsible for serving all appropriate parties.

__X__The Prothonotary's office has provided service to the following parties:

_____Plaintiff(s) __X__Plaintiff(s) Attorney _____Other

__X__Defendant(s) _____Defendant(s) Attorney

_____Special Instructions:

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL INC., ROBERT E. HAMILTON, ANNA MARIE HAMILTON; JAMES E. HAMILTON, JR. and ETHEL M. HAMILTON, Defendants	:	

FILED 3cc
01:44 BY R. Hamilton
AUG 22 2006 (GP)
William A. Shaw
Prothonotary/Clerk of Courts

MOTION FOR EXTENSION OF TIME TO FILE A RESPONSIVE PLEADING TO SECOND AMENDED COMPLAINT AND TO FILE PETITION TO JOIN ADDITIONAL DEFENDANTS

AND NOW, comes the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, Pro-Se and files this Motion for Extension of Time to File a Responsive Pleading to Second Amended Complaint and to File Petition to Join Additional Defendants and in support thereof, avers as follows:

1. That on July 14, 2006, this Honorable Court directed Defendants to file a Responsive Pleading to Plaintiff's Second Amended Complaint as well as Petition to Join Additional Defendants within forty-five (45) days from that date;
2. That Defendants are in the process of trying to secure counsel to represent them with regard to this action;
3. That Defendants have ordered a copy of the transcript be prepared from hearing held on July 14, 2006, with regard to Petition for Non Pros and Preliminary Objections to Plaintiff's Second Amended Complaint. Said request was made to the Court Reporter of Clearfield County on August 8, 2006.

WHEREFORE, Defendants respectfully request that this Honorable Court grant an extension of time allowing Defendants an addition sixty (60) days file all necessary responsive pleadings.

Respectfully submitted,

Robert E. Hamilton, Pro-Se

Anna Marie Hamilton, Pro-Se

James E. Hamilton, Jr., Pro-Se

Ethel M. Hamilton, Pro-Se

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL INC., ROBERT E. HAMILTON, ANNA MARIE HAMILTON; JAMES E. HAMILTON, JR. and ETHEL M. HAMILTON, Defendants	:	

CERTIFICATE OF SERVICE

We, the undersigned, hereby certify that a copy of the within document was served this 22 day of August, 2006, upon the following by U.S. Mail, postage prepaid, via certified mail, return receipt requested to:

Matthew D. Gailey, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA. 15219

Respectfully submitted:

Robert E. Hamilton

Robert E. Hamilton, Pro-Se

Anna Marie Hamilton

Anna Marie Hamilton, Pro-Se

James E. Hamilton Jr.

James E. Hamilton, Jr., Pro-Se

Ethel M. Hamilton

Ethel M. Hamilton, Pro-Se

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL INC., ROBERT E. HAMILTON, ANNA MARIE HAMILTON; JAMES E. HAMILTON, JR. and ETHEL M. HAMILTON, Defendants	:	

ORDER

AND NOW, this 23 day of August, 2006, it is the ORDER of this Court that Defendant's Motion for Extension of Time to File a Responsive Pleading to Second Amended Complaint and to File Petition to Join Additional Defendants be and is hereby GRANTED. Defendant's shall have an additional sixty (60) days from this date to file responsive pleadings pursuant to Order of Court dated July 14, 2006.

BY THE COURT,

FREDRIC J. AMMERMAN,
PRESIDENT JUDGE

FILED 5CC
04:00/BH R. Hamilton
AUG 23 2006 RR1 Box 16
Irvona, PA 16656
William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 23 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/23/06

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

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

UTICA MUTUAL INSURANCE COMPANY, PLAINTIFF	:	
VS.	:	NO. 03-798-CD
HAMILTON BROTHERS COAL INC., ROBERT E. HAMILTON; ANNA MARIE HAMILTON; JAMES E. HAMILTON, JR., and ETHEL M. HAMILTON Defendants	:	
	:	**PRAECIPE**
	:	Filed on behalf of: Defendants Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton
	:	Counsel for this party: Ronald L. Collins, Esquire
	:	Supreme Court No. 36744
	:	SOBEL & COLLINS Attorneys at Law 218 South Second Street Clearfield, PA 16830
	:	(814)765-5552
	:	(814)765-6210

FILED
SEP 13 2006
0/2:50/cc
William A. Shaw
Prothonotary/Clerk of Courts
3 cent to Atty

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

UTICA MUTUAL INSURANCE COMPANY, :
PLAINTIFF

VS. : NO. 03-798-CD

HAMILTON BROTHERS COAL INC.,
ROBERT E. HAMILTON; ANNA MARIE
HAMILTON; JAMES E. HAMILTON, JR., and
ETHEL M. HAMILTON :
Defendants

PRAECIPE

To the Clerk of Courts:

Kindly enter my appearance as counsel for the above defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton.

Date:

Ronald L. Collins, Esquire

ALL-STATE LEGAL, A DIVISION OF ALL-STATE® INTERNATIONAL, INC.
FORM NO.: 07152-BF • 07153-BL • 07166-GY • 07168-WH

No. 03-798-CD

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

vs.

Hamilton Brothers Coal, Inc., Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton,
Defendants

P R A E C I P E

Ronald L. Collins, Esquire

Sobel & Collins
ATTORNEYS & COUNSELORS AT LAW
218 SOUTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-5552
sobelcollins@atlanticbb.net

FILED
SEP 13 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL INC., ROBERT E. HAMILTON, ANNA MARIE HAMILTON; JAMES E. HAMILTON, JR. and ETHEL M. HAMILTON, Defendants	:	

FILED
SEP 13 2006
William A. Shaw
Prothonotary/Clerk of Courts
0/2:50(L)
$ cent to Atty

MOTION FOR RECONSIDERATION
TO SCHEDULE ARGUMENT ON PRELIMINARY OBJECTIONS

AND NOW, comes the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, by and through their counsel, Ronald L. Collins, Esquire, who files this Motion for Reconsideration to Schedule Argument on Preliminary Objections and avers as follows:

1. Plaintiff, Utica Mutual Insurance Company, by and through their attorney, Matthew Gailey, Esquire filed a Second Amended Complaint with regard to this matter on May 31, 2006.

2. Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, pro-se, filed Preliminary Objections to Plaintiff's Second Amended Complaint on June 6, 2006.

3. Prior to the filing of Plaintiff's Second Amended Complaint, as well as Defendant's Preliminary Objections, Defendants had filed, pro-se, a Motion for

Non-Pros which was scheduled to be heard before this Honorable Court on July 14, 2006.

4. That the parties appeared before the Court on July 14, 2006 for purpose of hearing with regard to the Motion for Non-Pros filed by Defendants.

5. That during the course of that hearing, the Honorable Court began to question the parties with regard to the Preliminary Objections, at which time Defendant, Robert E. Hamilton, indicated to the Court that he was unprepared to argue the Preliminary Objections, as it was his understanding that the same was not scheduled for argument at that present time.

6. The Court entered an Order on July 14, 2006 denying the Defendant's Motion for Non-Pros, as well as Defendant's Preliminary Objections, which had not been scheduled to be heard.

7. The Defendants, effective this date, have retained the undersigned counsel to represent them with regard to this matter.

8. The Defendants believe and therefore aver that having secured counsel that argument should be scheduled as to the Preliminary Objections such that the Court might fully consider the same.

9. That should the Court grant the scheduling of argument as to the Preliminary Objections, it would be requested that the time periods set forth in the July 14, 2006 Order or any subsequent Orders be tolled, pending determination as to the Preliminary Objections.

WHEREFORE, in fairness to the Defendants, counsel would respectfully request Defendants Preliminary Objections be scheduled before the Court such that Defendants shall

have the opportunity to present argument to the Court.

Respectfully submitted,

Ronald L. Collins, Esquire
Attorney for Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton

Dated: Sept 13, 2004

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL INC., ROBERT E. HAMILTON, ANNA MARIE HAMILTON; JAMES E. HAMILTON, JR. and ETHEL M. HAMILTON, Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within document was served this 13th day of ~~August~~ Sept, 2006, upon the following by U.S. Mail, postage prepaid, via certified mail, return receipt requested to:

Matthew D. Gailey, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA. 15219

Respectfully submitted,

Ronald L. Collins, Esquire

ALL STATE LEGAL, A DIVISION OF ALL-STATE® INTERNATIONAL, INC.
FORM NO.: 07162-BF • 07163-BL • 07155-GY • 07156-WH

No. 03-798-CD

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

HAMILTON BROTHERS COAL, INC., ROBERT E. HAMILTON, ANNA MARIE HAMILTON, JAMES E. HAMILTON, JR., and ETHEL M. HAMILTON,
Defendants

Motion for Reconsideration to Schedule Argument on Preliminary Objections

Ronald L. Collins, Esquire

Sobel & Collins
ATTORNEYS & COUNSELORS AT LAW
218 SOUTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-5552
sobelcollins@atlanticbb.net

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	*	
vs.	*	NO. 03-798-CD
HAMILTON BROTHERS COAL INC., ROBERT E. HAMILTON, ANNA MARIE HAMILTON, JAMES E. HAMILTON, JR., and ETHEL M. HAMILTON, Defendants	*	

ORDER

AND NOW, this 14th day of September, 2006 the Court being in receipt of the Motion for Reconsideration to Schedule Argument on Preliminary Objections filed by the Defendants, it is the ORDER of this Court that said Motion be and is hereby DENIED.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED 2cc
01:00/6/61 Copies See Attached
SEP 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

FILED

SEP 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/18/06

___ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) X Plaintiff(s) Attorney ___ Other

X Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

03-798-CD
Utica Mutual Insurance vs. Hamilton Brothers et al

1cc Paul K. Vey, Esq.
William Wyrick, Esq.
Robert J. Monahan, Esq.
Matthew D. Gailey, Esq.
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

1cc Hamilton Brothers Coal, Inc.
C/o Fred Kuzemachak
RD 2 Box 563
Clymer, PA 15728

1cc Robert Hamilton
Anna Marie Hamilton
RD 1, Box 16
Irvona, PA 16656

1cc James E. Hamilton, Jr.
Ethel M. Hamilton
262 Market Street
Coalport, PA 16627

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

ALTOONA PA 166
18 SEP 2006 PM
016H16505405
$00.39
09/18/2006
Mailed From 16830
US POSTAGE

CDF

FILED
11:00 am
SEP 22 2006
William A. Shaw
Prothonotary/Clerk of Courts

No further address in File

Hamilton Brothers Coal, Inc.
C/o Fred Kuzemachak
RD 2 Box 563

A
C
S
☐ INSUFFICIENT ADDRESS
☐ ATTEMPTED NOT KNOWN
☐ NO SUCH NUMBER/ STREET
☒ NOT DELIVERABLE AS ADDRESSED
- UNABLE TO FORWARD
☐ OTHER

RTS
RETURN TO SENDER

16830/0543

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

UTICA MUTUAL INSURANCE COMPANY,	*	
Plaintiff	*	
vs.	*	NO. 03-798-CD
HAMILTON BROTHERS COAL INC.,	*	
ROBERT E. HAMILTON, ANNA MARIE	*	
HAMILTON, JAMES E. HAMILTON, JR., and	*	
ETHEL M. HAMILTON,	*	
Defendants	*	

ORDER

AND NOW, this 14th day of September, 2006 the Court being in receipt of the Motion for Reconsideration to Schedule Argument on Preliminary Objections filed by the Defendants, it is the ORDER of this Court that said Motion be and is hereby DENIED.

BY THE COURT,

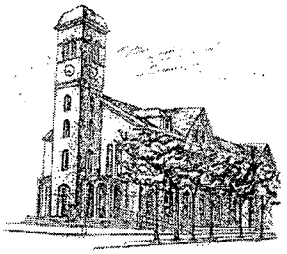
/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

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

SEP 18 2006

Attest. William L. Ahern
Prothonotary/
Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
David S. Ammerman Solicitor
Jacki Kendrick Deputy Prothonotary
Bonnie Hudson Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 9/18/06

_____You are responsible for serving all appropriate parties.

__X__The Prothonotary's office has provided service to the following parties:

_____Plaintiff(s) _____X_____Plaintiff(s) Attorney _____Other

__X__Defendant(s) _____Defendant(s) Attorney

_____Special Instructions:

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL, INC., ROBERT E. HAMILTON, an individual, ANNA M. HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants	:	

PRAECIPE FOR WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANTS

TO THE HONORABLE WILLIAM A. SHAW, PROTHONOTARY:

Please issue a Writ of Summons to join the below listed parties as additional Defendants in the above captioned matter:

Evergreen Insurance Associates, Inc.
P.O. Box 505
Ebensburg, Pennsylvania 15931

Commonwealth of Pennsylvania
Department of Environmental Protection
Hawk Run District Office
Empire Road
Hawk Run, Pennsylvania

Fred Kuzemchak
Fred Kuzemchak Mining
R.D.#2, Box 563
Clymer, Pennsylvania 15728

Respectfully submitted,

Ronald L. Collins, Esquire
Attorney for Defendants

FILED 1cc Atty Collins
013:37/BK
OCT 23 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WRIT TO JOIN ADDITIONAL DEFENDANT

Utica Mutual Insurance Company
Plaintiff(s)

Vs.

Hamilton Brothers Coal, Inc., Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton Jr., Ethel M. Hamilton
Defendant(s)

2003-00798-CD

Vs.

Evergreen Insurance Associates, Inc., Commonwealth of Pennsylvania, and Fred Kuzemchak
Additional Defendant(s)

TO: Evergreen Insurance Associates, Inc., Commonwealth of Pennsylvania, and Fred Kuzemchak

You are notified that Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton has joined you as an additional defendant in this action, which you are required to defend.

Dated: October 23, 2006

Prothonotary

Filing Attorney: Ronald L. Collins, Esq.
218 South Second Street
Clearfield, PA 16830

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 2003-798-CD
V.	:	Type of Document: Answer, New Matter and Counterclaim
HAMILTON BROTHERS COAL, INC., A Pennsylvania Corporation, ROBERT E. HAMILTON,, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	Filed by: Ronald L. Collins, Esquire Sobel & Collins 218 South Second Street Clearfield, PA. 16830 Attorney I.D. 36744 (814) 765-5552 (814) 765-6210

FILED 2 cc
03:37 PM Atty Collins
OCT 23 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
V.	:	No: 03-798-CD
HAMILTON BROTHERS COAL, INC., ROBERT E. HAMILTON, an individual, ANNA M. HAMILTON, an individual, JAMES E. HAMILTON, JR., ETHEL M. HAMILTON, an individual, Defendants	:	

NOTICE TO PLEAD

TO: UTICA MUTUAL INSURANCE COMPANY

You are hereby notified to plead to the within new Matter and Counterclaim within twenty (20) days of service hereof or a default judgment may be entered against you.

Ronald L. Collins, Esquire
Attorney for Defendants

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL, INC, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants	:	

ANSWER, NEW MATTER AND COUNTERCLAIM

AND NOW, comes the Defendants, Robert E. Hamilton, an individual, Anna Marie Hamilton, an individual, James E. Hamilton, Jr., an individual and Ethel M. Hamilton, an individual, by and through their attorney, Ronald L. Collins, Esquire, and files the foregoing Answer, New Matter and Counterclaim and respectfully avers as follows:

ANSWER

NOW COMES the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton, by and through their attorney, Ronald L. Collins, Esquire, who respectfully sets forth the Defendants Answer to Plaintiff's Second Amended Complaint as follows:

1. Paragraph One of the Second Amended Complaint is admitted to the extent stated.

2. Paragraph Two of the Second Amended Complaint is denied. It is specifically denied that Hamilton Brothers Coal, Inc. is a Pennsylvania Corporation with its principal place of business at R.D. #1, Box 16, Irvona, Pennsylvania. It would be

specifically averred that since June 25, 1996, that Hamilton Brothers Coal, Inc. has not maintained the address as set forth within Plaintiff's Second Amended Complaint but rather maintained an address of : Mr. Fred Kuzemchak, Sr., President, Hamilton Brothers Coal Company, Inc., R.R.#2, Box 563, Clymer, Pennsylvania 15728. Strict proof of the averment set forth in Paragraph Two of the Second Amended Complaint would be demanded at the time of trial and hearing in this matter.

3. Paragraph Three of the Second Amended Complaint would be admitted to the extent stated.

4. Paragraph Four of the Second Amended Complaint would be admitted to the extent stated.

5. Paragraph Five of the Second Amended Complaint would be admitted to the extent stated.

6. Paragraph Six of the Second Amended Complaint would be denied in part and would be such that the Plaintiff's can not provide a responsive averment as to the same. It would be specifically denied that at all times relevant to the instant matter, that the Defendant's conducted surface mining activities in Beccaria Township, Clearfield County, Pennsylvania pursuant to Commonwealth of Pennsylvania, Department of Environmental Protection Permit Numbers 17880122, 17910122 and 17930116. It would be specifically denied that the individual Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton ever conducted surface mining activities in Beccaria Township, Clearfield County, Pennsylvania pursuant to the Department

of Environmental Protection permits set forth within this paragraph. It would be further averred that the Defendant's after inquiry and investigation are without sufficient information to fully admit or deny portions of Plaintiff's Second Amended Complaint, Paragraph Six, as complete copies of the Environmental Protection Permits 178 80122, 17910122 and 17930116 have not been attached to the Second Amended Complaint or supplied to the Defendants. Strict proof of the denied averments of Paragraph Six of the Second Amended Complaint would be demanded at time of trial and hearing in t his matter.

7. Paragraph Seven of the Second Amended Complaint would be denied as stated. It would be specifically denied that the individual Defendant's, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton were required to individually post surety bonds in connection with any contracts. Strict proof thereof would be demanded at the time of trial and hearing in this matter.

8. Paragraph Eight of the Second Amended Complaint would be denied as stated. It would be specifically denied that the individual Defendants Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton, individually, contracted with the Plaintiff, Utica, for surety bonds bearing Surety Bond Numbers SU1524284, SU1545137, SU1554222, SU1635674, SU1700538, SU1700550, SU1366516, SU1635678, SU44373, SU44374 and SU44375. Strict proof of the averments made within Paragraph Eight of the Second Amended Complaint would be demanded at the time of trial and hearing in this matter.

9. Paragraph Nine of the Second Amended Complaint would be admitted to the extent stated. The Defendant's would aver and would deny that said Indemnity

Agreement does apply to any Surety Bonds or extension of Surety Bonds which were put into place after June 25, 1996. Strict proof of the denied portion of the averment set forth within Paragraph Nine of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

10. Paragraph Ten of the Second Amended Complaint would be denied. It is specifically denied that the individual Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton commenced work on those areas covered by Department of Environmental Protection Permit Numbers 1780122, 178910122 and 17930116. Defendant's would further specifically deny that the individual Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton were defaulting or ever defaulted on any obligations under the three permit numbers set forth above. Strict proof thereof would be demanded at time of trial and hearing in this matter.

11. Paragraph Eleven of the Second Amended Complaint would be denied. It would be specifically denied that the Plaintiff, Utica, was required to make payment to the Department of Environmental Protection on January 12, 2000 of any sums pursuant to any default or action of the individual Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton. Strict proof the denied averment of Paragraph Eleven of the Second Amended Complaint would be demanded at time of trial and hearing in this matter.

12. Paragraph Twelve of the Second Amended Complaint would be denied. It would be specifically denied that the Plaintiff, Utica, was required to make payment to the Department of Environmental Protection on May 8, 2001 of any sums

pursuant to any default or action of the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton.

13. Paragraph Thirteen of the Second Amended Complaint would be denied. It would be specifically denied that the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton are in any fashion obligated or required to indemnify Utica for any sums of money including but not limited to attorneys fees and costs associated with regard to this alleged default of Hamilton Brothers Coal, Inc. under the permits set forth above. Strict proof thereof would be demanded at the time of trial and hearing in this matter.

14. Paragraph Fourteen of the Second Amended Complaint would be denied. It would be specifically denied that the individual Defendants owe the Plaintiff, Utica, $155,458.09 for any costs whatsoever associated in regard to any payment made by Utica to the Department of Environmental Protection. Strict proof of the denied averment of Paragraph Fourteen of the Second Amended Complaint would be demanded at the time of trial or hearing in this matter.

15. Paragraph Fifteen of the Second Amended Complaint would be denied. It would be specifically denied that the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton in any fashion breached the Indemnity Agreement referred to in Paragraph Nine above, should said Indemnity Agreement be found to exist, as well as it would be specifically denied that the individual Defendants Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton are obligated in any fashion to reimburse ongoing attorney's fees associated in regard to this matter. Strict proof

of the denied averments of Paragraph Fifteen would be demanded at the time of trial or hearing in this matter.

16. Paragraph Sixteen of the Second Amended Complaint would be denied. It would be specifically denied that the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton have caused any injury to the Plaintiff, Utica, such that any form of compensation is due and owing. Strict proof thereof would be demanded at the time of trial or hearing in this matter.

WHEREFORE, the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton respectfully request that your Honorable Court deny the Plaintiff, Utica Mutual Insurance Company's request for judgment and that your Honorable Court dismiss the Second Amended Complaint filed by the Plaintiff. It is further respectfully requested that your Honorable Court deny the Plaintiff any counsel fees, interest, costs or any other sum associated with regard to this matter.

NEW MATTER

NOW COMES the Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton by and through their attorney, Ronald L. Collins, Esquire, who respectfully sets forth the Defendant's New Matter to the Second Amended Complaint and would respectfully set forth and aver as follows:

17. Paragraphs One through Sixteen of the Answer set forth above would be incorporated herein by reference as if the same were set forth in full at length.

18. That on June 25, 1996, Hamilton Brothers Coal, Inc. was sold to Fred Kuzemchak Mining.

19. That as a result of said sale of the corporation, Hamilton Brothers Coal, Inc., the individual Defendant's Robert E. Hamilton, James E. Hamilton, Jr. no longer retained any ownership, interest, control or in any fashion were involved in the mining operations of Hamilton Brothers Coal, Inc. subsequent to that date.

20. That as of the date of the conveyance to Kuzemchak, Hamilton Brothers Coal, Inc. was in full compliance with all regulations and permit requirements and was in full conformity with all regulations of the Pennsylvania Department of Environmental Protection.

21. That as of the date of the conveyance to Kuzemchak, Hamilton Brothers Coal, Inc. was not the subject of any Notices of Violation or Cessation Orders of the Pennsylvania Department of Environmental Protection.

22. That as of December 17, 1998, the Plaintiff, Utica Mutual Insurance Company was fully aware of the alleged default in the Surety Bonds as such was indicated within correspondence received by the Defendants Robert E. Hamilton and James E. Hamilton, Jr. on that same date.

23. That the instant matter was commenced by Civil Complaint filed June 2, 2003, against the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton based upon the Indemnification Agreement set forth as Exhibit B to Plaintiff's Second Amended Complaint.

24. That by letter dated December 17, 1998, the Defendant, Robert E. Hamilton was notified by the Plaintiff, Utica Mutual Insurance Company that a default had occurred as to Pennsylvania Department of Environmental Protection Bonds and that the life insurance policy held by the Plaintiff, Utica Mutual Life Insurance in

the name of Robert E. Hamilton was being forfeited such that payment could be made to the Department of Environmental Services.

25. That at the time of said forfeiture the value of said policy was $71,713.85.

26. That by letter dated December 17, 1998, the Defendant, James E. Hamilton, Jr. was notified by the Plaintiff, Utica Mutual Insurance Company, that a default had occurred as to Pennsylvania Department of Environmental Protection Bonds and that the life insurance policy held by the Plaintiff, Utica Mutual Life Insurance in the name of James E. Hamilton, Jr. was being forfeited such that payment could be made to the Department of Environmental Services.

27. That at the time of the forfeiture the value of said policy was in an amount in excess of $55,103.56.

28. That after the sale of June 25, 1996, Hamilton Brothers Coal, Inc. continued to be operated by Fred Kuzemchak Mining.

29. That from June 25, 1996 through the Notice of Default on December 17, 1998, Hamilton Brothers Coal, Inc. while being operated by Fred Kuzemchak Mining, fell out of compliance with Department of Environmental Protection regulations such that various violations were cited with said violations continuing in effect up through and including the date of the Cessation Order.

30. That despite the fact that Hamilton Brothers Coal, Inc. during that time period set forth within the immediately preceding paragraph was not in compliance with Department of Environmental Protection regulations, the Department in violation of its own regulations allowed the extension, amendment, restructuring and/or modified or extended those bonds which were covering the areas being mined by

Hamilton Brothers Coal, Inc.

31. That from June 25, 1996 through the date of the Notice of Default on December 17, 1998, the Plaintiff, Utica Mutual Insurance Company through its agent, Evergreen Insurance Associated, Inc. were aware of the sale of Hamilton Brothers Coal, Inc. to Fred Kuzemchak Mining.

32. That from June 25, 1996 through the date of the Notice of Default on December 17, 1998, the Plaintiff, Utica Mutual Insurance Company, through its agent, Evergreen Insurance Associates, Inc. was aware of the fact that the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton were no longer associated with the operation of Hamilton Brothers Coal, Inc.

33. That from June 25, 1996 through the date of the Notice of Default on December 17, 1998 and thereafter, the Plaintiff, Utica Mutual Insurance company, through its agent, Evergreen Insurance Associates, Inc. continued to bill Hamilton Brothers Coal, Inc. at the address of Fred Kuzemchak Mining for Surface Mining Bonds some of which are those same Surety Bonds set forth within Plaintiffs Second Amended Complaint as well as allowed modification of the bonds by the Department of Environmental Protection such that various acres of support and collateral letters of credit were used in order to modify the former acres of support such that mining could be commenced thereon.

34. That the net effect of such action set forth in paragraph thirty three above is that the same increased the liability and exposure of the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton.

35. On December 2, 1997, after the sale of Hamilton Brothers Coal, Inc. more modifications were done to Utica Surety Bond SU1700550 such that more acreage was added to both the mining and support bonds.

36. That the net effect of such action set forth in paragraph thirty three above is that the same increased the liability and exposure of the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton.

37. That from June 25, 1996 through the date of the Notice of Default on December 17, 1998 and thereafter, the Plaintiff, Utica Mutual Insurance, Inc., allowed modification of the bonds by the Department of Environmental Protection such that various acres of support and mining were modified thereby increasing and allowing the mining activities on the permitted properties as well as such that the liability of the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton was increased.

38. That the net effect of such action is that the same increased the liability and exposure of the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton.

39. That at no time did the Plaintiff, Utica Mutual Insurance Company notify the Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton that the individual bonds and/or permits set forth within Plaintiff's Second Amended Complaint were being renewed, modified, altered, transferred so as to increase the liability under the bonds or any other action such as would have the effect of increasing the liability under the Indemnification Agreement executed by the individual Defendants, Robert E. Hamilton, Anna M.

Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton.

40. That the Department of Environmental Protection as of March 9, 1999, granted a partial release of Permit Number 17930116 and refunded money back to Hamilton Brothers Coal, Inc. and refunded/credited money back to Hamilton Brothers Coal, Inc. and/or Utica Mutual Insurance Company.

41. That said refunding/credit of a portion of the bond money associated in regard to Permit Number 17930116 was refunded to Hamilton Brothers Coal, Inc. and/or Utica Mutual Insurance Company on March 9, 1999, despite the fact that the Plaintiff, Utica Mutual Insurance Company had previously forfeited the Defendant, Robert E. Hamilton and James E. Hamilton Jr.'s life insurance policies as of December 17, 1998.

WHEREFORE, it is respectfully requested that your Honorable Court dismiss the Complaint filed against the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton and that your Honorable Court award the Defendants counsel fees, costs and expenses associated with regard to the defense of the instant matter.

COUNTERCLAIM

AND NOW, comes the Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton by and through their attorney, Ronald L. Collins, Esquire who respectfully sets forth the Defendants Counterclaim as follows:

42. Paragraph One through Forty-One of the Answer and New Matter set forth above would be incorporated herein by reference as if the same were set forth at length.

43. That by letter dated December 17, 1998, the life insurance policy of Robert E.

Hamilton was forfeited for the alleged purpose of payment of obligations due and owing the Department of Environmental Protection as a result of a Cessation Order which had been issued.

44. That said life insurance policy at the time of its forfeiture had a cash surrender value in the amount of $71,713.85.

45. That said forfeiture and surrender of the policy was improper in that Robert E. Hamilton as of June 25, 1996 was no longer an owner of Hamilton Brothers Coal, Inc. nor was he associated with regard to the same such that he should be obligated for any default of Hamilton Brothers Coal, Inc. obligations.

46. That by letter December 17, 1998, the life insurance policy of James E. Hamilton, Jr. was forfeited for the alleged purpose of payment of obligations due and owing the Department of Environmental Protection as a result of the Cessation Order which had been issued.

47. That said life insurance policy at the time of its forfeiture had a cash surrender value in an amount in excess of $55,103.50.

48. That said forfeiture and surrender of the policy was improper in that James E. Hamilton, Jr. as of June 25, 1996 was no longer an owner of Hamilton Brothers Coal, Inc. nor was he associated with regard to the same such that he should be obligated for any default of Hamilton Brothers Coal, Inc. obligations.

49. That the Defendants, Robert E. Hamilton and James E. Hamilton, Jr. have suffered injury as a result of the actions of the Plaintiff, Utica Mutual Insurance Company in an amount in excess of $126,817.35.

50. That since the date of the forfeiture of each individual policy the Defendants,

Robert E. Hamilton and James E. Hamilton, Jr. have suffered the additional loss of the gain and interest which would have accrued as to said life insurance policies from December 17, 1998 through the present day as well as loss which will continue to accrue into the future which can no longer be obtained due to the cashing in of said policies and the loss of the insurance value which was available to each of the individual Defendants, Robert E. Hamilton and James E. Hamilton, Jr., at the time said policies were forfeited. Said future damages are in an unliquidated amount.

51. That the Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton have further had to expend counsel fees, costs and ongoing counsel fees in regard to the assertion of this Counterclaim.

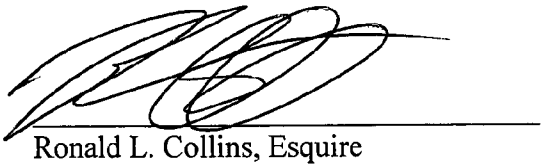
52. That the conduct of the Plaintiff, Utica Mutual Insurance Company in forfeiting the insurance policies improperly and in commencing this action to collect on the Indemnification Agreement constitutes an arbitrary, vexatious and/or bad faith act such that the Defendants would request punitive damages in an unliquidated amount to compensate the Defendants as a result of the Plaintiffs improper act.

WHEREFORE, the Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton demand judgment against the Plaintiff, Utica Mutual Insurance Company in the liquidated amount in excess of $126,817.35, plus counsel fees, costs and expenses, interest, accrued interest from 1998 to the present date on the forfeited life

insurance policies as well as punitive damages in an unliquidated amount.

JURY TRIAL DEMANDED

Respectfully Submitted:



Ronald L. Collins, Esquire
Attorney for Defendants

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL INC., ROBERT E. HAMILTON, ANNA MARIE HAMILTON; JAMES E. HAMILTON, JR. and ETHEL M. HAMILTON, Defendants	:	

VERIFICATION

I verify that the statements made in the forgoing Answer, New Matter and Counterclaim 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.

Robert E. Hamilton

Anna Marie Hamilton

James E. Hamilton, Jr.

Ethel M. Hamilton

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL, INC., ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, and individual, Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within document was served this 23 day of October, 2006, upon the following by U.S. Mail, postage prepaid, via certified mail, return receipt requested to:

Matthew D. Gailey, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA. 15219

Respectfully submitted:

Ronald L. Collins, Esquire
Attorney for Defendant

CA

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	CIVIL ACTION No. 03 – 798 - CD **PRELIMINARY OBJECTIONS OF PLAINTIFF TO DEFENDANTS' COUNTERCLAIM TO PLAINTIFF'S SECOND AMENDED COMPLAINT** Filed on behalf of plaintiff: UTICA MUTUAL INSURANCE COMPANY Counsel of record for this party: Paul K. Vey, Esquire Pa. I. D. #30824 Matthew D. Gailey, Esquire Pa. I. D. #90920 PIETRAGALLO, BOSICK & GORDON Firm I.D. #834 38th Floor, One Oxford Centre Pittsburgh, PA 15219 (412) 263-2000

FILED NO CC
m/10:55/01
DEC 06 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

PRELIMINARY OBJECTIONS OF PLAINTIFF TO DEFENDANTS' COUNTERCLAIM TO PLAINTIFF'S SECOND AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Utica Mutual Insurance Company ("Utica Mutual"), by and through its attorneys, Pietragallo Bosick & Gordon LLP, and submits these Preliminary Objections to Defendants' Counterclaim to Plaintiff's Second Amended Complaint, averring as follows: Utica seeks the dismissal of Defendants' Counterclaim to Plaintiff's Second Amended Complaint on the basis that the Defendants have failed to set forth a legally cognizable claim. Pursuant to Rule 1028 of the Pennsylvania Rules of Civil Procedure, Utica Mutual submits the following:

I. Defendants' Counterclaim Sounding in Bad Faith is Legally Insufficient.

1. Pa. R. C. P. 1028(a)(4) authorizes preliminary objections due to the legal insufficiency of a pleading.

2. Defendants' Counterclaim to Plaintiff's Second Amended Complaint alleging bad faith against Utica Mutual is legally insufficient.

3. On October 27, 1989, Defendants Robert Hamilton and James Hamilton executed a Surety Bond Agreement whereby Defendants agreed to furnish Utica security in the form of an absolute assignment of cash values. The intent of this agreement was to protect Utica from loss, cost and expense in connection with the bonds. Furthermore, this assignment was to remain in full force and effect until all of Utica's liability in connection with the bonds have been finally and fully terminated.

4. According to Pennsylvania law, the surety bonds that Defendants acquired from the Plaintiff were a necessary prerequisite to conducting mining operations.

5. The Defendants allege in Paragraphs 45 and 48 of their Counterclaim that the life insurance policies of both Robert Hamilton and James E. Hamilton, Jr. were improperly forfeited and surrendered to the Plaintiff.

6. Based upon the proceeding, the Defendants have authored allegations of bad faith in their Counterclaim against the Plaintiff. The Defendants allege in Paragraphs 45 and 48 that they were no longer owners of Hamilton Brothers Coal, Inc. nor were they associated with the company and the company's obligations at the time these life insurance policies were forfeited and surrendered.

7. Plaintiff, due to Defendants' breaches of their actual obligations to their indemnification agreement and default on the bonds, was forced to pay $173,400 on or about January 10, 2000 to the Pennsylvania Dept. of Environmental Protection, and $108,380 on or about May 8, 2001.

8. Pursuant to 42 Pa. CSA §8371 of the Pennsylvania Bad Faith Statute, the averments contained in the Defendants' Counterclaim are legally insufficient to support a bad faith claim.

9. 42 Pa. CSA §8371 of the Pennsylvania Bad Faith Statute provides as follows:

> If in an action arising under an insurance policy, the court finds that the insurer is acting in bad faith toward the insured, the court may take all of the following actions: (1) award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus three percent; (2) award punitive damages against the insurer; and (3) assess court costs and attorney fees against the insurer.

10. As the statute indicates and as case law clearly defines, §8371 expressly permits an ***insured*** (emphasis added) to pursue a bad faith claim. See Detweiler v. Nationwide Insurance Company, 2000 U. S. Dist. Lex. 15684 (E. D. Pa. 2000); Beaumont Holding Corp. v. Life & Health Insurance Company, 2000 U. S. Dist. Lex. 51250 (E. D. Pa. 2000).

11. The Defendants are not insureds under any policy related to the issuance of the surety bonds. As such, the Defendants do not have standing to pursue the bad faith claim pursuant to 42 Pa. C. S. A. §8371.

12. Defendants may note that the bad faith statute has been interpreted to allow a court to award damages and find that the insurer acted in bad faith in actions against sureties for failing to honor performance bonds. See Reading Tube Corp. v. Employers' Insurance of Wausau, E. D. Pa. 1996, 944 F. Supp. 398. However, this case can be factually distinguished from the Reading Tube case as that case dealt with a party that failed to fulfill its obligations under the performance bond. In this matter, as highlighted in Paragraph 7, Plaintiff Utica Mutual satisfied all obligations under the surety bonds when it performed and issued payment in the amount of $173,400 on or about January 10, 2000 and $108,380 on or about May 8, 2001 to the Pennsylvania Department of Environmental Protection in accordance with the terms of the bonds.

13. Based on the preceding, Utica performed its obligation under the bonds due to the Defendants' default. The allegations contained in Defendants' Counterclaim to Plaintiff's Second Amended Complaint are legally insufficient as the Defendants have failed to allege any action that would constitute bad faith on the part of the Plaintiff, and the Defendants lack standing to pursue such a claim as required by the controlling statute, 42 Pa. C. S. A. §8371.

WHEREFORE, the Plaintiff, Utica Mutual Insurance Company, respectfully requests that this Honorable Court grant its Preliminary Objections and dismiss Defendants Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton's Counterclaim with prejudice.

JURY TRIAL DEMANDED

Respectfully submitted,

PIETRAGALLO BOSICK & GORDON LLP

By: _____

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Attorneys for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Plaintiff's Preliminary Objections to Defendants' Counterclaim to Plaintiff's Second Amended Complaint** was served on the following by first class mail, postage pre-paid, this 4 day of December, 2006:

Richard L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830
Attorneys for Defendants

Matthew D. Gailey

Matthew D. Gailey, Esq.
Attorney for Plaintiff

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

ORDER OF COURT

AND NOW, this _____ day of _____, 2006, upon consideration of the Preliminary Objections of the Plaintiff, it is hereby ORDERED that said Preliminary Objections are granted and the Defendants' Counterclaim is dismissed with prejudice. A judgment is entitled to be entered in favor of the Plaintiff, Utica Mutual Insurance Company, against Defendants.

_____ J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY, Plaintiff,	CIVIL ACTION No. 03 – 798 - CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	**REPLY TO NEW MATTER** Filed on behalf of plaintiff: UTICA MUTUAL INSURANCE COMPANY Counsel of record for this party: Paul K. Vey, Esquire Pa. I. D. #30824 Matthew D. Gailey, Esquire Pa. I. D. #90920 PIETRAGALLO, BOSICK & GORDON Firm I.D. #834 38th Floor, One Oxford Centre Pittsburgh, PA 15219 (412) 263-2000

FILED NO CC
m/10:55/bl
DEC 06 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

REPLY TO NEW MATTER

AND NOW, comes the Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP and files the within Reply to Defendants' New Matter, averring as follows:

17. It is admitted that the Defendants have incorporated Paragraphs 1 through 16 of their Answer and New Matter as if the same were set forth at length.

18. After reasonable investigation, Plaintiff is without information to either admit or deny the averments contained in Paragraph 18 of Defendants' New Matter. Plaintiff was aware that a sale of the company to Fred Kozemchak took place, but has no evidence of a sales agreement containing the date of that sale. Therefore, strict proof of the same is required at trial.

19. After reasonable investigation, Plaintiff is without information to either admit or deny the averments contained in Paragraph 19 of Defendants' New Matter. Therefore, strict proof of the same is required at trial. Plaintiff further avers that Defendants had an affirmative duty to relieve themselves of

any of their obligations on the original bonds at the time of any alleged sale and that the Defendants failed to do so.

20. After reasonable investigation, Plaintiff is without information to either admit or deny the averments contained in Paragraph 20 of Defendants' New Matter. Therefore, strict proof of the same is required at trial. Plaintiff further avers that Defendants had an affirmative duty to relieve themselves of any of their obligations on the original bonds at the time of any alleged sale and that the Defendants failed to do so.

21. After reasonable investigation, Plaintiff is without information to either admit or deny the averments contained in Paragraph 21 of Defendants' New Matter. Therefore, strict proof of the same is required at trial. Plaintiff further avers that Defendants had an affirmative duty to relieve themselves of any of their obligations on the original bonds at the time of any alleged sale and that the Defendants failed to do so.

22. After reasonable investigation, Plaintiff is without information to either admit or deny the averments contained in Paragraph 22 of Defendants' New Matter. Therefore, strict proof of the same is required at trial. Plaintiff further avers that it has conducted a search for the December 17, 1998 correspondence referenced herein and has been unable to locate the same.

23. The averments contained in Paragraph 23 of Defendants' New Matter are admitted.

24. After reasonable investigation, Plaintiff is without information to either admit or deny the averments contained in Paragraph 24 of Defendants' New Matter. Plaintiff further avers that it has conducted a search for the December 17, 1998 correspondence referenced herein and has been unable to locate the same. Therefore, strict proof of the same is required at trial.

25. The averments contained in Paragraph 25 of Defendants' New Matter are admitted.

26. After reasonable investigation, Plaintiff is without information to either admit or deny the averments contained in Paragraph 26 of Defendants' New Matter. Plaintiff further avers that it has conducted a search for the December 17, 1998 correspondence referenced herein and has been unable to locate the same. Therefore, strict proof of the same is required at trial.

27. The averments contained in Paragraph 27 of Defendants' New Matter are admitted.

28. After reasonable investigation, Plaintiff is without information to either admit or deny the averments contained in Paragraph 28 of Defendants' New Matter. Therefore, strict proof of the same is required at trial. Plaintiff further avers that Defendants had an affirmative duty to relieve themselves of any of their obligations on the original bonds at the time of any alleged sale and that the Defendants failed to do so.

29. After reasonable investigation, Plaintiff is without information to either admit or deny the averments contained in Paragraph 28 of Defendants' New Matter. Plaintiff further avers that it has conducted a search for the December 17, 1998 correspondence referenced herein and has been unable to locate the same. Therefore, strict proof of the same is required at trial. Plaintiff further avers that Defendants had an affirmative duty to relieve themselves of any of their obligations on the original bonds at the time of any alleged sale and that the Defendants failed to do so.

30. The averments contained in Paragraph 30 of Defendants' New Matter contain conclusions of law to which no response is required. To the extent a response is deemed required, the allegations contained in Paragraph 30 of Defendants' New Matter are denied and strict proof of the same is required at trial. Plaintiff further avers that Defendants had an affirmative duty to relieve themselves of any of their obligations on the original bonds at the time of any alleged sale and that the Defendants failed to do so.

31. The averments contained in Paragraph 31 of Defendants' New Matter are conclusions of law to which no response is required. To the extent a response is deemed required, the allegations of Paragraph 31 of Defendants' New Matter are denied and strict proof of the same is required at trial. Plaintiff further avers that the Plaintiff has no knowledge of Evergreen Insurance Agency's knowledge of the Hamiltons' business. Plaintiff further avers that Defendants had an affirmative duty to relieve themselves of any of their obligations on the original bonds at the time of any alleged sale and that the Defendants failed to do so.

32. The averments contained in Paragraph 32 of Defendants' New Matter are conclusions of law to which no response is required. To the extent a response is deemed required, the allegations of Paragraph 32 of Defendants' New Matter are denied and strict proof of the same is required at trial. Plaintiff further avers that the Plaintiff has no knowledge of Evergreen Insurance Agency's knowledge of the Hamiltons' business. Plaintiff further avers that Defendants had an affirmative duty to relieve themselves of any of their obligations on the original bonds at the time of any alleged sale and that the Defendants failed to do so.

33. The averments contained in Paragraph 32 of Defendants' New Matter are conclusions of law to which no response is required. To the extent a response is deemed required, the allegations of Paragraph 33 of Defendants' New Matter are denied and strict proof of the same is required at trial. Plaintiff further avers that the Plaintiff has no knowledge of Evergreen Insurance Agency's knowledge of the Hamiltons' business. Plaintiff further avers that Defendants had an affirmative duty to relieve themselves of any of their obligations on the original bonds at the time of any alleged sale and that the Defendants failed to do so.

34. The averments contained in Paragraph 34 of Defendants' New Matter contain conclusions of law to which no response is required. To the extent a response is deemed required, the

allegations contained in Paragraph 34 of Defendants' New Matter are denied and strict proof of the same is required at trial.

35. After reasonable investigation, Plaintiff is without information to either admit or deny the averments contained in Paragraph 35 of Defendants' New Matter. Therefore, strict proof of the same is required at trial.

36. The averments contained in Paragraph 36 of Defendants' New Matter contain conclusions of law to which no response is required. To the extent a response is deemed required, the allegations contained in Paragraph 36 of Defendants' New Matter are denied and strict proof of the same is required at trial.

37. The averments contained in Paragraph 37 of Defendants' New Matter contain conclusions of law to which no response is required. To the extent a response is deemed required, the allegations contained in Paragraph 37 of Defendants' New Matter are denied and strict proof of the same is required at trial.

38. The averments contained in Paragraph 38 of Defendants' New Matter contain conclusions of law to which no response is required. To the extent a response is deemed required, the allegations contained in Paragraph 38 of Defendants' New Matter are denied and strict proof of the same is required at trial.

39. After reasonable investigation, Plaintiff is without information to either admit or deny the averments contained in Paragraph 35 of Defendants' New Matter. Therefore, strict proof of the same is required at trial. Plaintiff further avers that they were under no obligation to notify the Defendants of renewals, modifications, alterations or transferals of any bonds in this case. Plaintiff further avers that Defendant had the affirmative obligation that their interest in the company and corresponding bonds be completely extinguished at the time of sale, which they failed to do.

40. The averments contained in Paragraph 40 of the Defendants' New Matter are denied.

41. The averments contained in Paragraph 41 of the Defendants' New Matter are denied.

WHEREFORE, it is respectfully requested that this Honorable Court dismiss the New Matter filed against Plaintiff, Utica Mutual Insurance Company, and demands judgment against Defendants in the amount of $155,458.09 plus attorneys' fees, together with interest, plus services rendered and expenses advanced up to the time of trial.

JURY TRIAL DEMANDED

Respectfully submitted,
PIETRAGALLO, BOSICK & GORDON, LLP

By: _____

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

VERIFICATION

I, Jason Jaskolka, Esq., verify that I am a representative of **Utica Mutual Insurance Company**, the Plaintiff in the within action, that I am authorized to file the foregoing **Reply to New Matter** on its behalf, and that the statements and averments of fact contained therein are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa. C.S.A. Section 4904.

Dated: December 4 2006

Jason Jaskolka, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Reply to New Matter** was served on the following by first class mail, postage pre-paid, this 4th day of December, 2006:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Counsel for Defendants

Matthew D. Gailey, Esq.
Attorney for Plaintiff

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

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

SCHEDULING ORDER

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED 6cc Atty Gailey
DEC 13 2006
William A. Shaw
Prothonotary/Clerk of Courts

UA

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

SCHEDULING ORDER

AND NOW, this 13th day of December, 2006, pursuant to Local Rule 211, oral argument on the above Plaintiff's Preliminary Objections to Defendants' Counterclaim to Plaintiff's Second Amended Complaint is scheduled before the undersigned in Courtroom No. 1 on January 29, 2007 @ 11:00 A.M..

By the Court:

Fredric J Ammerman J.

ATTEST:

Prothonotary

Respectfully submitted,

PIETRAGALLO BOSICK & GORDON LLP

By: _____

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Attorneys for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED

DEC 13 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/13/06

X You are responsible for serving all appropriate parties.

____The Prothonotary's office has provided service to the following parties:

____Plaintiff(s) ____Plaintiff(s) Attorney ____Other

____Defendant(s) ____Defendant(s) Attorney

____Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY	:	
VS.	:	NO. 03-798-CD
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation,	:	
ROBERT E. HAMILTON, an indiv.,	:	
ANNA MARIE HAMILTON, an indiv.,	:	
JAMES E. HAMILTON, JR., an indiv., and ETHEL M. HAMILTON, an individual	:	

O R D E R

AND NOW, this 29th day of January, 2007, upon the agreement of counsel, it is the ORDER of this Court that the Defendants' Preliminary Objections to the Counterclaim to the Second Amended Complaint are hereby granted to the extent that Paragraph 52 is stricken from the Defendants' Counterclaim. The bad faith claim as set forth within the Counterclaim is hereby dismissed.

BY THE COURT,

President Judge

FILED (6K)
02:22/6/01
JAN 30 2007
William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys:
Vey, Wyrick, Monahan, Gailey
R. Collins

ICC: Hamilton Brothers Coal, Inc.
Fred Kuzemchak
RD 2, Box 563
Clymer, PA 15728

Evergreen Ins. Assoc., Inc.
PO Box 505
Ebensburg, PA 15931

Comm. of PA-DEP
Hawk Run District Office
Empire Road
Hawk Run, PA 16840

FILED

JAN 30 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/30/07

____ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) X Plaintiff(s) Attorney ____ Other

X Defendant(s) X Defendant(s) Attorney
Hamilton Brothers, Fred Kuzarchak, Evergreen, DEP

____ Special Instructions:

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

FILED
FEB 05 2007
William A. Shaw
Prothonotary/Clerk of Courts

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Hamilton Brothers Coal, Inc.
Fred Kuzemchak
RD 2, Box 562
Clymer, PA

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY	:	
VS.	:	NO. 03-798-CD
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an indiv., ANNA MARIE HAMILTON, an indiv., JAMES E. HAMILTON, JR., an indiv., and ETHEL M. HAMILTON, an individual	:	

O R D E R

AND NOW, this 29th day of January, 2007, upon the agreement of counsel, it is the ORDER of this Court that the Defendants' Preliminary Objections to the Counterclaim to the Second Amended Complaint are hereby granted to the extent that Paragraph 52 is stricken from the Defendants' Counterclaim. The bad faith claim as set forth within the Counterclaim is hereby dismissed.

BY THE COURT,

/s/ Fredric J. Ammerman

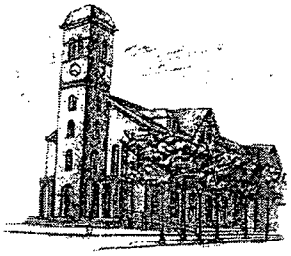
President Judge

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

JAN 30 2007

Attest.

William L. Ammerman
Prothonotary/
Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts | **David S. Ammerman** Solicitor | **Jacki Kendrick** Deputy Prothonotary | **Bonnie Hudson** Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 1/30/07

_____You are responsible for serving all appropriate parties.

__X__The Prothonotary's office has provided service to the following parties:

_____Plaintiff(s) __X__Plaintiff(s) Attorney _____Other

__X__Defendant(s) __X__Defendant(s) Attorney
Hamilton Brothers, Fred Kuzemchak, Evergreen, D.E.P.

_____Special Instructions:

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

FILED
11:30 Am
FEB 05 2007
William A. Shaw
Prothonotary/Clerk of Courts

No further address in file

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Commonwealth of Pennsylvania
Dept. of Environmental Protection
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BC: 16830054949 *2343-19079-30-38

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY	:	
VS.	:	NO. 03-798-CD
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation,	:	
ROBERT E. HAMILTON, an indiv.,	:	
ANNA MARIE HAMILTON, an indiv.,	:	
JAMES E. HAMILTON, JR., an indiv., and ETHEL M. HAMILTON, an individual	:	

O R D E R

AND NOW, this 29th day of January, 2007, upon the agreement of counsel, it is the ORDER of this Court that the Defendants' Preliminary Objections to the Counterclaim to the Second Amended Complaint are hereby granted to the extent that Paragraph 52 is stricken from the Defendants' Counterclaim. The bad faith claim as set forth within the Counterclaim is hereby dismissed.

BY THE COURT,

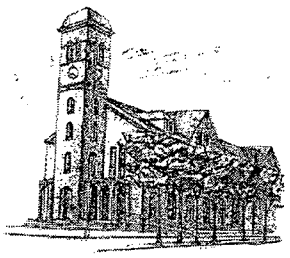
/s/ Fredric J. Ammerman

President Judge

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

JAN 30 2007

Attest. William L. Prothonotary/ Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
David S. Ammerman Solicitor
Jacki Kendrick Deputy Prothonotary
Bonnie Hudson Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 1/30/07

_____ You are responsible for serving all appropriate parties.

__X__ The Prothonotary's office has provided service to the following parties:

_____ Plaintiff(s) __X__ Plaintiff(s) Attorney _____ Other

__X__ Defendant(s) __X__ Defendant(s) Attorney
Hamilton Brothers, Fred Kuzemchak, Evergreen, D.E.P.

_____ Special Instructions:

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 1 of 3 Services

Sheriff Docket # **102115**

Case # 03-798-CD

UTICA MUTUAL INSURANCE COMPANY

vs.

HAMILTON BROTHERS COAL, INC. al

TYPE OF SERVICE WRIT TO JOIN ADDITIONAL DEFENDANT

SHERIFF RETURNS

NOW February 15, 2007 RETURNED THE WITHIN WRIT TO JOIN ADDITIONAL DEFENDANT "NOT SERVED, TIME EXPIRED" AS TO EVERGREEN INSURANCE ASSOCIATES INC., DEFENDANT. NEVER RECEIVED 911 ADDRESS

SERVED BY: /

FILED

FEB 15 2007

6/2:45/cwm

William A. Shaw

Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 2 of 3 Services

Sheriff Docket # **102115**

Case # 03-798-CD

UTICA MUTUAL INSURANCE COMPANY

vs.

HAMILTON BROTHERS COAL, INC. al

TYPE OF SERVICE WRIT TO JOIN ADDITIONAL DEFENDANT

SHERIFF RETURNS

NOW February 15, 2007 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURNED THE WITHIN WRIT TO JOIN ADDITIONAL DEFENDANT "NOT FOUND" AS TO COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DEFENDANT. MOVED TO CENTRE COUNTY.

SERVED BY: /

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 3 of 3 Services

Sheriff Docket # **102115**

Case # 03-798-CD

UTICA MUTUAL INSURANCE COMPANY

vs.

HAMILTON BROTHERS COAL, INC. al

TYPE OF SERVICE WRIT TO JOIN ADDITIONAL DEFENDANT

SHERIFF RETURNS

NOW February 15, 2007 RETURNED THE WITHIN WRIT TO JOIN ADDITIONAL DEFENDANT "NOT SERVED, TIME EXPIRED" AS TO FRED KUZEMCHAK, DEFENDANT. NEVER RECEIVED 911 ADDRESS

SERVED BY: /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102115
NO: 03-798-CD
SERVICES 3
WRIT TO JOIN ADDITIONAL DEFENDANT

PLAINTIFF: UTICA MUTUAL INSURANCE COMPANY
vs.
DEFENDANT: HAMILTON BROTHERS COAL, INC. al

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	COLLINS	1943	30.00
SHERIFF HAWKINS	COLLINS	1943	40.41

Sworn to Before Me This

_____ Day of _____ 2007

_____

So Answers,

Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WRIT TO JOIN ADDITIONAL DEFENDANT

Utica Mutual Insurance Company
Plaintiff(s)

Vs.

Hamilton Brothers Coal, Inc., Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton Jr., Ethel M. Hamilton
Defendant(s)

2003-00798-CD

Vs.

Evergreen Insurance Associates, Inc., Commonwealth of Pennsylvania, and Fred Kuzemchak
Additional Defendant(s)

TO: Evergreen Insurance Associates, Inc., Commonwealth of Pennsylvania, and Fred Kuzemchak

You are notified that Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton has joined you as an additional defendant in this action, which you are required to defend.

Dated: October 23, 2006

Prothonotary

Filing Attorney: Ronald L. Collins, Esq.
218 South Second Street
Clearfield, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WRIT TO JOIN ADDITIONAL DEFENDANT

Utica Mutual Insurance Company
Plaintiff(s)

Vs.

Hamilton Brothers Coal, Inc., Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton Jr., Ethel M. Hamilton
Defendant(s)

2003-00798-CD

Vs.

Evergreen Insurance Associates, Inc., Commonwealth of Pennsylvania, and Fred Kuzemchak
Additional Defendant(s)

TO: Evergreen Insurance Associates, Inc., Commonwealth of Pennsylvania, and Fred Kuzemchak

You are notified that Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton has joined you as an additional defendant in this action, which you are required to defend.

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218 South Second Street
Clearfield, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WRIT TO JOIN ADDITIONAL DEFENDANT

Utica Mutual Insurance Company
Plaintiff(s)

Vs.

Hamilton Brothers Coal, Inc., Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton Jr., Ethel M. Hamilton
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2003-00798-CD

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Evergreen Insurance Associates, Inc., Commonwealth of Pennsylvania, and Fred Kuzemchak
Additional Defendant(s)

TO: Evergreen Insurance Associates, Inc., Commonwealth of Pennsylvania, and Fred Kuzemchak

You are notified that Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton has joined you as an additional defendant in this action, which you are required to defend.

Dated: October 23, 2006

Prothonotary

Filing Attorney: Ronald L. Collins, Esq.
218 South Second Street
Clearfield, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

REPLY TO COUNTER-CLAIM AND NEW MATTER TO COUNTER-CLAIM

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

NOTICE TO DEFENDANTS:

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ATTACHED NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Matthew D. Gailey

Attorney for Plaintiff

FILED NO CC
m/11:04/BK
MAY 08 2007
GK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

REPLY TO COUNTER-CLAIM AND NEW MATTER TO COUNTERCLAIM

AND NOW, comes the Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP and files the within Reply to Defendants' Counter-Claim and New Matter to Counter-Claim, averring as follows:

42. It is admitted that the Defendants have incorporated Paragraphs 1 through 41 of their Answer and New Matter as if the same were set forth at length therein.

43. The allegations set forth in Paragraph 43 of Defendants' Counter-Claim are admitted.

44. The allegations set forth in Paragraph 44 of Defendants' Counter-Claim are admitted.

45. The allegations contained in Paragraph 45 of Defendants' Counter-Claim are denied.

46. The Plaintiff does not have sufficient information to either admit or deny the allegations contained in Paragraph 46 of Defendants' Counter-Claim. Plaintiff no longer possesses a copy of the December 17, 1998 correspondence referenced therein, and Defendant has failed to provide it upon request.

47. The allegations contained in Paragraph 47 of Defendants' Counter-Claim are admitted.

48. The allegations contained in Paragraph 48 of Defendants' Counter-Claim are denied.

49. The allegations contained in Paragraph 49 of Defendants' Counter-Claim are denied.

50. The allegations contained in Paragraph 50 of Defendants' Counter-Claim are denied.

51. After reasonable investigation, Plaintiff does not have information sufficient to form a belief as to the truth or falsity of the averments contained in Paragraph 51 of Defendants' Counter-Claim. Therefore, the same are denied and strict proof is demanded at trial.

WHEREFORE, it is respectfully requested that this Honorable Court dismiss the Counter-Claim filed against Plaintiff, Utica Mutual Insurance Company, and demands judgment against Defendants in the amount of $155,458.09 plus attorneys' fees, together with interest, plus services rendered and expenses advanced up to the time of trial.

JURY TRIAL DEMANDED

NEW MATTER TO COUNTER-CLAIM

1. If through the pleadings, discovery, or at the time of trial it is determined that the affirmative defenses of setoff, accord and satisfaction, consent estoppel, tender of payment, performance, statute of fraud, latches, release, *res judicata*, assumption of the risk, contributory negligence, illegality, or any other form of affirmative defense that is shown to be applicable to this matter, or which may be available, said affirmative defenses will be asserted and will bar or otherwise limit Defendants' recovery.

Respectfully submitted,
PIETRAGALLO, BOSICK & GORDON, LLP

By: Matthew D. Gailey

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

VERIFICATION

I, Jason Jaskolka, Esq., verify that I am a representative of **Utica Mutual Insurance Company**, the Plaintiff in the within action, that I am authorized to file the foregoing **Reply to Counter-Claim and New Matter** on its behalf, and that the statements and averments of fact contained therein are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa. C.S.A. Section 4904.

Dated: May 2, 2007

Jason Jaskolka, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Reply to Counter-Claim and New Matter to Counterclaim** was served on the following by first class mail, postage pre-paid, this 4 day of May, 2007:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Counsel for Defendants

Matthew D. Gailey

Matthew D. Gailey, Esq.
Attorney for Plaintiff

UB

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

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

MOTION TO COMPEL DISCOVERY RESPONSES

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED NO CC
SEP 25 2007
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

MOTION TO COMPEL DISCOVERY RESPONSES

AND NOW, comes Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP and files the following Motion to Compel Discovery Responses, and in support thereof avers the following:

1. Plaintiff filed an Amended Complaint on or about June 9, 2004. The Amended Complaint seeks recovery of Defendants' breach of the Indemnity Agreement.

2. On or about July 13, 2007, Plaintiff served upon Defendants Plaintiff's First Request for Production of Documents, Requests for Admissions and Plaintiff's First Set of Interrogatories Directed to Defendants. (See Discovery Requests attached hereto as Exhibit "A").

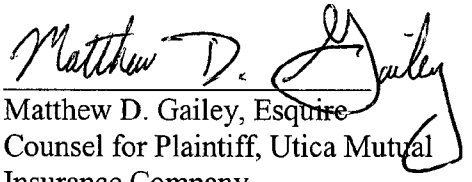
3. Plaintiff has called defense counsel seeking a response to this discovery.

4. As of the date of this filing, Plaintiff has received no response to any of the discovery requests sent on July 13, 2007.

WHEREFORE, Plaintiff requests this Court to enter an Order directing Defendants to provide answers to all of Plaintiff's discovery requests.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON, LLP



Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATION

I, Matthew D. Gailey, Esquire, being counsel of record for Plaintiff Utica Mutual Insurance Company, hereby certify that I attempted to confer with all interested parties in order to resolve this matter without Court action pursuant to Local Rule 208.2(e), and that I was unsuccessful.

Matthew D. Gailey, Esquire

Dated: September 24, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

REQUEST FOR ADMISSIONS

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

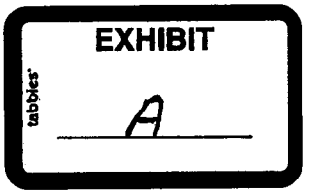
Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, v. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

REQUEST FOR ADMISSIONS

AND NOW comes the Plaintiff, Utica Mutual Insurance Company ("Utica"), by and through its counsel, Pietragallo Bosick & Gordon, LLP and hereby requests that you answer separately and fully, each of the following Requests for Admissions in accordance with Pennsylvania Rule of Civil Procedure 4014. In accordance with the Pennsylvania Rules of Civil Procedure, Defendants are hereby directed to file written answers to these Requests for Admissions within 30 days of service. Further, notice is hereby provided that each request set forth herein shall be deemed admitted if a timely response is not filed.

If any of the Requests for Admissions set forth herein are denied in any respect, the Defendants are hereby directed to fully and completely set forth the reasons for such denial.

These discovery requests are deemed to be continuing in nature, and the Defendants shall be under an obligation to seasonally supplement their responses in the manner provided under the Pennsylvania Rules of Civil Procedure.

1. Admit that the document attached hereto as Exhibit "A" is a copy of the Utica Mutual Insurance Company General Agreement of Indemnity entered into by the Defendants.

ADMITTED: _____ **DENIED:** _____

2. Admit that the first signature contained on the signature line on Page 3 of the Indemnity Agreement attached hereto as Exhibit "A," is that of Robert E. Hamilton, operating as President.

ADMITTED: _____ **DENIED:** _____

3. Admit that the second signature contained on the signature line on Page 3 of the Indemnity Agreement attached hereto as Exhibit "A," is that of Robert E. Hamilton, individually.

ADMITTED: _____ **DENIED:** _____

4. Admit that the fourth signature contained on the signature line on Page 3 of the Indemnity Agreement attached hereto as Exhibit "A," is that of James Hamilton, Jr. individually.

ADMITTED: _____ **DENIED:** _____

5. The Defendants entered into the Indemnity Agreement, attached hereto as Exhibit "A," as a prerequisite to the execution of bonds as Utica Mutual required complete indemnification.

ADMITTED: _____ **DENIED:** _____

6. Admit that the exhibit attached hereto as Exhibit "B" is an assignment of life insurance policy for James E. Hamilton, Jr. (Life Insurance Policy No. 000021057A).

ADMITTED: _____ **DENIED:** _____

7. Admit that the signature contained on the signature line of Exhibit "B," attached hereto, is that James E. Hamilton, Jr.

ADMITTED: _____ **DENIED:** _____

8. Admit that the corporate acknowledgement on the back of Exhibit "B," attached hereto, maintains that James E. Hamilton, Jr. was the Secretary/Treasurer of Hamilton Bros. Coal, Inc.

ADMITTED: _____ **DENIED:** _____

9. Admit that Exhibit "C," attached hereto, is an assignment of life insurance policy #000021058A issued by Utica National Life Insurance Co.

ADMITTED: _____ **DENIED:** _____

10. Admit that the Corporate Acknowledgement on the back of Exhibit "C," attached hereto, maintains that Robert Hamilton was the President of Hamilton Bros. Coal Co.

ADMITTED: _____ **DENIED:** _____

11. Admit that the signature contained on the signature line of Exhibit "C," attached hereto, is that of Robert E. Hamilton.

ADMITTED: _____ **DENIED:** _____

12. Admit that Exhibit "D," attached hereto, is a surety bond agreement entered into by Robert Hamilton.

ADMITTED: _____ **DENIED:** _____

13. Admit that the second signature on the surety bond agreement, attached hereto as Exhibit "D," is that of Robert E. Hamilton, President.

ADMITTED: _____ **DENIED:** _____

14. Admit that Exhibit "E," attached hereto, is a surety bond agreement entered into by James Hamilton, Jr.

ADMITTED: _____ **DENIED:** _____

15. Admit that the first signature on the surety bond agreement attached hereto as Exhibit "E," is that of James Hamilton, Jr., Secretary/Treasurer.

ADMITTED: _____ **DENIED:** _____

Respectfully submitted,
PIETRAGALLO, BOSICK & GORDON, LLP

By: _____

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Request for Admissions** was served on the following by first class mail, postage pre-paid, this 15 day of July, 2007:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Counsel for Defendants

Matthew D. Gailey

Matthew D. Gailey, Esq.
Attorney for Plaintiff

HO CLAIMS SERVICE
APR 21 2000

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

GENERAL AGREEMENT OF INDEMNITY

This Agreement entered into by and between the undersigned, herein called the Indemnitors, and the Utica Mutual Insurance Company of New Hartford, New York, herein called the Company, witnesseth:

WHEREAS, in the transaction of business certain bonds, undertakings and other writings obligatory in the nature of a bond have heretofore been, and may hereafter be, required by, for, or on behalf of the Indemnitors or any one or more of the parties included in the designation Indemnitors, and application has been made and will hereafter be made to the Company to execute such bonds, and as a prerequisite to the execution of such bond or bonds, the Company requires complete indemnification.

NOW, THEREFORE, in consideration of the premises, and the payment by the Company of the sum of One ($1.00) Dollar to each of the Indemnitors, receipt whereof is hereby acknowledged, and for other good and valuable considerations, the Indemnitors do, for themselves, their heirs, executors, administrators and assigns, jointly and severally, agree with the Company as follows:

1. The Indemnitors will pay to the Company, at its Home Office in the Town of New Hartford, New York, premiums and charges at the rates, and at the times specified in respect to each such bond in the Company's schedule of rates, which, with any additions or amendments thereto, is by reference made a part hereof, and will continue to pay the same where such premium or charge is annual, until the Company shall be discharged and released from any and all liability and responsibility upon and from each such bond or matters arising therefrom, and until the Indemnitors shall deliver to the Company at its Home Office in New Hartford, New York, competent written evidence satisfactory to the Company of its discharge from all liability on such bond or bonds.

2. The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of, such bonds, or any renewals or continuations thereof or substitutes therefor, including fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. In the event of payments by the Company, the Indemnitors agree to accept the voucher or other evidence of such payments as prima facie evidence of the propriety thereof, and of the Indemnitors' liability therefor to the Company.

3. If the Company shall set up a reserve to cover any claim, suit or judgment under any such bond, the Indemnitors will, immediately upon demand, deposit with the Company a sum of money equal to such reserve, such sum to be held by the Company as collateral security on such bond, and such sum and any other money or property which shall have been, or shall hereafter be, pledged as collateral security on any such bond shall, unless otherwise agreed in writing by the Company, be available, in the discretion of the Company, as collateral security on any other or all bonds coming within the scope of this Agreement.

4. The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability with which the Company may be subsequently charged under any such bond, shall notify the Company thereof in writing at its Home Office in the Town of New Hartford, New York.

5. The Company shall have the exclusive right to determine for itself and the Indemnitors whether any claim or suit brought against the Company or the Principal upon any such bond shall be settled or defended and its decision shall be binding and conclusive upon the Indemnitors.

6. The Company, and its designated agents, shall, at any and all reasonable times, have free access to the books and records of the Indemnitors.

EXHIBIT

7. If such bond be given in connection with a contract, the Company is hereby authorized, but not required, to consent to any change in the contract or in the plans or specifications relating thereto; to make or guarantee advances or loans for the purpose of the contract without necessity of seeing to the application thereof, it being understood that the amount of all such advances or loans, unless repaid with legal interest by the Contractor to the Company when due, shall be conclusively presumed to be a loss hereunder; in the event the Indemnitors, or any of them, shall fail to pay any premium charge when due; or abandon, forfeit or breach such contract; or breach any bond given in connection therewith; or fail, neglect or refuse to pay for any labor or materials used in the prosecution of such contract; or have proceedings instituted against them, or any of them, alleging that they are insolvent, or for the appointment of a receiver or trustee for the benefit of creditors, whether such Indemnitor(s) are insolvent or not; or have proceedings instituted against them, or any of them, the effect of which may be to deprive any of them of the use of any part of the equipment used in connection with the work under the contract so as to hinder, delay or impede the normal and satisfactory progress of the work, the Company shall have the right, but not the obligation, to take possession of the work under the contract and under any other contract in connection with which the Company has given its bond or bonds within the purview of this General Agreement of Indemnity and, at the expense of the Indemnitors, to complete the contract(s), or cause, or consent, to the completion thereof. The Indemnitors hereby assign, transfer, and set over to the Company (to be effective as of the date of such bond or bonds, but only in the event of a default as aforesaid), all of their rights under the contract(s), including their right, title and interest in and to all subcontracts let in connection therewith; all machinery, plant, equipment, tools and materials which shall be upon the site of the work or elsewhere for the purposes of the contract(s), including all materials ordered for the contract(s), any and all sums due under the contract(s) at the time of such default, or which may thereafter become due, and the Indemnitors hereby authorize the Company to endorse in the name of the payee, and to receive and collect any check, draft, warrant or other instrument made or issued in payment of any such sum, and to disburse the proceeds thereof.

8. That it shall not be necessary for the Company to give the Indemnitors, or any one or more of them, notice of the execution of any such bonds, nor of any fact or information coming to the notice or knowledge of the Company affecting its rights or liabilities, the rights or liabilities of the Indemnitors under any such bond executed by it, notice of all such being hereby expressly waived.

9. In the event of any claim or demand being made by the Company against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of a bond or bonds, the Company is hereby expressly authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and we hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

10. The Company may decline to execute any Bond applied for without incurring any liability whatever and without impairing the validity of this General Agreement of Indemnity. If the Company shall execute a bid or proposal bond, or any similar undertaking, it may nevertheless decline to execute any and all Bonds that may be required in connection with any award made on the proposal for which the bond or undertaken is given.

11. If the Company procures the execution of such bonds by other companies, or executes such bonds with cosureties, or reinsures any portions of such bonds with reinsuring companies, then all the terms and conditions of this Agreement shall apply and operate for the benefit of such other companies, cosureties and reinsurers as their interest may appear.

12. The liability of the Indemnitors hereunder shall not be affected by the failure of the Principal to sign any such bond, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

13. These covenants herein and also all collateral security, if any, at any time deposited with the Company concerning the said bond or bonds and any other former or subsequent bonds executed for the Indemnitors at their instance shall, at the option of the Company, be available in its behalf and for its benefit as well concerning any bond or undertaking applied for, and also concerning all other former or subsequent bonds and undertakings, executed for the Indemnitors or for others at their request.

14. This Agreement may be terminated the Indemnitors, or any one or more of the ies so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force.

15. Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee.

16. THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF.

17. This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of Hamilton Brothers Coal Inc.

18. IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of 19

Witness: Thomas C Johnson

HAMILTON BROTHERS COAL INC.

Robert E. Hamilton (L. S.)
Robert E. Hamilton, President

Box 157 Irvona Pa
Street or P. O. Box City State

Box 134, Coalport, PA 16627
Street or P. O. Box City State

Witness: Thomas C Johnson

Robert E. Hamilton (L. S.)
Robert E. Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Witness: Thomas C Johnson

Anna Marie Hamilton (L. S.)
Anna Marie Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Witness: Thomas C Johnson

James E. Hamilton Jr. (L. S.)
James E. Hamilton, Jr., Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

Witness: Thomas C Johnson

Ethel M. Hamilton (L. S.)
Ethel M. Hamilton, Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE.

14. This Agreement may be terminated the Indemnitors, or any one or more of the ies so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by on of any and all such obligations that may be then in force.

15. Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee.

16. THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF.

17. This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of Hamilton Brothers Coal Inc.

18. IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of 19

HAMILTON BROTHERS COAL INC.

Thomas C Johnson
Witness

Robert E. Hamilton (L. S.)
Robert E. Hamilton, President

Box 157 Irvona Pa
Street or P. O. Box City State

Box 134, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Robert E. Hamilton (L. S.)
Robert E. Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

Anna Marie Hamilton (L. S.)
Anna Marie Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

James E. Hamilton Jr (L. S.)
James E. Hamilton, Jr., Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Ethel M. Hamilton (L. S.)
Ethel M. Hamilton, Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE.

UTICA NATIONAL INSURANCE COMPANY

TO: HO Claims Legal **DATE:** 12/28/99

FROM: Bond Dept.

SUBJECT: **New Claim/Underwriting File**

Re: Bond Number 1524284 Collateral CVLI

Principal HAMILTON BROS. Finan. File YES

Attached is the Underwriting file for the above referenced bond. Claim activity has been reported - see attached.

Please advise as to the individual who is handling the claim and return the underwriting file at your earliest convenience.

LAURA STOLMAN

Name

Bond Department

TO: Bond Dept. **DATE:** _____

FROM: HO Claims Legal

The above bond file has been assigned to:

_____

The Underwriting file is attached.

_____

Name

HO Claims Legal

UTICA NATIONAL INSURANCE COMPANY

TO: HO Claims Legal **DATE:** 12/28/99

FROM: Bond Dept.

SUBJECT: **New Claim/Underwriting File**

Re: Bond Number 4700552 Collateral YES CVLI
Principal HAMILTON BROS Finan. File YES

Attached is the Underwriting file for the above referenced bond. Claim activity has been reported - see attached.

Please advise as to the individual who is handling the claim and return the underwriting file at your earliest convenience.

JANE STOWAY
Name
Bond Department

TO: Bond Dept. **DATE:** _____

FROM: HO Claims Legal

The above bond file has been assigned to:

_____

The Underwriting file is attached.

_____
Name
HO Claims Legal

2-R-660 Ed. 6-95

1st Copy - Bond Underwriting 2nd Copy - HO Claims

C 30 1989

UTICA NATIONAL LIFE INSURANCE COMPANY

NEW HARTFORD, NEW YORK

ASSIGNMENT OF LIFE INSURANCE POLICY AS COLLATERAL

A. For Value Received the undersigned hereby assign, transfer and set over to Utica Mutual Insurance Company 180 Genesee St., New Hartford, NY 13413 its successors and assigns, (herein called the "Assignee") Policy No. 000021057A issued by the UTICA NATIONAL LIFE INSURANCE COMPANY (herein called the "Insurer") and any supplementary contracts issued in connection therewith (said policy and contracts being herein called the "Policy"), upon the life of James E. Hamilton, Jr. of Rd 1, Box 140, Coalport, PA 16627 and all claims, options, privileges, rights, title and interest therein and thereunder (except as provided in Paragraph C hereof), subject to all the terms and conditions of the Policy and to all superior liens, if any, which the Insurer may have against the Policy. The undersigned by this instrument jointly and severally agree and the Assignee by the acceptance of this assignment agrees to the conditions and provisions herein set forth.

B. It is expressly agreed that, without detracting from the generality of the foregoing, the following specific rights are included in the assignment and pass by virtue hereof:
   1. The sole right to collect from the Insurer the net proceeds of the Policy, but only to the extent of the outstanding amount of any Liabilities, as described in Paragraph D hereof, existing between the Insured or Owner and the Assignee.
   2. The sole right to surrender the Policy and receive the surrender value thereof at any time provided by the terms of the Policy and at such other times as the Insurer may allow, subject to Paragraph E. The amount paid to the Assignee pursuant to such surrender shall be limited to the amount of any outstanding Liabilities existing between the Insured or Owner and the Assignee.
   3. The sole right to obtain one or more loans or advances on the Policy, either from the Insurer or, at any time, from other persons, and to pledge or assign the Policy as security for such loans or advances; subject to Paragraph E.
   4. The sole right to collect and receive all distributions or shares of surplus, dividend deposits or additions to the Policy now or hereafter made or apportioned thereto, and to exercise any and all options contained in the Policy with respect thereto; provided, that unless and until the Assignee shall notify the Insurer in writing to the contrary, the distributions or shares of surplus, dividend deposits and additions shall continue on the plan in force at the time of this assignment; and
   5. The sole right to exercise all nonforfeiture rights permitted by the terms of the Policy or allowed by the Insurer and to receive all benefits and advantages derived therefrom.

C. It is expressly agreed that the following specific rights, so long as the policy has not been surrendered, are reserved and excluded from this assignment and do not pass by virtue hereof:
   1. The right to collect from the Insurer any disability benefit payable in cash that does not reduce the amount of insurance;
   2. The right to designate and change the beneficiary;
   3. The right to elect any optional mode of settlement permitted by the Policy or allowed by the Insurer; but the reservation of these rights shall in no way impair the right of the Assignee to surrender the Policy completely with all its incidents or impair any other right of the Assignee hereunder, and any designation or change of beneficiary or election of a mode of settlement shall be made subject to this assignment and to the rights of the Assignee hereunder.

D. This assignment is made and the Policy is to be held as collateral security for any and all liabilities of the Insured or Owner, or any of them, to the Assignee, either now existing or that may hereafter arise in the ordinary course of business between the Insured or Owner and the Assignee (all of which liabilities secured or to become secured are herein called "Liabilities").

E. The Assignee covenants and agrees with the undersigned as follows:
   1. That any balance of sums received hereunder from the Insurer remaining after payment of the then existing Liabilities, matured or unmatured, shall be paid by the Assignee to the persons entitled thereto under the terms of the Policy had this assignment not been executed;
   2. That the Assignee will not exercise either the right to surrender the Policy or (except for the purpose of paying premiums) the right to obtain policy loans from the Insurer, until there has been default in any of the Liabilities or a failure to pay any premium when due, nor until twenty days after the Assignee shall have mailed, by first-class mail, to the undersigned at the addresses last supplied in writing to the Assignee specifically referring to this assignment, notice of intention to exercise such right; and
   3. That the Assignee will upon request forward without unreasonable delay to the Insurer the Policy for endorsement of any designation or change of beneficiary or any election of an optional mode of settlement.

F. The insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, or the validity or the amount of the Liabilities or the existence of any default therein, or the giving of any notice under Paragraph E (2) above or otherwise, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The sole signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned hereby and the sole receipt of the Assignee for any sums received shall be a full discharge and release therefor to the Insurer. Checks for all or any part of the sums payable under the Policy and assigned herein, shall be drawn to the exclusive order of the Assignee if, when, and in such amounts as may be, requested by the Assignee.

G. The Assignee shall be under no obligation to pay any premium, or the principal of or interest on any loans or advances on the Policy whether or not obtained by the Assignee, or any other charges on the Policy, but any such amounts so paid by the Assignee from its own funds, shall become a part of the Liabilities hereby secured, shall be due immediately, and shall draw interest at a rate fixed by the Assignee from time to time, not exceeding the maximum rate of interest permitted by the laws of the State of New York.

H. The exercise of any right, option, privilege or power given herein to the Assignee shall be at the option of the Assignee, but (except as restricted by Paragraph E (2) above) the Assignee may exercise any such right, option, privilege or power without notice to, or assent by, or affecting the liability of, or releasing any interest hereby assigned by the undersigned, or any of them.

I. The Assignee may take or release other security, may release any party primarily or secondarily liable for any of the Liabilities, may grant extensions, renewals or indulgences with respect to the Liabilities, or may apply to the Liabilities in such order as the Assignee shall determine, the proceeds of the Policy hereby assigned or any amount received on account of the Policy by the exercise of any right permitted under this assignment, without resorting or regard to other security.

J. In the event of any conflict between the provisions of this assignment and provisions of the note or other evidence of any Liability, with respect to the Policy or rights of collateral security therein, the provisions of this assignment shall prevail.

K. Each of the undersigned declares that no proceedings in bankruptcy are pending against him and that his property is not subject to any assignment for the benefit of creditors.

Signed and sealed this 27th day of October 19 89

Witness — Insured or Owner

Address

Witness — Beneficiary

Address

EXHIBIT 8

10-C-27 Ed. 6-85

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On the _____ day of _____ 19 _____,

before me personally came _____,

to me known to be the individual _____ described in and who executed the assignment on the reverse side hereof and acknowledged

to me that _____ he _____ executed the same.

_____
Notary Public

My commission expires _____

CORPORATE ACKNOWLEDGMENT

STATE OF Pennsylvania

COUNTY OF Clearfield

On the 27th day of October 19 89,

before me personally came James F. Hamilton,

who being by me duly sworn, did depose and say that he resides in Coalport, PA

that he is the Secretary/Treas of Hamilton Bros. Coal Co., the

corporation described in and which executed the assignment on the reverse side hereof; and acknowledged to me that through this

he has executed the same.

Edna Weaver
Notary Public

Notarial Seal
Edna Weaver, Notary Public
Johnstown, Cambria County
My Commission Expires Sept. 16, 1993

My commission expires _____

Duplicate received and filed at the home office of the Insurer in New Hartford, New York, this 7th

day of November 19 89.

Utica National Life Insurance Co.

By Richard S. Kelly Jr.
Authorized Officer
Asst. Secretary

OCT 30 1989

UTICA NATIONAL LIFE INSURANCE COMPANY

NEW HARTFORD, NEW YORK

ASSIGNMENT OF LIFE INSURANCE POLICY AS COLLATERAL

A. For Value Received the undersigned hereby assign, transfer and set over to Utica Mutual Insurance Company 180 Genesee St., New Hartford, NY 13413 its successors and assigns, (herein called the "Assignee") Policy No. 000021058A issued by the UTICA NATIONAL LIFE INSURANCE COMPANY (herein called the "Insurer") and any supplementary contracts issued in connection therewith (said policy and contracts being herein called the "Policy"), upon the life of Robert Hamilton of Rd #1, Box 16, Coalport, PA 16627 and all claims, options, privileges, rights, title and interest therein and thereunder (except as provided in Paragraph C hereof), subject to all the terms and conditions of the Policy and to all superior liens, if any, which the Insurer may have against the Policy. The undersigned by this instrument jointly and severally agree and the Assignee by the acceptance of this assignment agrees to the conditions and provisions herein set forth.

B. It is expressly agreed that, without detracting from the generality of the foregoing, the following specific rights are included in the assignment and pass by virtue hereof:
   1. The sole right to collect from the Insurer the net proceeds of the Policy, but only to the extent of the outstanding amount of any Liabilities, as described in Paragraph D hereof, existing between the Insured or Owner and the Assignee.
   2. The sole right to surrender the Policy and receive the surrender value thereof at any time provided by the terms of the Policy and at such other times as the Insurer may allow, subject to Paragraph E. The amount paid to the Assignee pursuant to such surrender shall be limited to the amount of any outstanding Liabilities existing between the Insured or Owner and the Assignee.
   3. The sole right to obtain one or more loans or advances on the Policy, either from the Insurer or, at any time, from other persons, and to pledge or assign the Policy as security for such loans or advances; subject to Paragraph E.
   4. The sole right to collect and receive all distributions or shares of surplus, dividend deposits or additions to the Policy now or hereafter made or apportioned thereto, and to exercise any and all options contained in the Policy with respect thereto; provided, that unless and until the Assignee shall notify the Insurer in writing to the contrary, the distributions or shares of surplus, dividend deposits and additions shall continue on the plan in force at the time of this assignment; and
   5. The sole right to exercise all nonforfeiture rights permitted by the terms of the Policy or allowed by the Insurer and to receive all benefits and advantages derived therefrom.

C. It is expressly agreed that the following specific rights, so long as the policy has not been surrendered, are reserved and excluded from this assignment and do not pass by virtue hereof:
   1. The right to collect from the Insurer any disability benefit payable in cash that does not reduce the amount of insurance;
   2. The right to designate and change the beneficiary;
   3. The right to elect any optional mode of settlement permitted by the Policy or allowed by the Insurer; but the reservation of these rights shall in no way impair the right of the Assignee to surrender the Policy completely with all its incidents or impair any other right of the Assignee hereunder, and any designation or change of beneficiary or election of a mode of settlement shall be made subject to this assignment and to the rights of the Assignee hereunder.

D. This assignment is made and the Policy is to be held as collateral security for any and all liabilities of the Insured or Owner, or any of them, to the Assignee, either now existing or that may hereafter arise in the ordinary course of business between the Insured or Owner and the Assignee (all of which liabilities secured or to become secured are herein called "Liabilities").

E. The Assignee covenants and agrees with the undersigned as follows:
   1. That any balance of sums received hereunder from the Insurer remaining after payment of the then existing Liabilities, matured or unmatured, shall be paid by the Assignee to the persons entitled thereto under the terms of the Policy had this assignment not been executed;
   2. That the Assignee will not exercise either the right to surrender the Policy or (except for the purpose of paying premiums) the right to obtain policy loans from the Insurer, until there has been default in any of the Liabilities or a failure to pay any premium when due, nor until twenty days after the Assignee shall have mailed, by first-class mail, to the undersigned at the addresses last supplied in writing to the Assignee specifically referring to this assignment, notice of intention to exercise such right; and
   3. That the Assignee will upon request forward without unreasonable delay to the Insurer the Policy for endorsement of any designation or change of beneficiary or any election of an optional mode of settlement.

F. The insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, or the validity or the amount of the Liabilities or the existence of any default therein, or the giving of any notice under Paragraph E (2) above or otherwise, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The sole signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned hereby and the sole receipt of the Assignee for any sums received shall be a full discharge and release therefor to the Insurer. Checks for all or any part of the sums payable under the Policy and assigned herein, shall be drawn to the exclusive order of the Assignee if, when, and in such amounts as may be, requested by the Assignee.

G. The Assignee shall be under no obligation to pay any premium, or the principal of or interest on any loans or advances on the Policy whether or not obtained by the Assignee, or any other charges on the Policy, but any such amounts so paid by the Assignee from its own funds, shall become a part of the Liabilities hereby secured, shall be due immediately, and shall draw interest at a rate fixed by the Assignee from time to time, not exceeding the maximum rate of interest permitted by the laws of the State of New York.

H. The exercise of any right, option, privilege or power given herein to the Assignee shall be at the option of the Assignee, but (except as restricted by Paragraph E (2) above) the Assignee may exercise any such right, option, privilege or power without notice to, or assent by, or affecting the liability of, or releasing any interest hereby assigned by the undersigned, or any of them.

I. The Assignee may take or release other security, may release any party primarily or secondarily liable for any of the Liabilities, may grant extensions, renewals or indulgences with respect to the Liabilities, or may apply to the Liabilities in such order as the Assignee shall determine, the proceeds of the Policy hereby assigned or any amount received on account of the Policy by the exercise of any right permitted under this assignment, without resorting or regard to other security.

J. In the event of any conflict between the provisions of this assignment and provisions of the note or other evidence of any Liability, with respect to the Policy or rights of collateral security therein, the provisions of this assignment shall prevail.

K. Each of the undersigned declares that no proceedings in bankruptcy are pending against him and that his property is not subject to any assignment for the benefit of creditors.

Signed and sealed this 27th day of OCTOBER 19 89

Witness

X Robert C Hamilton
Insured or Owner

Address

Witness

Beneficiary

Address

10-C-27 Ed. 6-85

EXHIBIT 2

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On the _____ day of _____ 19 _____,

before me personally came _____,

to me known to be the individual _____ described in and who executed the assignment on the reverse side hereof and acknowledged to me that _____ he _____ executed the same.

_____
Notary Public

My commission expires _____

CORPORATE ACKNOWLEDGMENT

STATE OF Pennsylvania

COUNTY OF Clearfield

On the 27th day of October 19 89,

before me personally came Robert Hamilton,

who being by me duly sworn, did depose and say that he resides in Coalport, PA

_____ that he is the President of Hamilton Bros. Coal Co., the corporation described in and which executed the assignment on the reverse side hereof; and acknowledged to me that through this he has executed the same.

Edna Weaver
Notary Public

Notarial Seal
Edna Weaver, Notary Public
Johnstown, Cambria County
My Commission Expires Sept. 16, 1990

My commission expires _____

Duplicate received and filed at the home office of the Insurer in New Hartford, New York, this 1st day of November 19 89

Utica National Life Ins. Co.

By Richard S. Reff
Authorized Officer

UTICA NATIONAL LIFE INSURANCE COMPANY

SURETY BOND AGREEMENT

1989

OCT 30 1989

THIS AGREEMENT MADE AS OF THE 27th DAY OF OCTOBER, 19 89 BY AND AMONG

Utica Mutual Insurance Company
(HEREINAFTER REFERRED TO AS OWNER) UTICA MUTUAL INSURANCE COMPANY (UTICA).

AND Robert Hamilton
(INSURED), WITNESSETH THAT:

WHEREAS, UTICA HAS EXECUTED IN THE PAST AND MAY IN THE FUTURE EXECUTE SURETY BONDS FOR OR ON BEHALF OF Hamilton Bros. Coal, Inc. AND/OR ANY FIRMS, PARTNERSHIPS, OR CORPORATIONS IN WHICH Robert Hamilton NOW HAS OR MAY HEREINAFTER ACQUIRE ANY INTEREST OF ANY KIND, SAID ENTITIES TO BE HERE SOMETIMES REFERRED TO AS PRINCIPALS: AND

WHEREAS, OWNER AND THE INSURED HAVE AGREED TO FURNISH UTICA SECURITY IN THE FORM OF AN ABSOLUTE ASSIGNMENT OF CASH VALUES HEREINAFTER DESCRIBED, TO PROTECT UTICA FROM LOSS, COST AND EXPENSE IN CONNECTION WITH SAID SURETY BONDS, AND

WHEREAS, IT IS THE INTENTION OF THE PARTIES HERETO THAT SAID ABSOLUTE ASSIGNMENT OF CASH VALUE SHALL BE FROM A LIFE INSURANCE POLICY ON THE LIFE OF INSURED, TO BE ASSIGNED AND CONVEYED TO UTICA AS BELOW DESCRIBED.

NOW, THEREFORE, THE PARTIES HERETO AGREE TO AS FOLLOWS:

1) EACH AND ALL OF THE PARTIES HERETO SHALL EXECUTE WHATEVER ASSIGNMENTS, OR OTHER DOCUMENTS OF ANY KIND WHATEVER, MAY BE NECESSARY TO ASSIGN AND CONVEY TO UTICA AND TO MAINTAIN IN UTICA THE CONTROL AND SECURITY INTEREST IN SAID POLICY, TO THE END THAT UTICA SHALL AT ALL TIMES HAVE THE RIGHT AND THE ABILITY TO SURRENDER THE POLICY AND RECEIVE THE SURRENDER VALUE, AND THE RIGHT AND ABILITY TO RECEIVE AN AMOUNT OF THE DEATH BENEFIT EQUIVALENT TO THE ACTUAL CASH VALUE OF THE POLICY, INCLUDING THE AMOUNT OF OUTSTANDING POLICY LOAN(S) AT TIME OF DEATH OF THE INSURED, AND SUCH OTHER RIGHTS AND ABILITIES AS ARE SET OUT IN SAID ASSIGNMENTS AND/OR OTHER DOCUMENTS.

2) REGARDLESS OF ANYTHING TO THE CONTRARY, THE INTEREST OF UTICA IN SAID POLICY SHALL BE A SECURITY INTEREST AND SHALL EXIST SOLELY TO THE EXTENT NECESSARY TO PROTECT AND SAVE IT HARMLESS AND FREE OF LOSS, COST AND EXPENSE IN CONNECTION WITH THE EXECUTION OF SURETY BONDS AND THE COLLECTION OF PREMIUMS THEREFORE, FOR OR ON BEHALF OF ANY PRINCIPAL, WHETHER SUCH BONDS HAVE BEEN EXECUTED PRIOR TO OR AFTER THE DATE OF THE AGREEMENT.

3) THIS AGREEMENT AND THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL TERMINATED BY WRITTEN CONSENT OF UTICA OR UNTIL ALL OF UTICA'S LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, SHALL HAVE BEEN FINALLY AND FULLY TERMINATED, TO THE SATISFACTION OF UTICA.

4) IF UTICA SHALL EVER RECEIVE ANY FUNDS FROM SAID POLICY AS A RESULT OF THE HEREIN DESCRIBED ASSIGNMENT AND CONVEYANCE, UTICA MAY RETAIN SUCH FUNDS FOR THE PURPOSES DESCRIBED IN PARAGRAPH 2 ABOVE UNTIL THEY ARE VOLUNTARILY RELEASED BY UTICA OR UNTIL ALL OF UTICA'S LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL SHALL BE FINALLY AND FULLY TERMINATED, TO THE SATISFACTION OF UTICA SHALL HAVE NO DUTY TO INVEST SAID FUNDS OR TO TAKE ANY WHATEVER TO EARN ANY INCOME ON SAID FUNDS AND SHALL NEVER BE TO ACCOUNT FOR MORE THAN THE ACTUAL MONIES RECEIVED, BUT DOES

EXHIBIT

TO MAKE ITS BEST EFFORT TO PLACE ACTUAL MONIES RECEIVED IN AN INCOME PRODUCING FUND MANAGED OR CONTROLLED BY UTICA NATIONAL LIFE OR ONE OF ITS AFFILIATES OR SUBSIDIARIES WITH EARNINGS ACCRUING TO BENEFIT OF OWNER.

5) UTICA MAY WITHDRAW ANY OR ALL OF THE CONTENTS OF THE CASH VALUE WITHOUT THE CONSENT OF OWNER UPON SUBMISSION OF A WRITTEN CERTIFICATION SIGNED BY AN AUTHORIZED OFFICER STATING THAT THEY HAVE INCURRED LIABILITY BY REASON OF EXECUTING BONDS OR UNDERTAKINGS ON BEHALF OF ANY PRINCIPAL. UTICA AGREES TO COPY OWNER ON ANY SUCH CERTIFICATION.

6) THIS AGREEMENT AND THE SECURITY PROVIDED SHALL BE FOR THE BENEFIT OF UTICA, ITS CO-SURETIES, AND ITS REINSURERS, AND ANY OTHER SURETY COMPANIES UTICA MAY REQUEST OR CAUSE TO EXECUTE BONDS FOR OR ON BEHALF OF ANY PRINCIPAL.

7) AT SUCH TIME AS UTICA, IN ITS SOLE DISCRETION, CONSIDERS THAT IT NO LONGER HAS ANY PRESENT OR POTENTIAL LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, UTICA WILL CONSENT TO THE TERMINATION OF THE AGREEMENT AND OF THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED, AND WILL DELIVER TO OWNER THE UNUSED PORTION OF ANY FUNDS THAT MAY HAVE BEEN RECEIVED UNDER THE TERMS OF THE AGREEMENT AND THE POLICY.

8) THIS AGREEMENT SHALL BE CUMULATIVE WITH, AND SHALL NOT LIMIT OR DIMINISH THE DUTIES OR RESPONSIBILITIES OF OWNER OR INSURED UNDER ANY OTHER DOCUMENT OR AGREEMENT ENTERED INTO FOR THE BENEFIT OF UTICA, NOR SHALL THIS AGREEMENT CONFLICT WITH OR DIMINISH ANY OTHER RIGHTS UTICA MAY EVER HAVE BY WAY OF SUBROGATED RIGHTS AGAINST OTHER PARTIES OR BY WAY OF OTHER SECURITY ARRANGEMENTS.

9) THE LIFE INSURANCE POLICY HEREINABOVE REFERRED TO SHALL BE ISSUED BY UTICA NATIONAL LIFE AND SHALL BEAR NUMBER 000021058A.

10) OWNER MAY AT ANYTIME SUBSTITUTE OTHER SECURITY FOR THE INTEREST IN THE HEREIN DESCRIBED LIFE INSURANCE POLICY PROVIDED THAT UTICA FIRST CONSENTS IN WRITING. SUCH CONSENT WILL NOT BE UNREASONABLY WITHHELD, BUT UTICA MUST FIRST BE SATISFIED THAT THE NEW SECURITY REPRESENTS NO DIMINUTION OF THE PROTECTION AFFORDED TO UTICA.

11) TO THE EXTENT THAT THE CASH VALUE OF SAID LIFE INSURANCE POLICY MAY EXCEED THE AGGREGATE AMOUNT OF UTICA LIABILITY UNDER ITS BONDS OR UNDERTAKING (OR SUCH OTHER AMOUNT AS OWNER AND UTICA MAY AGREE ON) SUCH EXCESS SHALL BE MADE AVAILABLE TO OWNER FOR ITS USE.

SIGNED THIS 27th DAY OF OCTOBER 19 89

UTICA MUTUAL INSURANCE COMPANY

BY: [signature]

(OWNER) HAMILTON BROS COAL, INC.

BY: X James E. Hamilton Jr. Secretary

(INSURED) ROBERT E. HAMILTON

BY: X Robert E. Hamilton President

UTICA NATIONAL LIFE INSURANCE COMPANY

SURETY BOND AGREEMENT

THIS AGREEMENT MADE AS OF THE 27th DAY OF OCTOBER, 19 89 BY AND AMONG Utica Mutual Insurance Company (HEREINAFTER REFERRED TO AS OWNER) UTICA MUTUAL INSURANCE COMPANY (UTICA).

AND James E. Hamilton, Jr. (INSURED), WITNESSETH THAT:

WHEREAS, UTICA HAS EXECUTED IN THE PAST AND MAY IN THE FUTURE EXECUTE SURETY BONDS FOR OR ON BEHALF OF Hamilton Bros. Coal, Inc. AND/OR ANY FIRMS, PARTNERSHIPS, OR CORPORATIONS IN WHICH James E. Hamilton, Jr. NOW HAS OR MAY HEREINAFTER ACQUIRE ANY INTEREST OF ANY KIND, SAID ENTITIES TO BE HERE SOMETIMES REFERRED TO AS PRINCIPALS: AND

WHEREAS, OWNER AND THE INSURED HAVE AGREED TO FURNISH UTICA SECURITY IN THE FORM OF AN ABSOLUTE ASSIGNMENT OF CASH VALUES HEREINAFTER DESCRIBED, TO PROTECT UTICA FROM LOSS, COST AND EXPENSE IN CONNECTION WITH SAID SURETY BONDS, AND

WHEREAS, IT IS THE INTENTION OF THE PARTIES HERETO THAT SAID ABSOLUTE ASSIGNMENT OF CASH VALUE SHALL BE FROM A LIFE INSURANCE POLICY ON THE LIFE OF INSURED, TO BE ASSIGNED AND CONVEYED TO UTICA AS BELOW DESCRIBED.

NOW, THEREFORE, THE PARTIES HERETO AGREE TO AS FOLLOWS:

1) EACH AND ALL OF THE PARTIES HERETO SHALL EXECUTE WHATEVER ASSIGNMENTS, OR OTHER DOCUMENTS OF ANY KIND WHATEVER, MAY BE NECESSARY TO ASSIGN AND CONVEY TO UTICA AND TO MAINTAIN IN UTICA THE CONTROL AND SECURITY INTEREST IN SAID POLICY, TO THE END THAT UTICA SHALL AT ALL TIMES HAVE THE RIGHT AND THE ABILITY TO SURRENDER THE POLICY AND RECEIVE THE SURRENDER VALUE, AND THE RIGHT AND ABILITY TO RECEIVE AN AMOUNT OF THE DEATH BENEFIT EQUIVALENT TO THE ACTUAL CASH VALUE OF THE POLICY, INCLUDING THE AMOUNT OF OUTSTANDING POLICY LOAN(S) AT TIME OF DEATH OF THE INSURED, AND SUCH OTHER RIGHTS AND ABILITIES AS ARE SET OUT IN SAID ASSIGNMENTS AND/OR OTHER DOCUMENTS.

2) REGARDLESS OF ANYTHING TO THE CONTRARY, THE INTEREST OF UTICA IN SAID POLICY SHALL BE A SECURITY INTEREST AND SHALL EXIST SOLELY TO THE EXTENT NECESSARY TO PROTECT AND SAVE IT HARMLESS AND FREE OF LOSS, COST AND EXPENSE IN CONNECTION WITH THE EXECUTION OF SURETY BONDS AND THE COLLECTION OF PREMIUMS THEREFORE, FOR OR ON BEHALF OF ANY PRINCIPAL, WHETHER SUCH BONDS HAVE BEEN EXECUTED PRIOR TO OR AFTER THE DATE OF THE AGREEMENT.

3) THIS AGREEMENT AND THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL TERMINATED BY WRITTEN CONSENT OF UTICA OR UNTIL ALL OF UTICA'S LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, SHALL HAVE BEEN FINALLY AND FULLY TERMINATED, TO THE SATISFACTION OF UTICA.

4) IF UTICA SHALL EVER RECEIVE ANY FUNDS FROM SAID POLICY AS A RESULT OF THE HEREIN DESCRIBED ASSIGNMENT AND CONVEYANCE, UTICA MAY RETAIN SUCH FUNDS FOR THE PURPOSES DESCRIBED IN PARAGRAPH 2 ABOVE UNTIL THEY ARE VOLUNTARILY RELEASED BY UTICA OR UNTIL ALL OF UTICA'S LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL SHALL BE FINALLY AND FULLY TERMINATED, TO THE SATISFACTION OF UTICA. UTICA SHALL HAVE NO DUTY TO INVEST SAID FUNDS OR TO TAKE ANY STE WHATEVER TO EARN ANY INCOME ON SAID FUNDS AND SHALL NEVER BE HEL TO ACCOUNT FOR MORE THAN THE ACTUAL MONIES RECEIVED, BUT DOES AG

EXHIBIT C

TO MAKE ITS BEST EFFORT TO PLACE ACTUAL MONIES RECEIVED IN AN INCOME PRODUCING FUND MANAGED OR CONTROLLED BY UTICA NATIONAL LIFE OR ONE OF ITS AFFILIATES OR SUBSIDIARIES WITH EARNINGS ACCRUING TO BENEFIT OF OWNER.

5) UTICA MAY WITHDRAW ANY OR ALL OF THE CONTENTS OF THE CASH VALUE WITHOUT THE CONSENT OF OWNER UPON SUBMISSION OF A WRITTEN CERTIFICATION SIGNED BY AN AUTHORIZED OFFICER STATING THAT THEY HAVE INCURRED LIABILITY BY REASON OF EXECUTING BONDS OR UNDERTAKINGS ON BEHALF OF ANY PRINCIPAL. UTICA AGREES TO COPY OWNER ON ANY SUCH CERTIFICATION.

6) THIS AGREEMENT AND THE SECURITY PROVIDED SHALL BE FOR THE BENEFIT OF UTICA, ITS CO-SURETIES, AND ITS REINSURERS, AND ANY OTHER SURETY COMPANIES UTICA MAY REQUEST OR CAUSE TO EXECUTE BONDS FOR OR ON BEHALF OF ANY PRINCIPAL.

7) AT SUCH TIME AS UTICA, IN ITS SOLE DISCRETION, CONSIDERS THAT IT NO LONGER HAS ANY PRESENT OR POTENTIAL LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, UTICA WILL CONSENT TO THE TERMINATION OF THE AGREEMENT AND OF THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED, AND WILL DELIVER TO OWNER THE UNUSED PORTION OF ANY FUNDS THAT MAY HAVE BEEN RECEIVED UNDER THE TERMS OF THE AGREEMENT AND THE POLICY.

8) THIS AGREEMENT SHALL BE CUMULATIVE WITH, AND SHALL NOT LIMIT OR DIMINISH THE DUTIES OR RESPONSIBILITIES OF OWNER OR INSURED UNDER ANY OTHER DOCUMENT OR AGREEMENT ENTERED INTO FOR THE BENEFIT OF UTICA, NOR SHALL THIS AGREEMENT CONFLICT WITH OR DIMINISH ANY OTHER RIGHTS UTICA MAY EVER HAVE BY WAY OF SUBROGATED RIGHTS AGAINST OTHER PARTIES OR BY WAY OF OTHER SECURITY ARRANGEMENTS.

9) THE LIFE INSURANCE POLICY HEREINABOVE REFERRED TO SHALL BE ISSUED BY UTICA NATIONAL LIFE AND SHALL BEAR NUMBER 000021057A.

10) OWNER MAY AT ANYTIME SUBSTITUTE OTHER SECURITY FOR THE INTEREST IN THE HEREIN DESCRIBED LIFE INSURANCE POLICY PROVIDED THAT UTICA FIRST CONSENTS IN WRITING. SUCH CONSENT WILL NOT BE UNREASONABLY WITHHELD, BUT UTICA MUST FIRST BE SATISFIED THAT THE NEW SECURITY REPRESENTS NO DIMINUTION OF THE PROTECTION AFFORDED TO UTICA.

11) TO THE EXTENT THAT THE CASH VALUE OF SAID LIFE INSURANCE POLICY MAY EXCEED THE AGGREGATE AMOUNT OF UTICA LIABILITY UNDER ITS BONDS OR UNDERTAKING (OR SUCH OTHER AMOUNT AS OWNER AND UTICA MAY AGREE ON) SUCH EXCESS SHALL BE MADE AVAILABLE TO OWNER FOR ITS USE.

SIGNED THIS 27th DAY OF OCTOBER 19 89

UTICA MUTUAL INSURANCE COMPANY

BY: [signature]

(OWNER) HAMILTON BROS. CONST. INC.

BY: Robert L Hamilton

(INSURED) JAMES E. HAMILTON JR.

BY: James E Hamilton Jr

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

PLAINTIFF'S FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANTS

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, v. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

PLAINTIFF'S FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANTS

AND NOW comes Defendant, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP, and propounds the following First Set of Interrogatories upon the Plaintiffs. The Defendant requests that these Interrogatories be fully and completely answered in writing within thirty (30) days in accordance with the Pennsylvania Rules of Civil Procedure and that they be seasonally supplemented as required by the Pennsylvania Rules of Civil Procedure.

DEFINITIONS

1. As used herein, the terms listed below shall have the following meaning:

   (a) All written or printed material of any kind, including the original and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, but not limited to, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, agendas, expense accounts, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, notations of any sort (including notes of

telephone conversations of meetings), invoices and all drafts, modifications and changes or amendments to any of the foregoing.

(b) All graphic and manual records or representations of any kind, including, but not limited to, photographs, charts, graphs and records.

(c) All electronic records or representations of any kind, including, but not limited to, cassettes, computer software and print-outs and tape recordings.

(d) Any other document or tangible thing as set forth in Rule 4009 of the Pennsylvania Rules of Civil Procedure.

2. The term "person" as used in these Interrogatories shall refer to individuals, sole proprietorships, firms, associations, companies, partnerships, joint ventures, corporations, trusts, estates and/or any other legal or business entity, as is appropriate in the context of each question.

3. The term "identify" when used in reference to an individual means to state the individual's full name, last known address, last known telephone number, present or last known business affiliations and/or employer(s), business address and job title.

4. The term "identify" when used in reference to a document means to state its custodian and location, as well as providing a general description of the document or documents, including a specification of (1) the nature or type of document (e.g., letter, memorandum, etc.); (2) the date of the document; (3) its general subject matter; (4) the author of the document; and (5) the title, file number or any other appropriate designation of the document.

5. The term "you" or "your" when used in these Interrogatories shall refer to the plaintiffs or plaintiffs' representative, as is appropriate in the context of each question.

6. The term "accident" or "incident" refers to the incident which is the subject matter of this litigation.

INSTRUCTIONS

1. These Interrogatories shall be continuing in nature and supplemental answers shall be required promptly if you, directly or indirectly, obtain further or different information from the time the answers to these Interrogatories are served. Further, plaintiff shall be under an obligation to seasonally supplement these answers to Interrogatories as required under the Pennsylvania Rules of Civil Procedure.

2. If you claim privilege as grounds for not responding to any request in any Interrogatory, whether in whole or in part, describe the factual and legal basis for your claim in sufficient detail so as to permit the court to adjudicate the validity of the assertion of privilege. Also, identify by date, author and address each document and the subject matter contained therein which you claim to be subject to the privilege. Identify to whom copies were distributed and to whom such claim of privilege relates.

3. If you claim that any document or tangible thing requested to be identified herein was in existence at one time but has been lost, discarded or destroyed, identify such document or thing as completely as possible including an explanation of what type of document or thing it was, where and how it was lost or destroyed and where it was disposed of or destroyed; and the identity of all persons aware of its content.

4. In responding to these Interrogatories, you are required to furnish all information known or available to you, regardless of whether such information is directly in your possession of that of your representatives, attorneys, expert witnesses or any other persons known to you.

5. If any of these Interrogatories cannot be answered fully and completely, you are directed to respond to these Interrogatories to the extent possible, specifying the reasons for your inability to answer the remainder of the Interrogatories and stating the substance of your

knowledge, information and belief concerning the subject matter of the unanswered portion of any Interrogatory.

6. Whenever appropriate in these Interrogatories, the singular form of a word shall be interpreted as the plural and vice versa.

7. The conjunctions "and" and "or" shall be individually interpreted in every instance as meaning "and/or" and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any Interrogatory.

INTERROGATORIES

1. Please identify the name and address of any and all individuals who contributed to the answers to these Interrogatories.

ANSWER:

2. Please identify any and all insurance policies which may provide coverage for the claims made against the Defendants in the Plaintiff's Complaint.

ANSWER:

3. Please identify the nature of the business of Hamilton Brothers Coal, Inc.

ANSWER:

4. Please identify the date of incorporation of Hamilton Brothers Coal, Inc.

ANSWER:

5. Please identify the names and address(es) of all individual(s) who are officers of Hamilton Brothers Coal, Inc.

ANSWER:

6. Please identify the names and addresses of all individuals who were officers of Hamilton Brothers Coal, Inc.

ANSWER:

7. Please identify any and all individuals who are responsible for making decisions on behalf of Hamilton Brothers Coal, Inc.

ANSWER:

8. Please identify any and all individuals who were responsible for making decisions on behalf of Hamilton Brothers Coal, Inc.

ANSWER:

9. Please describe any and all interactions regarding the sale of Hamilton Brothers Coal, Inc.

ANSWER:

10. Please describe in detail the process of the sale of Hamilton Brothers Coal, Inc. to Fred Kozemchak or any other individual.

ANSWER:

11. Please describe the nature of any agreements reached regarding the sale of Hamilton Brothers Coal, Inc. with Fred Kozemchak or any other individual.

ANSWER:

12. Please identify any and all experts you have retained related to this matter.

ANSWER:

13. Please identify any and all experts you have retained related to this matter whom you expect to testify at trial.

ANSWER:

14. Please identify any and all information or theories your expert will testify concerning at any trial.

ANSWER:

15. Please list all the corporate assets of Hamilton Brothers Coal, Inc., including property, land and equipment at the time of the sale of Hamilton Brothers Coal, Inc. to Fred Kozemchak or any other individual.

ANSWER:

16. Please list all the corporate liabilities of Hamilton Brothers Coal, Inc. at the time of sale to Fred Kozemchak or any other individual.

ANSWER:

17. Please identify and provide a copy of the contract for the sale of Hamilton Brothers Coal, Inc. to Fred Kozemchak and/or any other individual.

ANSWER:

18. Please identify and describe any and all interaction with the Pennsylvania Dept. of Environmental Protection regarding mine reclamation.

ANSWER:

19. Please identify any and all exhibits you plan to introduce at trial.

ANSWER:

20. Please identify any and all witnesses you plan to have testify at trial.

ANSWER:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Plaintiff's First Set of Interrogatories Directed to Defendants** was served on the following by first class mail, postage pre-paid, this 13 day of July, 2007:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Counsel for Defendants

Matthew D. Gailey

Matthew D. Gailey, Esq.
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, v. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS

AND NOW, comes the Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP and pursuant to the applicable Pennsylvania Rules of Civil Procedure, requests that Defendantss produce the following documents either in person or via mail within thirty (30) days of receipt herein. Such documents shall include the following:

DEFINITIONS

Unless the context clearly requires otherwise, the following definitions shall apply.

The term "document" means without limitation:

a. All written or printed material of any kind, including the original and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, but not limited to, correspondence, memoranda, e-mail, notes, blue-prints, diaries, statistics, letters, telegrams, minutes, agendas, expense accounts, contracts, reports, studies, checks,

statements, receipts, returns, summaries, pamphlets, notations of any sort (including notes of telephone conversations or meetings), invoices and all drafts, modifications and changes or amendments to any of the foregoing;

b. All graphic and manual records or representations of any kind, including, but not limited to, photographs, charts, graphs and records;

c. All electronic, mechanical or recorded records or representations of any kind, including, but not limited to, cassettes, computer software, e-mail and printouts and tape recordings; and

d. Any other document or thing, as set forth in the Pennsylvania Rules of Civil Procedure.

2. The conjunctions "and" and "or" shall be individually interpreted in every instance as meaning "and/or" and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

3. A "document" or "communication" refers to a given subject matter where that document or communication constitutes, embodies, comprises, reflects, identifies, states, deals with, comments on or responds to, describes, analyzes, contains information concerning, or is in any way pertinent to the subject matter, including, but not limited to, documents concerning the presentation of other documents.

4. Whenever appropriate in this request, the singular form of a word should be interpreted as plural and vice versa.

5. The word "person(s)" means individuals and entities, including, but not limited to, sole proprietorships, firms, associations, companies, partnerships, joint ventures, corporations, trusts, estates and any other legal or business or governmental entity.

6. The word "identify" when used in conjunction with an individual means to state that individual's full name, last known home address, last known home and business telephone numbers, present or last known business affiliations or employer(s), business address, job title, exact and/or approximate date and place of death, if deceased.

7. The word "identify" with respect to a person other than an individual means to state its name, address and telephone number and the name of the principal individuals with knowledge of the subject matter of these requests.

8. The word "identify" when used with respect to a document or documents means to state its custodian, location and general description of the document or documents, including the specification of (1) the nature or type of the document (e.g. letter, memorandum, etc.); (2) the date or the document, (3) its general subject matter; (4) the author and (5) the title, file number or other designation thereof.

9. The term "relating to" means consisting of, referring to, reflecting or being in any way logically or factually connected with the matter discussed.

10. The term "Plaintiff" refers to Utica Mutual Insurance Company, its agents and representatives, including attorneys.

11. The term you and/or "Defendants" refers to Hamilton Brothers Coal, Inc., Robert E. Hamilton, an individual, and James E. Hamilton, Jr., an individual.

INSTRUCTIONS

1. These requests shall be continuing in nature and supplemental answers shall be required promptly if you, directly or indirectly, obtain further or different information from the time answers to these requests are served.

2. If you claim privilege as a ground for not responding to any request, in whole or in part, describe the factual and legal basis for your claim in sufficient detail so as to permit the court to adjudicate the validity of the claim. Also identify by date, author, and address each document and the subject matter contained therein subject to the claimed privilege. Identify to whom copies were distributed and to whom such claim of privilege relates.

3. If you claim that any document or tangible thing requested to be produced herein was in existence at one time but has been lost, discarded or destroyed, identify such document or thing as completely as possible, including an explanation of what type of document or thing it was; when and how it was lost or destroyed; why it was disposed of or destroyed; and who knows its contents.

4. In responding to these requests, you are required to furnish all information known or available to you, regardless of whether such information is directly in your possession or that of your representatives, attorneys, or experts, as well as their respective agents, employees or representatives.

5. If any of these requests cannot be answered fully and completely, you shall answer to the extent possible, specifying the reasons for your inability to answer the remainder and stating the substance of your knowledge, information or belief concerning the subject matter of the unanswered portion.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. A copy of the Corporate Book for Hamilton Brothers Coal, Inc., along with any other corporation formation documents concerning Hamilton Brother's Coal, Inc.

2. Any and all correspondence between Defendants and the Plaintiff.

3. Any and all documents used or referred to in order to assist with the preparation of your responses to Interrogatories directed to Defendants.

4. Any and all documents referenced in your response to the Interrogatories directed to Defendants.

5. Any or all resumes or curriculum vitae of the expert(s) you may call or expect to call as an expert witness at the time of trial.

6. Any and all documents which you may, or expect to, introduce at the time of trial.

7. Any and all exhibits which you plan to introduce at the time of trial.

8. Any and all documents which you have supplied to any consultant as they relate to this claim.

9. Any and all documents which you have supplied to any expert as a result of this claim.

10. Any and all documents related to the sale of Hamilton Brother Coal, Inc. to Fred Kozemchak.

11. Any and all correspondence between Fred Kozemchak and the Defendants.

12. Copies of any and all bonds taken out by the Defendants related to Hamilton Brothers Coal, Inc.

13. Any and all correspondence between Hamilton Brothers Coal, Inc. and the Pennsylvania Dept. of Environmental Protection.

14. Any and all correspondence between the Defendants and the Pennsylvania Dept. of Environmental Protection.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON, LLP

By: Matthew D. Gailey

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Plaintiff's First Request for Production of Documents** was served on the following by first class mail, postage pre-paid, this 13 day of July, 2007:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Counsel for Defendants

Matthew D. Gailey

Matthew D. Gailey, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion to Compel Discovery Responses was served on the following by first class mail, postage pre-paid, this 24 day of September, 2007:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Matthew D. Gailey

Matthew D. Gailey, Esquire
Attorney for Plaintiff

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	CIVIL ACTION No. 03 – 798 - CD **SCHEDULING ORDER** Filed on behalf of plaintiff: UTICA MUTUAL INSURANCE COMPANY Counsel of record for this party: Paul K. Vey, Esquire Pa. I. D. #30824 Matthew D. Gailey, Esquire Pa. I. D. #90920 PIETRAGALLO, BOSICK & GORDON, LLP Firm I.D. #834 38th Floor, One Oxford Centre Pittsburgh, PA 15219 (412) 263-2000

FILED 1cc Atty Gailey
01/15/2007
SEP 27 2007
GR
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

SCHEDULING ORDER

AND NOW, this 27 day of September, 2007, oral argument on the above Plaintiff's Motion to Compel Discovery Responses is scheduled before the undersigned in Courtroom No. 2 on October 10, 2007 at 9:30 A.m.

By the Court:

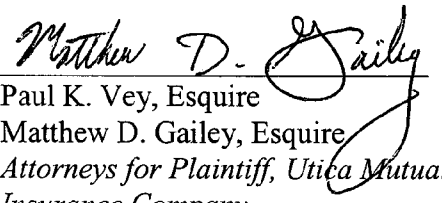
_____ J.

ATTEST:

_____
Prothonotary

Respectfully submitted,

PIETRAGALLO BOSICK & GORDON LLP

By: 

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Attorneys for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED

SEP 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/27/07

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

CA

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

ORDER OF COURT

AND NOW, to wit, this 10 day of October, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants provide answers to all of Plaintiff's discovery requests within ~~ten~~ twenty 20 FJA (~~10~~) days of the date of this Order. The Plaintiff's Motion to Compel Discovery Requests is hereby GRANTED.

J.

ORIGINAL

FILED 3 cc Atty Gailey (will serve)
01:47 PM
OCT 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

MOTION FOR SANCTIONS

Filed on behalf of Plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED NO CC
m/11:05/BK
NOV 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff,	CIVIL ACTION No. 03 – 798 – CD

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

MOTION FOR SANCTIONS

AND NOW, comes Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP and files the following Motion For Sanctions, and in support thereof avers the following:

1. Plaintiff filed an Amended Complaint on or about June 9, 2004. The Amended Complaint sought recovery of the Defendants' breach of the Indemnity Agreement.

2. On or about July 13, 2007, Plaintiff served upon Defendants Plaintiff's First Request for Production of Documents, Requests for Admissions and Plaintiff's First Set of Interrogatories Directed to Defendants.

3. On or about September 25, 2007, Plaintiff filed a Motion to Compel Discovery. (See Motion to Compel attached hereto as Exhibit "A").

4. On October 10, 2007, this Honorable Court entered an Order that Defendants provide answers to all of Plaintiff's discovery requests within twenty (20) days of the date of the Order. (See 10/10/07 Order attached hereto as Exhibit "B").

5. As of the date of this filing, Defendants have failed to comply with the Court's Order to provide responses to all of Plaintiff's discovery requests.

WHEREFORE, Plaintiff requests this Honorable Court to enter the following sanctions against Defendants as the Court sees fit:

a. A judgment be entered in favor of Plaintiff; and/or

b. Defendants are precluded from entering any evidence in defense of the claims put forth by Plaintiff; and/or

c. All of Plaintiff's Requests for Admissions are deemed ADMITTED; and/or

d. Any and all costs associated with Plaintiff's Motion to Compel Discovery and Motion for Sanctions will be paid by Defendants; and/or

e. Any other relief that the Court sees fit.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON, LLP

Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2007, it is hereby ORDERED, ADJUDGED and DECREED that: a) A judgment be entered in favor of Plaintiff; and/or b) Defendants are precluded from entering any evidence in defense of the claims put forth by Plaintiff; and/or c) All of Plaintiff's Requests for Admissions are deemed ADMITTED; and/or d) Any and all costs associated with Plaintiff's Motion to Compel Discovery and Motion for Sanctions will be paid by Defendants; and/or e) Any other relief that the Court sees fit. The Plaintiff's Motion for Sanctions is hereby GRANTED.

_____ *J.*

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

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

MOTION TO COMPEL DISCOVERY RESPONSES

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

COPY
FILED
SEP 25 2007
William A. Shaw
Prothonotary/Clerk of Courts

EXHIBIT
tabbies
A

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

MOTION TO COMPEL DISCOVERY RESPONSES

AND NOW, comes Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP and files the following Motion to Compel Discovery Responses, and in support thereof avers the following:

1. Plaintiff filed an Amended Complaint on or about June 9, 2004. The Amended Complaint seeks recovery of Defendants' breach of the Indemnity Agreement.

2. On or about July 13, 2007, Plaintiff served upon Defendants Plaintiff's First Request for Production of Documents, Requests for Admissions and Plaintiff's First Set of Interrogatories Directed to Defendants. (See Discovery Requests attached hereto as Exhibit "A").

3. Plaintiff has called defense counsel seeking a response to this discovery.

4. As of the date of this filing, Plaintiff has received no response to any of the discovery requests sent on July 13, 2007.

WHEREFORE, Plaintiff requests this Court to enter an Order directing Defendants to provide answers to all of Plaintiff's discovery requests.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON, LLP

Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

CIVIL ACTION

No. 03 – 798 – CD

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants provide answers to all of Plaintiff's discovery requests within ten (10) days of the date of this Order. The Plaintiff's Motion to Compel Discovery Requests is hereby GRANTED.

_____ *J.*

CERTIFICATION

I, Matthew D. Gailey, Esquire, being counsel of record for Plaintiff Utica Mutual Insurance Company, hereby certify that I attempted to confer with all interested parties in order to resolve this matter without Court action pursuant to Local Rule 208.2(c), and that I was unsuccessful.

Matthew D. Gailey

Matthew D. Gailey, Esquire

Dated: September 24, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

REQUEST FOR ADMISSIONS

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

EXHIBIT
A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, v. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

REQUEST FOR ADMISSIONS

AND NOW comes the Plaintiff, Utica Mutual Insurance Company ("Utica"), by and through its counsel, Pietragallo Bosick & Gordon, LLP and hereby requests that you answer separately and fully, each of the following Requests for Admissions in accordance with Pennsylvania Rule of Civil Procedure 4014. In accordance with the Pennsylvania Rules of Civil Procedure, Defendants are hereby directed to file written answers to these Requests for Admissions within 30 days of service. Further, notice is hereby provided that each request set forth herein shall be deemed admitted if a timely response is not filed.

If any of the Requests for Admissions set forth herein are denied in any respect, the Defendants are hereby directed to fully and completely set forth the reasons for such denial.

These discovery requests are deemed to be continuing in nature, and the Defendants shall be under an obligation to seasonally supplement their responses in the manner provided under the Pennsylvania Rules of Civil Procedure.

1. Admit that the document attached hereto as Exhibit "A" is a copy of the Utica Mutual Insurance Company General Agreement of Indemnity entered into by the Defendants.

ADMITTED: _____ **DENIED:** _____

2. Admit that the first signature contained on the signature line on Page 3 of the Indemnity Agreement attached hereto as Exhibit "A," is that of Robert E. Hamilton, operating as President.

ADMITTED: _____ **DENIED:** _____

3. Admit that the second signature contained on the signature line on Page 3 of the Indemnity Agreement attached hereto as Exhibit "A," is that of Robert E. Hamilton, individually.

ADMITTED: _____ **DENIED:** _____

4. Admit that the fourth signature contained on the signature line on Page 3 of the Indemnity Agreement attached hereto as Exhibit "A," is that of James Hamilton, Jr. individually.

ADMITTED: _____ **DENIED:** _____

5. The Defendants entered into the Indemnity Agreement, attached hereto as Exhibit "A," as a prerequisite to the execution of bonds as Utica Mutual required complete indemnification.

ADMITTED: _____ **DENIED:** _____

6. Admit that the exhibit attached hereto as Exhibit "B" is an assignment of life insurance policy for James E. Hamilton, Jr. (Life Insurance Policy No. 000021057A).

ADMITTED: _____ **DENIED:** _____

7. Admit that the signature contained on the signature line of Exhibit "B," attached hereto, is that James E. Hamilton, Jr.

ADMITTED: _____ **DENIED:** _____

8. Admit that the corporate acknowledgement on the back of Exhibit "B," attached hereto, maintains that James E. Hamilton, Jr. was the Secretary/Treasurer of Hamilton Bros. Coal, Inc.

ADMITTED: _____ **DENIED:** _____

9. Admit that Exhibit "C," attached hereto, is an assignment of life insurance policy #000021058A issued by Utica National Life Insurance Co.

ADMITTED: _____ **DENIED:** _____

10. Admit that the Corporate Acknowledgement on the back of Exhibit "C," attached hereto, maintains that Robert Hamilton was the President of Hamilton Bros. Coal Co.

ADMITTED: _____ **DENIED:** _____

11. Admit that the signature contained on the signature line of Exhibit "C," attached hereto, is that of Robert E. Hamilton.

ADMITTED: _____ **DENIED:** _____

12. Admit that Exhibit "D," attached hereto, is a surety bond agreement entered into by Robert Hamilton.

ADMITTED: _____ **DENIED:** _____

13. Admit that the second signature on the surety bond agreement, attached hereto as Exhibit "D," is that of Robert E. Hamilton, President.

ADMITTED: _____ **DENIED:** _____

14. Admit that Exhibit "E," attached hereto, is a surety bond agreement entered into by James Hamilton, Jr.

ADMITTED: _____ **DENIED:** _____

15. Admit that the first signature on the surety bond agreement attached hereto as Exhibit "E," is that of James Hamilton, Jr., Secretary/Treasurer.

ADMITTED: _____ **DENIED:** _____

Respectfully submitted,
PIETRAGALLO, BOSICK & GORDON, LLP

By: _____

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Request for Admissions** was served on the following by first class mail, postage pre-paid, this 17 day of July, 2007:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Counsel for Defendants

Matthew D. Gailey

Matthew D. Gailey, Esq.
Attorney for Plaintiff

HO CLAIMS SERVICE
APR 21 2000

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

GENERAL AGREEMENT OF INDEMNITY

This Agreement entered into by and between the undersigned, herein called the Indemnitors, and the Utica Mutual Insurance Company of New Hartford, New York, herein called the Company, witnesseth:

WHEREAS, in the transaction of business certain bonds, undertakings and other writings obligatory in the nature of a bond have heretofore been, and may hereafter be, required by, for, or on behalf of the Indemnitors or any one or more of the parties included in the designation Indemnitors, and application has been made and will hereafter be made to the Company to execute such bonds, and as a prerequisite to the execution of such bond or bonds, the Company requires complete indemnification.

NOW, THEREFORE, in consideration of the premises, and the payment by the Company of the sum of One ($1.00) Dollar to each of the Indemnitors, receipt whereof is hereby acknowledged, and for other good and valuable considerations, the Indemnitors do, for themselves, their heirs, executors, administrators and assigns, jointly and severally, agree with the Company as follows:

1. The Indemnitors will pay to the Company, at its Home Office in the Town of New Hartford, New York, premiums and charges at the rates, and at the times specified in respect to each such bond in the Company's schedule of rates, which, with any additions or amendments thereto, is by reference made a part hereof, and will continue to pay the same where such premium or charge is annual, until the Company shall be discharged and released from any and all liability and responsibility upon and from each such bond or matters arising therefrom, and until the Indemnitors shall deliver to the Company at its Home Office in New Hartford, New York, competent written evidence satisfactory to the Company of its discharge from all liability on such bond or bonds.

2. The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of, such bonds, or any renewals or continuations thereof or substitutes therefor, including fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. In the event of payments by the Company, the Indemnitors agree to accept the voucher or other evidence of such payments as prima facie evidence of the propriety thereof, and of the Indemnitors' liability therefor to the Company.

3. If the Company shall set up a reserve to cover any claim, suit or judgment under any such bond, the Indemnitors will, immediately upon demand, deposit with the Company a sum of money equal to such reserve, such sum to be held by the Company as collateral security on such bond, and such sum and any other money or property which shall have been, or shall hereafter be, pledged as collateral security on any such bond shall, unless otherwise agreed in writing by the Company, be available, in the discretion of the Company, as collateral security on any other or all bonds coming within the scope of this Agreement.

4. The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability with which the Company may be subsequently charged under any such bond, shall notify the Company thereof in writing at its Home Office in the Town of New Hartford, New York.

5. The Company shall have the exclusive right to determine for itself and the Indemnitors whether any claim or suit brought against the Company or the Principal upon any such bond shall be settled or defended and its decision shall be binding and conclusive upon the Indemnitors.

6. The Company, and its designated agents, shall, at any and all reasonable times, have free access to the books and records of the Indemnitors.

[redacted]

7. If such bond be given in connection with a contract, the Company is hereby authorized, but not required, to consent to any change in the contract or in the plans or specifications relating thereto; to make or guarantee advances or loans for the purpose of the contract without necessity of seeing to the application thereof, it being understood that the amount of all such advances or loans, unless repaid with legal interest by the Contractor to the Company when due, shall be conclusively presumed to be a loss hereunder; in the event the Indemnitors, or any of them, shall fail to pay any premium charge when due; or abandon, forfeit or breach such contract; or breach any bond given in connection therewith; or fail, neglect or refuse to pay for any labor or materials used in the prosecution of such contract; or have proceedings instituted against them, or any of them, alleging that they are insolvent, or for the appointment of a receiver or trustee for the benefit of creditors, whether such Indemnitor(s) are insolvent or not; or have proceedings instituted against them, or any of them, the effect of which may be to deprive any of them of the use of any part of the equipment used in connection with the work under the contract so as to hinder, delay or impede the normal and satisfactory progress of the work, the Company shall have the right, but not the obligation, to take possession of the work under the contract and under any other contract in connection with which the Company has given its bond or bonds within the purview of this General Agreement of Indemnity and, at the expense of the Indemnitors, to complete the contract(s), or cause, or consent, to the completion thereof. The Indemnitors hereby assign, transfer, and set over to the Company (to be effective as of the date of such bond or bonds, but only in the event of a default as aforesaid), all of their rights under the contract(s), including their right, title and interest in and to all subcontracts let in connection therewith; all machinery, plant, equipment, tools and materials which shall be upon the site of the work or elsewhere for the purposes of the contract(s), including all materials ordered for the contract(s), any and all sums due under the contract(s) at the time of such default, or which may thereafter become due, and the Indemnitors hereby authorize the Company to endorse in the name of the payee, and to receive and collect any check, draft, warrant or other instrument made or issued in payment of any such sum, and to disburse the proceeds thereof.

8. That it shall not be necessary for the Company to give the Indemnitors, or any one or more of them, notice of the execution of any such bonds, nor of any fact or information coming to the notice or knowledge of the Company affecting its rights or liabilities, the rights or liabilities of the Indemnitors under any such bond executed by it, notice of all such being hereby expressly waived.

9. In the event of any claim or demand being made by the Company against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of a bond or bonds, the Company is hereby expressly authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and we hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

10. The Company may decline to execute any Bond applied for without incurring any liability whatever and without impairing the validity of this General Agreement of Indemnity. If the Company shall execute a bid or proposal bond, or any similar undertaking, it may nevertheless decline to execute any and all Bonds that may be required in connection with any award made on the proposal for which the bond or undertaken is given.

11. If the Company procures the execution of such bonds by other companies, or executes such bonds with cosureties, or reinsures any portions of such bonds with reinsuring companies, then all the terms and conditions of this Agreement shall apply and operate for the benefit of such other companies, cosureties and reinsurers as their interest may appear.

12. The liability of the Indemnitors hereunder shall not be affected by the failure of the Principal to sign any such bond, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

13. These covenants herein and also all collateral security, if any, at any time deposited with the Company concerning the said bond or bonds and any other former or subsequent bonds executed for the Indemnitors at their instance shall, at the option of the Company, be available in its behalf and for its benefit as well concerning any bond or undertaking applied for, and also concerning all other former or subsequent bonds and undertakings, executed for the Indemnitors or for others at their request.

14. This Agreement may be terminated the Indemnitors, or any one or more of the ies so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force.

15. Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee.

16. THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF.

17. This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of Hamilton Brothers Coal Inc.

18. IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of 19

Witness	HAMILTON BROTHERS COAL INC. Robert E. Hamilton, President (L. S.)
Box 157 Irvona Pa Street or P. O. Box City State	Box 134, Coalport, PA 16627 Street or P. O. Box City State
Witness	Robert E. Hamilton, Individually (L. S.)
Street or P. O. Box City State	R.D. #1, Box #16, Irvona, PA 16656 Street or P. O. Box City State
Witness	Anna Marie Hamilton, Individually (L. S.)
Street or P. O. Box City State	R.D. #1, Box #16, Irvona, PA 16656 Street or P. O. Box City State
Witness	James E. Hamilton, Jr., Individually (L. S.)
Street or P. O. Box City State	Box #134, R.D. #1, Coalport, PA 16627 Street or P. O. Box City State
Witness	Ethel M. Hamilton, Individually (L. S.)
Street or P. O. Box City State	Box #134, R.D. #1, Coalport, PA 16627 Street or P. O. Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE.

14. This Agreement may be terminated the Indemnitors, or any one or more of the ies so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by pn of any and all such obligations that may be then in force.

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18. IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of 19

Witness

HAMILTON BROTHERS COAL INC.
Robert E. Hamilton, President (L. S.)

Box 157 Irvona Pa
Street or P. O. Box City State

Box 134, Coalport, PA 16627
Street or P. O. Box City State

Witness

Robert E. Hamilton, Individually (L. S.)

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Witness

Anna Marie Hamilton, Individually (L. S.)

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Witness

James E. Hamilton, Jr., Individually (L. S.)

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

Witness

Ethel M. Hamilton, Individually (L. S.)

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE.

UTICA NATIONAL INSURANCE COMPANY

TO: HO Claims Legal **DATE:** 12/28/99

FROM: Bond Dept.

SUBJECT: **New Claim/Underwriting File**

Re: Bond Number 1524284 Collateral CVLI

Principal HAMILTON BROS. Finan. File YES

Attached is the Underwriting file for the above referenced bond. Claim activity has been reported - see attached.

Please advise as to the individual who is handling the claim and return the underwriting file at your earliest convenience.

LAURA STOWAY

Name

Bond Department

TO: Bond Dept. **DATE:** _____

FROM: HO Claims Legal

The above bond file has been assigned to:

_____

The Underwriting file is attached.

_____

Name

HO Claims Legal

UTICA NATIONAL INSURANCE COMPANY

TO: HO Claims Legal

DATE: 12/28/99

FROM: Bond Dept.

SUBJECT: **New Claim/Underwriting File**

Re: Bond Number L700552 Collateral YES CVLI
Principal HAMILTON BROS Finan. File YES

Attached is the Underwriting file for the above referenced bond. Claim activity has been reported - see attached.

Please advise as to the individual who is handling the claim and return the underwriting file at your earliest convenience.

Steve Tomar
Name

Bond Department

TO: Bond Dept. **DATE:** _____

FROM: HO Claims Legal

The above bond file has been assigned to:

_____

The Underwriting file is attached.

_____
Name

HO Claims Legal

C 30 1989

UTICA NATIONAL LIFE INSURANCE COMPANY
NEW HARTFORD, NEW YORK

ASSIGNMENT OF LIFE INSURANCE POLICY AS COLLATERAL

A. For Value Received the undersigned hereby assign, transfer and set over to Utica Mutual Insurance Company 180 Genesee St., New Hartford, NY 13413 its successors and assigns, (herein called the "Assignee") Policy No. 000021057A issued by the UTICA NATIONAL LIFE INSURANCE COMPANY (herein called the "Insurer") and any supplementary contracts issued in connection therewith (said policy and contracts being herein called the "Policy"), upon the life of James E. Hamilton, Jr. of Rd 1, Box 140, Coalport, PA 16627 and all claims, options, privileges, rights, title and interest therein and thereunder (except as provided in Paragraph C hereof), subject to all the terms and conditions of the Policy and to all superior liens, if any, which the Insurer may have against the Policy. The undersigned by this instrument jointly and severally agree and the Assignee by the acceptance of this assignment agrees to the conditions and provisions herein set forth.

B. It is expressly agreed that, without detracting from the generality of the foregoing, the following specific rights are included in the assignment and pass by virtue hereof:
   1. The sole right to collect from the Insurer the net proceeds of the Policy, but only to the extent of the outstanding amount of any Liabilities, as described in Paragraph D hereof, existing between the Insured or Owner and the Assignee.
   2. The sole right to surrender the Policy and receive the surrender value thereof at any time provided by the terms of the Policy and at such other times as the Insurer may allow, subject to Paragraph E. The amount paid to the Assignee pursuant to such surrender shall be limited to the amount of any outstanding Liabilities existing between the Insured or Owner and the Assignee.
   3. The sole right to obtain one or more loans or advances on the Policy, either from the Insurer or, at any time, from other persons, and to pledge or assign the Policy as security for such loans or advances; subject to Paragraph E.
   4. The sole right to collect and receive all distributions or shares of surplus, dividend deposits or additions to the Policy now or hereafter made or apportioned thereto, and to exercise any and all options contained in the Policy with respect thereto; provided, that unless and until the Assignee shall notify the Insurer in writing to the contrary, the distributions or shares of surplus, dividend deposits and additions shall continue on the plan in force at the time of this assignment; and
   5. The sole right to exercise all nonforfeiture rights permitted by the terms of the Policy or allowed by the Insurer and to receive all benefits and advantages derived therefrom.

C. It is expressly agreed that the following specific rights, so long as the policy has not been surrendered, are reserved and excluded from this assignment and do not pass by virtue hereof:
   1. The right to collect from the Insurer any disability benefit payable in cash that does not reduce the amount of insurance;
   2. The right to designate and change the beneficiary;
   3. The right to elect any optional mode of settlement permitted by the Policy or allowed by the Insurer; but the reservation of these rights shall in no way impair the right of the Assignee to surrender the Policy completely with all its incidents or impair any other right of the Assignee hereunder, and any designation or change of beneficiary or election of a mode of settlement shall be made subject to this assignment and to the rights of the Assignee hereunder.

D. This assignment is made and the Policy is to be held as collateral security for any and all liabilities of the Insured or Owner, or any of them, to the Assignee, either now existing or that may hereafter arise in the ordinary course of business between the Insured or Owner and the Assignee (all of which liabilities secured or to become secured are herein called "Liabilities").

E. The Assignee covenants and agrees with the undersigned as follows:
   1. That any balance of sums received hereunder from the Insurer remaining after payment of the then existing Liabilities, matured or unmatured, shall be paid by the Assignee to the persons entitled thereto under the terms of the Policy had this assignment not been executed;
   2. That the Assignee will not exercise either the right to surrender the Policy or (except for the purpose of paying premiums) the right to obtain policy loans from the Insurer, until there has been default in any of the Liabilities or a failure to pay any premium when due, nor until twenty days after the Assignee shall have mailed, by first-class mail, to the undersigned at the addresses last supplied in writing to the Assignee specifically referring to this assignment, notice of intention to exercise such right; and
   3. That the Assignee will upon request forward without unreasonable delay to the Insurer the Policy for endorsement of any designation or change of beneficiary or any election of an optional mode of settlement.

F. The insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, or the validity or the amount of the Liabilities or the existence of any default therein, or the giving of any notice under Paragraph E (2) above or otherwise, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The sole signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned hereby and the sole receipt of the Assignee for any sums received shall be a full discharge and release therefor to the Insurer. Checks for all or any part of the sums payable under the Policy and assigned herein, shall be drawn to the exclusive order of the Assignee if, when, and in such amounts as may be, requested by the Assignee.

G. The Assignee shall be under no obligation to pay any premium, or the principal of or interest on any loans or advances on the Policy whether or not obtained by the Assignee, or any other charges on the Policy, but any such amounts so paid by the Assignee from its own funds, shall become a part of the Liabilities hereby secured, shall be due immediately, and shall draw interest at a rate fixed by the Assignee from time to time, not exceeding the maximum rate of interest permitted by the laws of the State of New York.

H. The exercise of any right, option, privilege or power given herein to the Assignee shall be at the option of the Assignee, but (except as restricted by Paragraph E (2) above) the Assignee may exercise any such right, option, privilege or power without notice to, or assent by, or affecting the liability of, or releasing any interest hereby assigned by the undersigned, or any of them.

I. The Assignee may take or release other security, may release any party primarily or secondarily liable for any of the Liabilities, may grant extensions, renewals or indulgences with respect to the Liabilities, or may apply to the Liabilities in such order as the Assignee shall determine, the proceeds of the Policy hereby assigned or any amount received on account of the Policy by the exercise of any right permitted under this assignment, without resorting or regard to other security.

J. In the event of any conflict between the provisions of this assignment and provisions of the note or other evidence of any Liability, with respect to the Policy or rights of collateral security therein, the provisions of this assignment shall prevail.

K. Each of the undersigned declares that no proceedings in bankruptcy are pending against him and that his property is not subject to any assignment for the benefit of creditors.

Signed and sealed this 27th day of October 19 89

Witness

James E. Hamilton, Jr.
Insured or Owner

Address

Witness

Beneficiary

Address

EXHIBIT

10-C-27 Ed. 6-85

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On the _____ day of _____ 19 _____,

before me personally came _____,

to me known to be the individual _____ described in and who executed the assignment on the reverse side hereof and acknowledged

to me that _____ he _____ executed the same.

_____
Notary Public

My commission expires _____

CORPORATE ACKNOWLEDGMENT

STATE OF Pennsylvania

COUNTY OF Clearfield

On the 27th day of October 19 89,

before me personally came James E. Hamilton,

who being by me duly sworn, did depose and say that he resides in Coalport, PA

that he is the Secretary/Treas of Hamilton Bros. Coal Co., the

corporation described in and which executed the assignment on the reverse side hereof; and acknowledged to me that through this

he has executed the same.

Edna Weaver
Notary Public

Notarial Seal
Edna Weaver, Notary Public
Johnstown, Cambria County
My Commission Expires Sept. 16, 1993

My commission expires _____

Duplicate received and filed at the home office of the Insurer in New Hartford, New York, this 7th

day of November 19 89.

3

Utica National Life Insurance Co.

By Richard S. Kelly Jr.
Authorized Officer
Asst. Secretary

OCT 30 [illegible]

UTICA NATIONAL LIFE INSURANCE COMPANY

NEW HARTFORD, NEW YORK

ASSIGNMENT OF LIFE INSURANCE POLICY AS COLLATERAL

A. For Value Received the undersigned hereby assign, transfer and set over to Utica Mutual Insurance Company 180 Genesee St., New Hartford, NY 13413 its successors and assigns, (herein called the "Assignee") Policy No. 000021058A issued by the UTICA NATIONAL LIFE INSURANCE COMPANY (herein called the "Insurer") and any supplementary contracts issued in connection therewith (said policy and contracts being herein called the "Policy"), upon the life of Robert Hamilton of Rd #1, Box 16, Coalport, PA 16627 and all claims, options, privileges, rights, title and interest therein and thereunder (except as provided in Paragraph C hereof), subject to all the terms and conditions of the Policy and to all superior liens, if any, which the Insurer may have against the Policy. The undersigned by this instrument jointly and severally agree and the Assignee by the acceptance of this assignment agrees to the conditions and provisions herein set forth.

B. It is expressly agreed that, without detracting from the generality of the foregoing, the following specific rights are included in the assignment and pass by virtue hereof:
   1. The sole right to collect from the Insurer the net proceeds of the Policy, but only to the extent of the outstanding amount of any Liabilities, as described in Paragraph D hereof, existing between the Insured or Owner and the Assignee.
   2. The sole right to surrender the Policy and receive the surrender value thereof at any time provided by the terms of the Policy and at such other times as the Insurer may allow, subject to Paragraph E. The amount paid to the Assignee pursuant to such surrender shall be limited to the amount of any outstanding Liabilities existing between the Insured or Owner and the Assignee.
   3. The sole right to obtain one or more loans or advances on the Policy, either from the Insurer or, at any time, from other persons, and to pledge or assign the Policy as security for such loans or advances; subject to Paragraph E.
   4. The sole right to collect and receive all distributions or shares of surplus, dividend deposits or additions to the Policy now or hereafter made or apportioned thereto, and to exercise any and all options contained in the Policy with respect thereto; provided, that unless and until the Assignee shall notify the Insurer in writing to the contrary, the distributions or shares of surplus, dividend deposits and additions shall continue on the plan in force at the time of this assignment; and
   5. The sole right to exercise all nonforfeiture rights permitted by the terms of the Policy or allowed by the Insurer and to receive all benefits and advantages derived therefrom.

C. It is expressly agreed that the following specific rights, so long as the policy has not been surrendered, are reserved and excluded from this assignment and do not pass by virtue hereof:
   1. The right to collect from the Insurer any disability benefit payable in cash that does not reduce the amount of insurance;
   2. The right to designate and change the beneficiary;
   3. The right to elect any optional mode of settlement permitted by the Policy or allowed by the Insurer; but the reservation of these rights shall in no way impair the right of the Assignee to surrender the Policy completely with all its incidents or impair any other right of the Assignee hereunder, and any designation or change of beneficiary or election of a mode of settlement shall be made subject to this assignment and to the rights of the Assignee hereunder.

D. This assignment is made and the Policy is to be held as collateral security for any and all liabilities of the Insured or Owner, or any of them, to the Assignee, either now existing or that may hereafter arise in the ordinary course of business between the Insured or Owner and the Assignee (all of which liabilities secured or to become secured are herein called "Liabilities").

E. The Assignee covenants and agrees with the undersigned as follows:
   1. That any balance of sums received hereunder from the Insurer remaining after payment of the then existing Liabilities, matured or unmatured, shall be paid by the Assignee to the persons entitled thereto under the terms of the Policy had this assignment not been executed;
   2. That the Assignee will not exercise either the right to surrender the Policy or (except for the purpose of paying premiums) the right to obtain policy loans from the Insurer, until there has been default in any of the Liabilities or a failure to pay any premium when due, nor until twenty days after the Assignee shall have mailed, by first-class mail, to the undersigned at the addresses last supplied in writing to the Assignee specifically referring to this assignment, notice of intention to exercise such right; and
   3. That the Assignee will upon request forward without unreasonable delay to the Insurer the Policy for endorsement of any designation or change of beneficiary or any election of an optional mode of settlement.

F. The Insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, or the validity or the amount of the Liabilities or the existence of any default therein, or the giving of any notice under Paragraph E (2) above or otherwise, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The sole signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned hereby and the sole receipt of the Assignee for any sums received shall be a full discharge and release therefor to the Insurer. Checks for all or any part of the sums payable under the Policy and assigned herein, shall be drawn to the exclusive order of the Assignee if, when, and in such amounts as may be, requested by the Assignee.

G. The Assignee shall be under no obligation to pay any premium, or the principal of or interest on any loans or advances on the Policy whether or not obtained by the Assignee, or any other charges on the Policy, but any such amounts so paid by the Assignee from its own funds, shall become a part of the Liabilities hereby secured, shall be due immediately, and shall draw interest at a rate fixed by the Assignee from time to time, not exceeding the maximum rate of interest permitted by the laws of the State of New York.

H. The exercise of any right, option, privilege or power given herein to the Assignee shall be at the option of the Assignee, but (except as restricted by Paragraph E (2) above) the Assignee may exercise any such right, option, privilege or power without notice to, or assent by, or affecting the liability of, or releasing any interest hereby assigned by the undersigned, or any of them.

I. The Assignee may take or release other security, may release any party primarily or secondarily liable for any of the Liabilities, may grant extensions, renewals or indulgences with respect to the Liabilities, or may apply to the Liabilities in such order as the Assignee shall determine, the proceeds of the Policy hereby assigned or any amount received on account of the Policy by the exercise of any right permitted under this assignment, without resorting or regard to other security.

J. In the event of any conflict between the provisions of this assignment and provisions of the note or other evidence of any Liability, with respect to the Policy or rights of collateral security therein, the provisions of this assignment shall prevail.

K. Each of the undersigned declares that no proceedings in bankruptcy are pending against him and that his property is not subject to any assignment for the benefit of creditors.

Signed and sealed this 27th day of OCTOBER 19 89

Witness

X Robert J Hamilton
Insured or Owner

Address

Witness

Beneficiary

Address

10-C-27 Ed. 6-85

EXHIBIT

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On the _____ day of _____ 19 ____,

before me personally came _____,

to me known to be the individual _____ described in and who executed the assignment on the reverse side hereof and acknowledged to me that _____ he _____ executed the same.

_____
Notary Public

My commission expires _____

CORPORATE ACKNOWLEDGMENT

STATE OF Pennsylvania

COUNTY OF Clearfield

On the 27th day of October 19 89,

before me personally came Robert Hamilton,

who being by me duly sworn, did depose and say that he resides in Coalport, PA

_____ that he is the President of Hamilton Bros. Coal Co., the corporation described in and which executed the assignment on the reverse side hereof; and acknowledged to me that through this he has executed the same.

Edna Weaver
Notary Public

Notarial Seal
Edna Weaver, Notary Public
Johnstown, Cambria County
My Commission Expires Sept. 16, 1993

My commission expires _____

Duplicate received and filed at the home office of the Insurer in New Hartford, New York, this 1st day of November 19 89

Utica National Life Ins. Co.

By Richard S. Kelly J.
Authorized Officer

UTICA NATIONAL LIFE INSURANCE COMPANY

SURETY BOND AGREEMENT

1989

OCT 30

THIS AGREEMENT MADE AS OF THE 27th DAY OF OCTOBER, 19 89 BY AND AMONG

Utica Mutual Insurance Company
(HEREINAFTER REFERRED TO AS OWNER) UTICA MUTUAL INSURANCE COMPANY (UTICA).

AND Robert Hamilton
(INSURED), WITNESSETH THAT:

WHEREAS, UTICA HAS EXECUTED IN THE PAST AND MAY IN THE FUTURE EXECUTE SURETY BONDS FOR OR ON BEHALF OF Hamilton Bros. Coal, Inc. AND/OR ANY FIRMS, PARTNERSHIPS, OR CORPORATIONS IN WHICH Robert Hamilton NOW HAS OR MAY HEREINAFTER ACQUIRE ANY INTEREST OF ANY KIND, SAID ENTITIES TO BE HERE SOMETIMES REFERRED TO AS PRINCIPALS: AND

WHEREAS, OWNER AND THE INSURED HAVE AGREED TO FURNISH UTICA SECURITY IN THE FORM OF AN ABSOLUTE ASSIGNMENT OF CASH VALUES HEREINAFTER DESCRIBED, TO PROTECT UTICA FROM LOSS, COST AND EXPENSE IN CONNECTION WITH SAID SURETY BONDS, AND

WHEREAS, IT IS THE INTENTION OF THE PARTIES HERETO THAT SAID ABSOLUTE ASSIGNMENT OF CASH VALUE SHALL BE FROM A LIFE INSURANCE POLICY ON THE LIFE OF INSURED, TO BE ASSIGNED AND CONVEYED TO UTICA AS BELOW DESCRIBED.

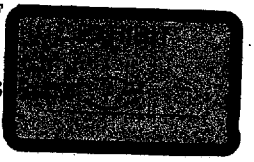
NOW, THEREFORE, THE PARTIES HERETO AGREE TO AS FOLLOWS:

1) EACH AND ALL OF THE PARTIES HERETO SHALL EXECUTE WHATEVER ASSIGNMENTS, OR OTHER DOCUMENTS OF ANY KIND WHATEVER, MAY BE NECESSARY TO ASSIGN AND CONVEY TO UTICA AND TO MAINTAIN IN UTICA THE CONTROL AND SECURITY INTEREST IN SAID POLICY, TO THE END THAT UTICA SHALL AT ALL TIMES HAVE THE RIGHT AND THE ABILITY TO SURRENDER THE POLICY AND RECEIVE THE SURRENDER VALUE, AND THE RIGHT AND ABILITY TO RECEIVE AN AMOUNT OF THE DEATH BENEFIT EQUIVALENT TO THE ACTUAL CASH VALUE OF THE POLICY, INCLUDING THE AMOUNT OF OUTSTANDING POLICY LOAN(S) AT TIME OF DEATH OF THE INSURED, AND SUCH OTHER RIGHTS AND ABILITIES AS ARE SET OUT IN SAID ASSIGNMENTS AND/OR OTHER DOCUMENTS.

2) REGARDLESS OF ANYTHING TO THE CONTRARY, THE INTEREST OF UTICA IN SAID POLICY SHALL BE A SECURITY INTEREST AND SHALL EXIST SOLELY TO THE EXTENT NECESSARY TO PROTECT AND SAVE IT HARMLESS AND FREE OF LOSS, COST AND EXPENSE IN CONNECTION WITH THE EXECUTION OF SURETY BONDS AND THE COLLECTION OF PREMIUMS THEREFORE, FOR OR ON BEHALF OF ANY PRINCIPAL, WHETHER SUCH BONDS HAVE BEEN EXECUTED PRIOR TO OR AFTER THE DATE OF THE AGREEMENT.

3) THIS AGREEMENT AND THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL TERMINATED BY WRITTEN CONSENT OF UTICA OR UNTIL ALL OF UTICA'S LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, SHALL HAVE BEEN FINALLY AND FULLY TERMINATED, TO THE SATISFACTION OF UTICA.

4) IF UTICA SHALL EVER RECEIVE ANY FUNDS FROM SAID POLICY AS A RESULT OF THE HEREIN DESCRIBED ASSIGNMENT AND CONVEYANCE, UTICA MAY RETAIN SUCH FUNDS FOR THE PURPOSES DESCRIBED IN PARAGRAPH 2 ABOVE UNTIL THEY ARE VOLUNTARILY RELEASED BY UTICA OR UNTIL ALL OF UTICA'S LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL SHALL BE FINALLY AND FULLY TERMINATED, TO THE SATISFACTION OF UTICA SHALL HAVE NO DUTY TO INVEST SAID FUNDS OR TO TAKE ANY WHATEVER TO EARN ANY INCOME ON SAID FUNDS AND SHALL NEVER BE TO ACCOUNT FOR MORE THAN THE ACTUAL MONIES RECEIVED, BUT DOES



TO MAKE ITS BEST EFFORT TO PLACE ACTUAL MONIES RECEIVED IN AN INCOME PRODUCING FUND MANAGED OR CONTROLLED BY UTICA NATIONAL LIFE OR ONE OF ITS AFFILIATES OR SUBSIDIARIES WITH EARNINGS ACCRUING TO BENEFIT OF OWNER.

5) UTICA MAY WITHDRAW ANY OR ALL OF THE CONTENTS OF THE CASH VALUE WITHOUT THE CONSENT OF OWNER UPON SUBMISSION OF A WRITTEN CERTIFICATION SIGNED BY AN AUTHORIZED OFFICER STATING THAT THEY HAVE INCURRED LIABILITY BY REASON OF EXECUTING BONDS OR UNDERTAKINGS ON BEHALF OF ANY PRINCIPAL. UTICA AGREES TO COPY OWNER ON ANY SUCH CERTIFICATION.

6) THIS AGREEMENT AND THE SECURITY PROVIDED SHALL BE FOR THE BENEFIT OF UTICA, ITS CO-SURETIES, AND ITS REINSURERS, AND ANY OTHER SURETY COMPANIES UTICA MAY REQUEST OR CAUSE TO EXECUTE BONDS FOR OR ON BEHALF OF ANY PRINCIPAL.

7) AT SUCH TIME AS UTICA, IN ITS SOLE DISCRETION, CONSIDERS THAT IT NO LONGER HAS ANY PRESENT OR POTENTIAL LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, UTICA WILL CONSENT TO THE TERMINATION OF THE AGREEMENT AND OF THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED, AND WILL DELIVER TO OWNER THE UNUSED PORTION OF ANY FUNDS THAT MAY HAVE BEEN RECEIVED UNDER THE TERMS OF THE AGREEMENT AND THE POLICY.

8) THIS AGREEMENT SHALL BE CUMULATIVE WITH, AND SHALL NOT LIMIT OR DIMINISH THE DUTIES OR RESPONSIBILITIES OF OWNER OR INSURED UNDER ANY OTHER DOCUMENT OR AGREEMENT ENTERED INTO FOR THE BENEFIT OF UTICA, NOR SHALL THIS AGREEMENT CONFLICT WITH OR DIMINISH ANY OTHER RIGHTS UTICA MAY EVER HAVE BY WAY OF SUBROGATED RIGHTS AGAINST OTHER PARTIES OR BY WAY OF OTHER SECURITY ARRANGEMENTS.

9) THE LIFE INSURANCE POLICY HEREINABOVE REFERRED TO SHALL BE ISSUED BY UTICA NATIONAL LIFE AND SHALL BEAR NUMBER 000021058A .

10) OWNER MAY AT ANYTIME SUBSTITUTE OTHER SECURITY FOR THE INTEREST IN THE HEREIN DESCRIBED LIFE INSURANCE POLICY PROVIDED THAT UTICA FIRST CONSENTS IN WRITING. SUCH CONSENT WILL NOT BE UNREASONABLY WITHHELD, BUT UTICA MUST FIRST BE SATISFIED THAT THE NEW SECURITY REPRESENTS NO DIMINUTION OF THE PROTECTION AFFORDED TO UTICA.

11) TO THE EXTENT THAT THE CASH VALUE OF SAID LIFE INSURANCE POLICY MAY EXCEED THE AGGREGATE AMOUNT OF UTICA LIABILITY UNDER ITS BONDS OR UNDERTAKING (OR SUCH OTHER AMOUNT AS OWNER AND UTICA MAY AGREE ON) SUCH EXCESS SHALL BE MADE AVAILABLE TO OWNER FOR ITS USE.

SIGNED THIS 27th DAY OF October 19 89

UTICA MUTUAL INSURANCE COMPANY

BY: [signature]

(OWNER) Hamilton Bros Coal, Inc.

BY: X James E. Hamilton Jr. Secretary

(INSURED) Robert C. Hamilton

BY: X Robert C. Hamilton President

UTICA NATIONAL LIFE INSURANCE COMPANY

SURETY BOND AGREEMENT

THIS AGREEMENT MADE AS OF THE 27th DAY OF OCTOBER, 19 89 BY AND AMONG Utica Mutual Insurance Company (HEREINAFTER REFERRED TO AS OWNER) UTICA MUTUAL INSURANCE COMPANY (UTICA).

AND James E. Hamilton, Jr. (INSURED), WITNESSETH THAT:

WHEREAS, UTICA HAS EXECUTED IN THE PAST AND MAY IN THE FUTURE EXECUTE SURETY BONDS FOR OR ON BEHALF OF Hamilton Bros. Coal, Inc. AND/OR ANY FIRMS, PARTNERSHIPS, OR CORPORATIONS IN WHICH James E. Hamilton, Jr. NOW HAS OR MAY HEREINAFTER ACQUIRE ANY INTEREST OF ANY KIND, SAID ENTITIES TO BE HERE SOMETIMES REFERRED TO AS PRINCIPALS: AND

WHEREAS, OWNER AND THE INSURED HAVE AGREED TO FURNISH UTICA SECURITY IN THE FORM OF AN ABSOLUTE ASSIGNMENT OF CASH VALUES HEREINAFTER DESCRIBED, TO PROTECT UTICA FROM LOSS, COST AND EXPENSE IN CONNECTION WITH SAID SURETY BONDS, AND

WHEREAS, IT IS THE INTENTION OF THE PARTIES HERETO THAT SAID ABSOLUTE ASSIGNMENT OF CASH VALUE SHALL BE FROM A LIFE INSURANCE POLICY ON THE LIFE OF INSURED, TO BE ASSIGNED AND CONVEYED TO UTICA AS BELOW DESCRIBED.

NOW, THEREFORE, THE PARTIES HERETO AGREE TO AS FOLLOWS:

1) EACH AND ALL OF THE PARTIES HERETO SHALL EXECUTE WHATEVER ASSIGNMENTS, OR OTHER DOCUMENTS OF ANY KIND WHATEVER, MAY BE NECESSARY TO ASSIGN AND CONVEY TO UTICA AND TO MAINTAIN IN UTICA THE CONTROL AND SECURITY INTEREST IN SAID POLICY, TO THE END THAT UTICA SHALL AT ALL TIMES HAVE THE RIGHT AND THE ABILITY TO SURRENDER THE POLICY AND RECEIVE THE SURRENDER VALUE, AND THE RIGHT AND ABILITY TO RECEIVE AN AMOUNT OF THE DEATH BENEFIT EQUIVALENT TO THE ACTUAL CASH VALUE OF THE POLICY, INCLUDING THE AMOUNT OF OUTSTANDING POLICY LOAN(S) AT TIME OF DEATH OF THE INSURED, AND SUCH OTHER RIGHTS AND ABILITIES AS ARE SET OUT IN SAID ASSIGNMENTS AND/OR OTHER DOCUMENTS.

2) REGARDLESS OF ANYTHING TO THE CONTRARY, THE INTEREST OF UTICA IN SAID POLICY SHALL BE A SECURITY INTEREST AND SHALL EXIST SOLELY TO THE EXTENT NECESSARY TO PROTECT AND SAVE IT HARMLESS AND FREE OF LOSS, COST AND EXPENSE IN CONNECTION WITH THE EXECUTION OF SURETY BONDS AND THE COLLECTION OF PREMIUMS THEREFORE, FOR OR ON BEHALF OF ANY PRINCIPAL, WHETHER SUCH BONDS HAVE BEEN EXECUTED PRIOR TO OR AFTER THE DATE OF THE AGREEMENT.

3) THIS AGREEMENT AND THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL TERMINATED BY WRITTEN CONSENT OF UTICA OR UNTIL ALL OF UTICA'S LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, SHALL HAVE BEEN FINALLY AND FULLY TERMINATED, TO THE SATISFACTION OF UTICA.

4) IF UTICA SHALL EVER RECEIVE ANY FUNDS FROM SAID POLICY AS A RESULT OF THE HEREIN DESCRIBED ASSIGNMENT AND CONVEYANCE, UTICA MAY RETAIN SUCH FUNDS FOR THE PURPOSES DESCRIBED IN PARAGRAPH 2 ABOVE UNTIL THEY ARE VOLUNTARILY RELEASED BY UTICA OR UNTIL ALL OF UTICA'S LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL SHALL BE FINALLY AND FULLY TERMINATED, TO THE SATISFACTION OF UTICA. UTICA SHALL HAVE NO DUTY TO INVEST SAID FUNDS OR TO TAKE ANY STE[redacted] WHATEVER TO EARN ANY INCOME ON SAID FUNDS AND SHALL NEVER BE HEL[redacted] TO ACCOUNT FOR MORE THAN THE ACTUAL MONIES RECEIVED, BUT DOES AG[redacted]

TO MAKE ITS BEST EFFORT TO PLACE ACTUAL MONIES RECEIVED IN AN INCOME PRODUCING FUND MANAGED OR CONTROLLED BY UTICA NATIONAL LIFE OR ONE OF ITS AFFILIATES OR SUBSIDIARIES WITH EARNINGS ACCRUING TO BENEFIT OF OWNER.

5) UTICA MAY WITHDRAW ANY OR ALL OF THE CONTENTS OF THE CASH VALUE WITHOUT THE CONSENT OF OWNER UPON SUBMISSION OF A WRITTEN CERTIFICATION SIGNED BY AN AUTHORIZED OFFICER STATING THAT THEY HAVE INCURRED LIABILITY BY REASON OF EXECUTING BONDS OR UNDERTAKINGS ON BEHALF OF ANY PRINCIPAL. UTICA AGREES TO COPY OWNER ON ANY SUCH CERTIFICATION.

6) THIS AGREEMENT AND THE SECURITY PROVIDED SHALL BE FOR THE BENEFIT OF UTICA, ITS CO-SURETIES, AND ITS REINSURERS, AND ANY OTHER SURETY COMPANIES UTICA MAY REQUEST OR CAUSE TO EXECUTE BONDS FOR, OR ON BEHALF OF ANY PRINCIPAL.

7) AT SUCH TIME AS UTICA, IN ITS SOLE DISCRETION, CONSIDERS THAT IT NO LONGER HAS ANY PRESENT OR POTENTIAL LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, UTICA WILL CONSENT TO THE TERMINATION OF THE AGREEMENT AND OF THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED, AND WILL DELIVER TO OWNER THE UNUSED PORTION OF ANY FUNDS THAT MAY HAVE BEEN RECEIVED UNDER THE TERMS OF THE AGREEMENT AND THE POLICY.

8) THIS AGREEMENT SHALL BE CUMULATIVE WITH, AND SHALL NOT LIMIT OR DIMINISH THE DUTIES OR RESPONSIBILITIES OF OWNER OR INSURED UNDER ANY OTHER DOCUMENT OR AGREEMENT ENTERED INTO FOR THE BENEFIT OF UTICA, NOR SHALL THIS AGREEMENT CONFLICT WITH OR DIMINISH ANY OTHER RIGHTS UTICA MAY EVER HAVE BY WAY OF SUBROGATED RIGHTS AGAINST OTHER PARTIES OR BY WAY OF OTHER SECURITY ARRANGEMENTS.

9) THE LIFE INSURANCE POLICY HEREINABOVE REFERRED TO SHALL BE ISSUED BY UTICA NATIONAL LIFE AND SHALL BEAR NUMBER 000021057A.

10) OWNER MAY AT ANYTIME SUBSTITUTE OTHER SECURITY FOR THE INTEREST IN THE HEREIN DESCRIBED LIFE INSURANCE POLICY PROVIDED THAT UTICA FIRST CONSENTS IN WRITING. SUCH CONSENT WILL NOT BE UNREASONABLY WITHHELD, BUT UTICA MUST FIRST BE SATISFIED THAT THE NEW SECURITY REPRESENTS NO DIMINUTION OF THE PROTECTION AFFORDED TO UTICA.

11) TO THE EXTENT THAT THE CASH VALUE OF SAID LIFE INSURANCE POLICY MAY EXCEED THE AGGREGATE AMOUNT OF UTICA LIABILITY UNDER ITS BONDS OR UNDERTAKING (OR SUCH OTHER AMOUNT AS OWNER AND UTICA MAY AGREE ON) SUCH EXCESS SHALL BE MADE AVAILABLE TO OWNER FOR ITS USE.

SIGNED THIS 27th DAY OF OCTOBER 19 89

UTICA MUTUAL INSURANCE COMPANY

BY: [signature]

(OWNER) Hamilton Bros. Corp. Trust

BY: Robert L Hamilton

(INSURED) James E. Hamilton, JR.

BY: James E Hamilton Jr Settlor

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

PLAINTIFF'S FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANTS

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, v. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

PLAINTIFF'S FIRST SET OF INTERROGATORIES
DIRECTED TO DEFENDANTS

AND NOW comes Defendant, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP, and propounds the following First Set of Interrogatories upon the Plaintiffs. The Defendant requests that these Interrogatories be fully and completely answered in writing within thirty (30) days in accordance with the Pennsylvania Rules of Civil Procedure and that they be seasonally supplemented as required by the Pennsylvania Rules of Civil Procedure.

DEFINITIONS

1. As used herein, the terms listed below shall have the following meaning:

   (a) All written or printed material of any kind, including the original and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, but not limited to, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, agendas, expense accounts, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, notations of any sort (including notes of

telephone conversations of meetings), invoices and all drafts, modifications and changes or amendments to any of the foregoing.

(b) All graphic and manual records or representations of any kind, including, but not limited to, photographs, charts, graphs and records.

(c) All electronic records or representations of any kind, including, but not limited to, cassettes, computer software and print-outs and tape recordings.

(d) Any other document or tangible thing as set forth in Rule 4009 of the Pennsylvania Rules of Civil Procedure.

2. The term "person" as used in these Interrogatories shall refer to individuals, sole proprietorships, firms, associations, companies, partnerships, joint ventures, corporations, trusts, estates and/or any other legal or business entity, as is appropriate in the context of each question.

3. The term "identify" when used in reference to an individual means to state the individual's full name, last known address, last known telephone number, present or last known business affiliations and/or employer(s), business address and job title.

4. The term "identify" when used in reference to a document means to state its custodian and location, as well as providing a general description of the document or documents, including a specification of (1) the nature or type of document (e.g., letter, memorandum, etc.); (2) the date of the document; (3) its general subject matter; (4) the author of the document; and (5) the title, file number or any other appropriate designation of the document.

5. The term "you" or "your" when used in these Interrogatories shall refer to the plaintiffs or plaintiffs' representative, as is appropriate in the context of each question.

6. The term "accident" or "incident" refers to the incident which is the subject matter of this litigation.

INSTRUCTIONS

1. These Interrogatories shall be continuing in nature and supplemental answers shall be required promptly if you, directly or indirectly, obtain further or different information from the time the answers to these Interrogatories are served. Further, plaintiff shall be under an obligation to seasonally supplement these answers to Interrogatories as required under the Pennsylvania Rules of Civil Procedure.

2. If you claim privilege as grounds for not responding to any request in any Interrogatory, whether in whole or in part, describe the factual and legal basis for your claim in sufficient detail so as to permit the court to adjudicate the validity of the assertion of privilege. Also, identify by date, author and address each document and the subject matter contained therein which you claim to be subject to the privilege. Identify to whom copies were distributed and to whom such claim of privilege relates.

3. If you claim that any document or tangible thing requested to be identified herein was in existence at one time but has been lost, discarded or destroyed, identify such document or thing as completely as possible including an explanation of what type of document or thing it was, where and how it was lost or destroyed and where it was disposed of or destroyed; and the identity of all persons aware of its content.

4. In responding to these Interrogatories, you are required to furnish all information known or available to you, regardless of whether such information is directly in your possession of that of your representatives, attorneys, expert witnesses or any other persons known to you.

5. If any of these Interrogatories cannot be answered fully and completely, you are directed to respond to these Interrogatories to the extent possible, specifying the reasons for your inability to answer the remainder of the Interrogatories and stating the substance of your

knowledge, information and belief concerning the subject matter of the unanswered portion of any Interrogatory.

6. Whenever appropriate in these Interrogatories, the singular form of a word shall be interpreted as the plural and vice versa.

7. The conjunctions "and" and "or" shall be individually interpreted in every instance as meaning "and/or" and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any Interrogatory.

INTERROGATORIES

1. Please identify the name and address of any and all individuals who contributed to the answers to these Interrogatories.

ANSWER:

2. Please identify any and all insurance policies which may provide coverage for the claims made against the Defendants in the Plaintiff's Complaint.

ANSWER:

3. Please identify the nature of the business of Hamilton Brothers Coal, Inc.

ANSWER:

4. Please identify the date of incorporation of Hamilton Brothers Coal, Inc.

ANSWER:

5. Please identify the names and address(es) of all individual(s) who are officers of Hamilton Brothers Coal, Inc.

ANSWER:

6. Please identify the names and addresses of all individuals who were officers of Hamilton Brothers Coal, Inc.

ANSWER:

7. Please identify any and all individuals who are responsible for making decisions on behalf of Hamilton Brothers Coal, Inc.

ANSWER:

8. Please identify any and all individuals who were responsible for making decisions on behalf of Hamilton Brothers Coal, Inc.

ANSWER:

9. Please describe any and all interactions regarding the sale of Hamilton Brothers Coal, Inc.

ANSWER:

10. Please describe in detail the process of the sale of Hamilton Brothers Coal, Inc. to Fred Kozemchak or any other individual.

ANSWER:

11. Please describe the nature of any agreements reached regarding the sale of Hamilton Brothers Coal, Inc. with Fred Kozemchak or any other individual.

ANSWER:

12. Please identify any and all experts you have retained related to this matter.

ANSWER:

13. Please identify any and all experts you have retained related to this matter whom you expect to testify at trial.

ANSWER:

14. Please identify any and all information or theories your expert will testify concerning at any trial.

ANSWER:

15. Please list all the corporate assets of Hamilton Brothers Coal, Inc., including property, land and equipment at the time of the sale of Hamilton Brothers Coal, Inc. to Fred Kozemchak or any other individual.

ANSWER:

16. Please list all the corporate liabilities of Hamilton Brothers Coal, Inc. at the time of sale to Fred Kozemchak or any other individual.

ANSWER:

17. Please identify and provide a copy of the contract for the sale of Hamilton Brothers Coal, Inc. to Fred Kozemchak and/or any other individual.

ANSWER:

18. Please identify and describe any and all interaction with the Pennsylvania Dept. of Environmental Protection regarding mine reclamation.

ANSWER:

19. Please identify any and all exhibits you plan to introduce at trial.

ANSWER:

20. Please identify any and all witnesses you plan to have testify at trial.

ANSWER:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Plaintiff's First Set of Interrogatories Directed to Defendants** was served on the following by first class mail, postage pre-paid, this 13 day of July, 2007:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Counsel for Defendants

Matthew D. Gailey, Esq.
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO, BOSICK & GORDON
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, v. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	)	No. 03 – 798 - CD

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS

AND NOW, comes the Plaintiff, Utica Mutual Insurance Company, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP and pursuant to the applicable Pennsylvania Rules of Civil Procedure, requests that Defendantss produce the following documents either in person or via mail within thirty (30) days of receipt herein. Such documents shall include the following:

DEFINITIONS

Unless the context clearly requires otherwise, the following definitions shall apply.

The term "document" means without limitation:

a. All written or printed material of any kind, including the original and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, but not limited to, correspondence, memoranda, e-mail, notes, blue-prints, diaries, statistics, letters, telegrams, minutes, agendas, expense accounts, contracts, reports, studies, checks,

statements, receipts, returns, summaries, pamphlets, notations of any sort (including notes of telephone conversations or meetings), invoices and all drafts, modifications and changes or amendments to any of the foregoing;

b. All graphic and manual records or representations of any kind, including, but not limited to, photographs, charts, graphs and records;

c. All electronic, mechanical or recorded records or representations of any kind, including, but not limited to, cassettes, computer software, e-mail and printouts and tape recordings; and

d. Any other document or thing, as set forth in the Pennsylvania Rules of Civil Procedure.

2. The conjunctions "and" and "or" shall be individually interpreted in every instance as meaning "and/or" and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

3. A "document" or "communication" refers to a given subject matter where that document or communication constitutes, embodies, comprises, reflects, identifies, states, deals with, comments on or responds to, describes, analyzes, contains information concerning, or is in any way pertinent to the subject matter, including, but not limited to, documents concerning the presentation of other documents.

4. Whenever appropriate in this request, the singular form of a word should be interpreted as plural and vice versa.

5. The word "person(s)" means individuals and entities, including, but not limited to, sole proprietorships, firms, associations, companies, partnerships, joint ventures, corporations, trusts, estates and any other legal or business or governmental entity.

6. The word "identify" when used in conjunction with an individual means to state that individual's full name, last known home address, last known home and business telephone numbers, present or last known business affiliations or employer(s), business address, job title, exact and/or approximate date and place of death, if deceased.

7. The word "identify" with respect to a person other than an individual means to state its name, address and telephone number and the name of the principal individuals with knowledge of the subject matter of these requests.

8. The word "identify" when used with respect to a document or documents means to state its custodian, location and general description of the document or documents, including the specification of (1) the nature or type of the document (e.g. letter, memorandum, etc.); (2) the date or the document, (3) its general subject matter; (4) the author and (5) the title, file number or other designation thereof.

9. The term "relating to" means consisting of, referring to, reflecting or being in any way logically or factually connected with the matter discussed.

10. The term "Plaintiff" refers to Utica Mutual Insurance Company, its agents and representatives, including attorneys.

11. The term you and/or "Defendants" refers to Hamilton Brothers Coal, Inc., Robert E. Hamilton, an individual, and James E. Hamilton, Jr., an individual.

INSTRUCTIONS

1. These requests shall be continuing in nature and supplemental answers shall be required promptly if you, directly or indirectly, obtain further or different information from the time answers to these requests are served.

2. If you claim privilege as a ground for not responding to any request, in whole or in part, describe the factual and legal basis for your claim in sufficient detail so as to permit the court to adjudicate the validity of the claim. Also identify by date, author, and address each document and the subject matter contained therein subject to the claimed privilege. Identify to whom copies were distributed and to whom such claim of privilege relates.

3. If you claim that any document or tangible thing requested to be produced herein was in existence at one time but has been lost, discarded or destroyed, identify such document or thing as completely as possible, including an explanation of what type of document or thing it was; when and how it was lost or destroyed; why it was disposed of or destroyed; and who knows its contents.

4. In responding to these requests, you are required to furnish all information known or available to you, regardless of whether such information is directly in your possession or that of your representatives, attorneys, or experts, as well as their respective agents, employees or representatives.

5. If any of these requests cannot be answered fully and completely, you shall answer to the extent possible, specifying the reasons for your inability to answer the remainder and stating the substance of your knowledge, information or belief concerning the subject matter of the unanswered portion.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. A copy of the Corporate Book for Hamilton Brothers Coal, Inc., along with any other corporation formation documents concerning Hamilton Brother's Coal, Inc.

2. Any and all correspondence between Defendants and the Plaintiff.

3. Any and all documents used or referred to in order to assist with the preparation of your responses to Interrogatories directed to Defendants.

4. Any and all documents referenced in your response to the Interrogatories directed to Defendants.

5. Any or all resumes or curriculum vitae of the expert(s) you may call or expect to call as an expert witness at the time of trial.

6. Any and all documents which you may, or expect to, introduce at the time of trial.

7. Any and all exhibits which you plan to introduce at the time of trial.

8. Any and all documents which you have supplied to any consultant as they relate to this claim.

9. Any and all documents which you have supplied to any expert as a result of this claim.

10. Any and all documents related to the sale of Hamilton Brother Coal, Inc. to Fred Kozemchak.

11. Any and all correspondence between Fred Kozemchak and the Defendants.

12. Copies of any and all bonds taken out by the Defendants related to Hamilton Brothers Coal, Inc.

13. Any and all correspondence between Hamilton Brothers Coal, Inc. and the Pennsylvania Dept. of Environmental Protection.

14. Any and all correspondence between the Defendants and the Pennsylvania Dept. of Environmental Protection.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON, LLP

By: Matthew D. Gailey

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Plaintiff's First Request for Production of Documents** was served on the following by first class mail, postage pre-paid, this 13 day of July, 2007:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Counsel for Defendants

Matthew D. Gailey

Matthew D. Gailey, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion to Compel Discovery Responses was served on the following by first class mail, postage pre-paid, this 24 day of September, 2007:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Matthew D. Gailey

Matthew D. Gailey, Esquire
Attorney for Plaintiff

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

CIVIL ACTION

No. 03 – 798 – CD

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

ORDER OF COURT

AND NOW, to wit, this 10 day of October, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants provide answers to all of Plaintiff's discovery requests within ~~ten~~ twenty 20 PJA (~~10~~) days of the date of this Order. The Plaintiff's Motion to Compel Discovery Requests is hereby GRANTED.

J.

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

OCT 10 2007

Attest.

William L. Prothonotary/ Clerk of Courts

EXHIBIT

tabbies

B

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion for Sanctions was served on the following by first class mail, postage pre-paid, this 31 day of October, 2007:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Matthew D. Gailey

Matthew D. Gailey, Esquire
Attorney for Plaintiff

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs. HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants.	CIVIL ACTION No. 03 – 798 - CD **SCHEDULING ORDER** Filed on behalf of plaintiff: UTICA MUTUAL INSURANCE COMPANY Counsel of record for this party: Paul K. Vey, Esquire Pa. I. D. #30824 Matthew D. Gailey, Esquire Pa. I. D. #90920 PIETRAGALLO, BOSICK & GORDON, LLP Firm I.D. #834 38th Floor, One Oxford Centre Pittsburgh, PA 15219 (412) 263-2000

FILED 1CC
NOV 05 2007 Atty Gailey
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

SCHEDULING ORDER

AND NOW, this PSA 25th day of November, 2007, oral argument on the above Plaintiff's Motion for Sanctions is scheduled before the undersigned in Courtroom No. 1 on December 3, 2007 at 11:00 A.m.

By the Court:

J.

ATTEST:

Prothonotary

Respectfully submitted,

PIETRAGALLO BOSICK & GORDON LLP

By: Matthew D. Gailey

Paul K. Vey, Esquire
Matthew D. Gailey, Esquire
Attorneys for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Scheduling Order was served on the following by first class mail, postage pre-paid, this 31st day of October, 2007:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

Matthew D. Gailey

Matthew D. Gailey, Esquire
Attorney for Plaintiff

FILED

NOV 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/5/07

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff V. HAMILTON BROTHERS COAL, INC., A Pennsylvania Corporation, ROBERT E. HAMILTON,, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	NO. 2003-798-CD Type of Document: Answer to Request for Production of Documents Certificate of Service Filed by: Ronald L. Collins, Esquire Sobel & Collins 218 South Second Street Clearfield, PA. 16830 Attorney I.D. 36744 (814) 765-5552 (814) 765-6210

FILED NO CC
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NOV 07 2007
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
VS.	:	
HAMILTON BROTHERS COAL, INC., ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, and individual, Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within document was served this 5th day of November, 2007, upon the following by U.S. Mail Express, postage prepaid to:

Matthew D. Gailey, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA. 15219

Respectfully submitted:

Ronald L. Collins, Esquire
Attorney for Defendant

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 2003-798-CD
V.	:	Type of Document: Answer to First Set of Interrogatories Certificate of Service
HAMILTON BROTHERS COAL, INC., A Pennsylvania Corporation, ROBERT E. HAMILTON,, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	Filed by: Ronald L. Collins, Esquire Sobel & Collins 218 South Second Street Clearfield, PA. 16830 Attorney I.D. 36744 (814) 765-5552 (814) 765-6210

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William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
VS.	:	
HAMILTON BROTHERS COAL, INC., ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, and individual, Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within document was served this 5th day of November, 2007, upon the following by U.S. Mail Express, postage prepaid to:

Matthew D. Gailey, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA. 15219

Respectfully submitted:

Ronald L. Collins, Esquire
Attorney for Defendant

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 2003-798-CD
V.	:	Type of Document: Answer to Request for Admissions Certificate of Service
HAMILTON BROTHERS COAL, INC., A Pennsylvania Corporation, ROBERT E. HAMILTON,, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	Filed by: Ronald L. Collins, Esquire Sobel & Collins 218 South Second Street Clearfield, PA. 16830 Attorney I.D. 36744 (814) 765-5552 (814) 765-6210

FILED NO CC
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NOV 07 2007
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL, INC., ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, and individual, Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within document was served this 5th day of November, 2007, upon the following by U.S. Mail Express, postage prepaid to:

Matthew D. Gailey, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA. 15219

Respectfully submitted,

Ronald L. Collins, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPAN
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

MOTION FOR SUMMARY JUDGMENT

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED NO CC
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

CIVIL ACTION

No. 03 – 798 – CD

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

MOTION FOR SUMMARY JUDGMENT

AND NOW, comes Plaintiff, Utica Mutual Insurance Company ("Utica Mutual"), by and through its attorneys, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and files the following Motion for Summary Judgment, averring as follows:

BACKGROUND

1. Plaintiff, Utica Mutual Insurance Company, (hereinafter "Utica") is a New York corporation licensed to do business in Pennsylvania with its principal place of business at 180 Genessee Street, New Hartford, New York, 13413.

2. Defendant, Hamilton Brothers Coal, Inc., is a Pennsylvania corporation with its principal place of business at R.D. Box 184, Coalport, Pennsylvania 16627.

3. Defendants, Robert E. Hamilton and Anna Marie Hamilton are individuals with a last known address of R.D. No. 1, Box No. 16, Irvona, Pennsylvania 16656.

4. Defendants, James E. Hamilton and Ethel M. Hamilton are individuals with a last known address of Box 134, R.D. #1, Coalport, Pennsylvania, 16627.

5. Plaintiff Utica is in the business of issuing surety bonds for surface mining operations in Pennsylvania.

6. At all times relevant hereto, Defendants conducted surface mining activities in Beccaria Township, Clearfield County, Pennsylvania pursuant to Commonwealth of Pennsylvania Department of Environmental Protection Permit Nos. 17880122, 17910122 and 17930116.

7. In connection with the execution of these contracts, Defendants were required to post surety bonds.

8. Pursuant to that requirement, Defendants contacted Plaintiff, Utica, which in turn issued surety bonds SU1524284, SU1545137, SU1554222, SU1635674, SU1700538, SU1700550, SU1366516, SU1635678, SU44373, SU44374 and SU44375 to them for permit numbers 17880122, 17910122 and 17930116.

9. The Surety Bond Agreement was executed by the Defendants, including Robert Hamilton, to secure assignment of the life insurance agreement to protect Utica from loss. A copy of Robert Hamilton's Surety Bond Agreement is attached and made a part hereof as Exhibit "A".

10. The Surety Bond Agreement was executed by the Defendants, including James Hamilton, to secure assignment of the life insurance agreement to protect Utica from loss. A copy of James Hamilton's Surety Bond Agreement is attached and made a part hereof as Exhibit "B".

11. The Defendants all entered into an General Agreement of Indemnity with Utica Mutual in which Defendants individually agreed to indemnify Plaintiff for any losses sustained by the Plaintiff with regard to the surety bonds issued, including attorney's fees and costs. The

General Agreement of Indemnity was executed by Robert, James, Ethel and Anne Marie Hamilton. A copy of the General Agreement of Indemnity is attached hereto and made a part hereof as Exhibit "C".

12. As collateral for the Surety Bond Agreement, Defendant Robert E. Hamilton executed the assignment of the cash surrender value of a life insurance policy which was previously purchased from Plaintiff. A copy of the letter regarding the assignment of the cash surrender value of the Life Insurance Policy is attached hereto and made a part hereof as Exhibit "D".

13. As collateral for the Surety Bond Agreement, Defendant James E. Hamilton, Jr. executed the assignment of the cash surrender value of a life insurance policy which was previously purchased from Plaintiff. A copy of the letter regarding the assignment of the cash surrender value of the Life Insurance Policy is attached hereto and made a part hereof as Exhibit "E".

14. After Defendants obtained contracts from landowners to mine, the Defendants commenced mining on permit numbers 17880122, 17910122 and 17930116. Utica Mutual subsequently learned that the Defendants were defaulting on their obligations under all three permits.

15. Eventually, the Pennsylvania Department of Environmental Protection (the "DEP") forfeited the bonds, forcing the Plaintiff to pay the DEP pursuant to their statutory obligations.

16. Defendants owe Plaintiff Utica Mutual Insurance Company $155,458.09 plus interest for costs associated with Plaintiff Utica's payment to the DEP as of the date of this filing.

17. Defendants failure to pay the Plaintiff $155,458.09, exclusive of ongoing costs, Plaintiff's attorney's fees and expenses, is a material breach of the General Agreement of Indemnity entered into by Plaintiff and Defendants.

18. Plaintiff Utica Mutual made demand for payment pursuant to the General Agreement of Indemnity.

19. The Defendants failed to pay pursuant to the General Agreement of Indemnity.

20. Therefore, Plaintiff, Utica Mutual, applied the assignment of the Defendants' life insurance policies pursuant to Utica's rights in the Surety Bond Agreement.

21. During the course of discovery, Plaintiff conducted depositions of the Defendants on May 16, 2008.

22. In his deposition, Robert E. Hamilton stated that he executed the Indemnification Contract as President. See Deposition Transcript of Robert E. Hamilton, p. 12, lines 8-17 attached hereto as Exhibit "F".

23. In his deposition, Robert E. Hamilton stated that he executed the Surety Bond Agreement. See Deposition Transcript of Robert E. Hamilton, p. 15, lines 3-15, attached hereto as Exhibit "G".

24. In his deposition, Defendant Robert E. Hamilton admitted that he signed the assignment of his life insurance policy as collateral and the proceeds were given to Utica Mutual. See Deposition Transcript of Robert E. Hamilton, p. 77, line 19 through p. 78, line 25, attached hereto as Exhibit "F".

25. In his deposition, James E. Hamilton, Jr. stated that he signed the assignment of life insurance policy as collateral. See Deposition Transcript of James E. Hamilton, Jr., p. 13, lines 5-14, attached hereto as Exhibit "G".

26. Defendants never entered into any agreement absolving them from the responsibility that they assumed under the General Agreement of Indemnity. Robert E. Hamilton testified that he did not enter into a novation agreement with Utica National as follows:

> Q. Earlier I asked you a question, if you knew what a novation was, and you said you didn't.
>
> Let me ask you this way: Did you ever sign a contract with Utica National and Fred Kuzemchak where they were all parties to one contract?
>
> A. Not that I'm aware.

See Exhibit "F", Deposition Transcript of Robert E. Hamilton, p. 75, l. 23 through p. 76, l. 5.

SUMMARY JUDGMENT STANDARD

A. Standard for Summary Judgment

1. Pennsylvania Rule of Civil Procedure 1035.2 provides:

> After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law.
>
> (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report
>
> ****

27. Summary judgment is appropriate where the pleadings, discovery, admissions of record and affidavits on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. Nationwide Mutual Insurance Company v. Nixon, 453 Pa. Super. 70, 682 A.2d 1310, 1313 (1986).

28. The record and any inferences which can be drawn must be viewed in the light most favorable to the non-moving party and any doubt must be resolved against the moving party. Frain v. Keystone Insurance Company, 433 Pa. Super. 462, 640 A.2d 1352, 1354 (1994).

29. While the moving party has the burden of proving that a genuine issue of material fact does not exist, the non-moving party may not rest upon averments contained in its pleadings. Spirer v. Freeland, 434 Pa. Super. 341, 643 A.2d 673 (1994).

30. Rather, the non-moving party must present sufficient evidence on an issue essential to his or her case on which he or she bears the burden of proof such that a jury could return a verdict in his or her favor. Ertel v. The Patriot-News Company, 544 Pa. 93, 674 A.2d 1038, 1042 (1996).

31. If the non-moving party fails to satisfy this burden, a genuine issue of material fact does not exist and the moving party is entitled to judgment as a matter of law. Id.

ARGUMENT

A. Defendants' Liability Under General Agreement of Indemnity

32. In short, there is no general issue of material fact that exists in this matter given the evidence in the record at this time.

33. The Defendants have agreed that they both signed the General Agreement of Indemnity which stated that the Plaintiff would be indemnified for any costs associated with the surety bonds that the Plaintiff had to pay, including attorney's fees and ongoing expenses.

34. Pursuant to the Plaintiff's statutory obligations, they compensated the Department of Environmental Protection due to the defaults that took place on the areas mined by the Defendants' company.

35. Pursuant to Paragraph 2 of the General Agreement of Indemnity, which the Defendants admittedly signed, it is clear that the Defendants, Robert E. and James E. Hamilton, Jr., are individually bound by the general agreement of indemnity:

> The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of, such bonds, or any renewals or continuations thereof or substitutes therefore, including fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligations of any of the Indemnitors under this Agreement. In the event of payments by the Company, the Indemnitors agree to accept the voucher or other evidence of such payments as prima facie evidence of the propriety thereof, and of the Indemnitors' liability therefore to the Company.

36. Defendants have not disputed that they entered into this General Agreement of Indemnity or that they signed this Agreement. Furthermore, the language stated above from Paragraph 2 of the General Agreement of Indemnity makes it abundantly clear that the Plaintiff is entitled to the relief that it is seeking.

37. In addition, no effort was ever made by the Defendants to relieve themselves of their obligations under the General Agreement of Indemnity at any point. As shown above, the Defendants never entered into a novation relieving themselves of liability pursuant to these agreements, nor did they inform Plaintiff of their desire to be relieved from the obligations contained therein at any point.

B. Defendants' Liability Pursuant to the Surety Bond Agreements and Defendants' Related Counterclaim

38. Defendants also admit entering into Surety Bond Agreements with Utica Mutual Insurance Company on October 27, 1989. The Surety Bond Agreements detailed the nature of

the obligations of both Utica Mutual and the Defendants related to any dealing with these bonds, which were a prerequisite to conducting mining activities in the Commonwealth of Pennsylvania.

39. The Surety Bond Agreements had several important paragraphs which are dispositive for the issues at hand. First, Paragraph 3 of the Surety Bond Agreement maintains that this agreement will be in effect until terminated by written consent of the Plaintiff, stating as follows:

> This Agreement and the assignment and conveyance herein described shall remain in full force and effect until terminated by written consent of Utica or until all of Utica's liability in connection with bonds executed for or on behalf of any principal, shall have been finally and fully terminated, to the satisfaction of Utica.

40. Furthermore, Utica Mutual never engaged in any written termination of the Surety Bond Agreement or stated that their liability connection with the bonds executed on behalf of the Defendants had ever been fully terminated or satisfied to the satisfaction of Plaintiff. As such, the Surety Bond Agreement remains in effect.

41. Additionally, Paragraph 7 of the Surety Bond Agreement makes it clear that the procedure for terminating a Surety Bond Agreement is as follows:

> At such time as Utica, in its sole discretion, considers that it no longer has any present or potential liability in connection with the bonds executed for or on behalf of any principal. Utica will consent to the termination of the Agreement and of the assignment and conveyance herein described, and will deliver to owner the unused portion of any funds that may have been received under the terms of the Agreement and the Policy.

42. At no time did the Defendants seek out termination of the Surety Bond Agreement or the return of their collateral, which was the cash surrender value of their respective life insurance policies. As such, the Surety Bond Agreement remains in effect today and the

surrender of the cash of the Defendants' life insurance policies was proper, thereby defeating Defendants' counterclaim, for the improper surrender of the Defendants' life insurance policies.

43. The Surety Bond Agreement, which was freely executed by both Defendants, also detailed the manner in which the cash surrender value of the life insurance policies would be acquired by the Plaintiff in the event of default. Paragraph 1 of the Surety Bond Agreement states as follows:

> Each and all of the parties hereto shall execute whatever assignments, or other documents of any kind whatever, may be necessary to assign and convey to Utica and to maintain in Utica the control and security interest in said policy, to the end that Utica shall at all times have the right and the ability to surrender the policy and receive the surrender value, equivalent to the actual cash value of the policy, including the amount of outstanding policy loan(s) at time of death of the insured, and such other rights and abilities as are set out in said assignments and/or other documents.

44. Pursuant to Paragraph 1 of the Surety Bond Agreement, the Plaintiff properly executed its right to the cash surrender value of the policy once it compensated the Department of Environmental Protection due to the Defendants' default. This surrender took place in December of 1998. Since the Surety Bond Agreement has not been terminated and is still in effect today, the surrender was proper and the Counterclaim filed by the Defendants is not warranted and should be defeated.

45. Additionally, in various pleadings and in their New Matter, Defendants have maintained that they informed Evergreen Insurance Associates of the sale of their business prior to any defaults which were the cause of Plaintiff Utica Mutual's payments to the Pennsylvania Department of Environmental Protection for mine reclamation work. The Defendants allege that this notice was sufficient as Evergreen was the agent of the Plaintiff.

46. The Defendants' contention that Evergreen was the agent of Plaintiff, Utica Mutual, is without merit as there is no evidence in the record that Evergreen Insurance was an agent of the Plaintiff at any point. As such, there is no dispute that the Surety Bond Agreement was not terminated.

47. Furthermore, no effort was ever made by the Defendants to relieve themselves of their obligations under the Surety Bond Agreement at any point. As shown above, the Defendants never entered into a novation relieving themselves of liability pursuant to these agreements, nor did they inform Plaintiff of their desire to be relieved from the obligations contained therein at any point.

48. Based on the preceding paragraphs, there is no genuine issue of any material fact that the Defendants owe the Plaintiff its costs plus fees and interest pursuant to the Defendants' contractual obligations under the General Agreement of Indemnity and Surety Agreement, and the Defendant's counterclaim should be defeated.

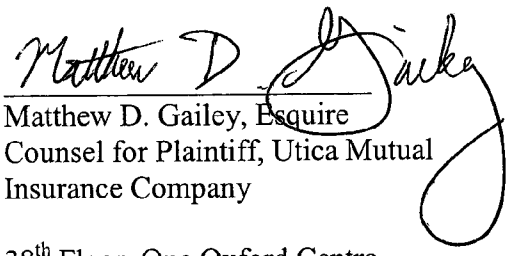
CONCLUSION

49. Pursuant to the proceeding paragraphs, Defendants are legally obligated through a contractual obligation to indemnify the Plaintiff in the amounts identified in the Second Amended Complaint plus subsequent attorney fees and interest.

WHEREFORE, Plaintiff requests this Honorable Court to enter an Order granting Plaintiff's Motion for Summary Judgment and denying Defendants' Counterclaim.

Respectfully submitted,

PIETRAGALLO GORDON
ALFANO BOSICK & RASPANTI,
LLP



Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual
Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff,	CIVIL ACTION No. 03 – 798 – CD

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2008, it is hereby ORDERED, ADJUDGED and DECREED the Plaintiff's Motion for Summary Judgment is GRANTED and Defendants' Counterclaim is DENIED.

_____ J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Plaintiff's **Motion for Summary Judgment** was served upon the following by first class mail, postage pre-paid, this ~~3rd~~ 12th day of December, 2008:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

By: Matthew D. Gailey
Matthew D. Gailey, Esquire
Attorney for Plaintiff

UTICA NATIONAL LIFE INSURANCE COMPANY

SURETY BOND AGREEMENT

1989

OCT 30 1989

THIS AGREEMENT MADE AS OF THE 27th DAY OF OCTOBER, 19 89 BY AND AMONG

Utica Mutual Insurance Company
(HEREINAFTER REFERRED TO AS OWNER) UTICA MUTUAL INSURANCE COMPANY (UTICA).

AND Robert Hamilton
(INSURED), WITNESSETH THAT:

WHEREAS, UTICA HAS EXECUTED IN THE PAST AND MAY IN THE FUTURE EXECUTE SURETY BONDS FOR OR ON BEHALF OF Hamilton Bros. Coal, Inc. AND/OR ANY FIRMS, PARTNERSHIPS, OR CORPORATIONS IN WHICH Robert Hamilton NOW HAS OR MAY HEREINAFTER ACQUIRE ANY INTEREST OF ANY KIND, SAID ENTITIES TO BE HERE SOMETIMES REFERRED TO AS PRINCIPALS: AND

WHEREAS, OWNER AND THE INSURED HAVE AGREED TO FURNISH UTICA SECURITY IN THE FORM OF AN ABSOLUTE ASSIGNMENT OF CASH VALUES HEREINAFTER DESCRIBED, TO PROTECT UTICA FROM LOSS, COST AND EXPENSE IN CONNECTION WITH SAID SURETY BONDS, AND

WHEREAS, IT IS THE INTENTION OF THE PARTIES HERETO THAT SAID ABSOLUTE ASSIGNMENT OF CASH VALUE SHALL BE FROM A LIFE INSURANCE POLICY ON THE LIFE OF INSURED, TO BE ASSIGNED AND CONVEYED TO UTICA AS BELOW DESCRIBED.

EXHIBIT A

NOW, THEREFORE, THE PARTIES HERETO AGREE TO AS FOLLOWS:

1) EACH AND ALL OF THE PARTIES HERETO SHALL EXECUTE WHATEVER ASSIGNMENTS, OR OTHER DOCUMENTS OF ANY KIND WHATEVER, MAY BE NECESSARY TO ASSIGN AND CONVEY TO UTICA AND TO MAINTAIN IN UTICA THE CONTROL AND SECURITY INTEREST IN SAID POLICY, TO THE END THAT UTICA SHALL AT ALL TIMES HAVE THE RIGHT AND THE ABILITY TO SURRENDER THE POLICY AND RECEIVE THE SURRENDER VALUE, AND THE RIGHT AND ABILITY TO RECEIVE AN AMOUNT OF THE DEATH BENEFIT EQUIVALENT TO THE ACTUAL CASH VALUE OF THE POLICY, INCLUDING THE AMOUNT OF OUTSTANDING POLICY LOAN(S) AT TIME OF DEATH OF THE INSURED, AND SUCH OTHER RIGHTS AND ABILITIES AS ARE SET OUT IN SAID ASSIGNMENTS AND/OR OTHER DOCUMENTS.

2) REGARDLESS OF ANYTHING TO THE CONTRARY, THE INTEREST OF UTICA IN SAID POLICY SHALL BE A SECURITY INTEREST AND SHALL EXIST SOLELY TO THE EXTENT NECESSARY TO PROTECT AND SAVE IT HARMLESS AND FREE OF LOSS, COST AND EXPENSE IN CONNECTION WITH THE EXECUTION OF SURETY BONDS AND THE COLLECTION OF PREMIUMS THEREFORE, FOR OR ON BEHALF OF ANY PRINCIPAL, WHETHER SUCH BONDS HAVE BEEN EXECUTED PRIOR TO OR AFTER THE DATE OF THE AGREEMENT.

3) THIS AGREEMENT AND THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL TERMINATED BY WRITTEN CONSENT OF UTICA OR UNTIL ALL OF UTICA'S LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, SHALL HAVE BEEN FINALLY AND FULLY TERMINATED, TO THE SATISFACTION OF UTICA.

4) IF UTICA SHALL EVER RECEIVE ANY FUNDS FROM SAID POLICY AS A RESULT OF THE HEREIN DESCRIBED ASSIGNMENT AND CONVEYANCE, UTICA MAY RETAIN SUCH FUNDS FOR THE PURPOSES DESCRIBED IN PARAGRAPH 2 ABOVE UNTIL THEY ARE VOLUNTARILY RELEASED BY UTICA OR UNTIL ALL OF UTICA'S LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL SHALL BE FINALLY AND FULLY TERMINATED, TO THE SATISFACTION OF UTICA SHALL HAVE NO DUTY TO INVEST SAID FUNDS OR TO TAKE ANY WHATEVER TO EARN ANY INCOME ON SAID FUNDS AND SHALL NEVER BE TO ACCOUNT FOR MORE THAN THE ACTUAL MONIES RECEIVED, BUT DOES

R. HAMILTON DEPOSITION EXHIBIT 3

TO MAKE ITS BEST EFFORT TO PLACE ACTUAL MONIES RECEIVED IN AN INCOME PRODUCING FUND MANAGED OR CONTROLLED BY UTICA NATIONAL LIFE OR ONE OF ITS AFFILIATES OR SUBSIDIARIES WITH EARNINGS ACCRUING TO BENEFIT OF OWNER.

5) UTICA MAY WITHDRAW ANY OR ALL OF THE CONTENTS OF THE CASH VALUE WITHOUT THE CONSENT OF OWNER UPON SUBMISSION OF A WRITTEN CERTIFICATION SIGNED BY AN AUTHORIZED OFFICER STATING THAT THEY HAVE INCURRED LIABILITY BY REASON OF EXECUTING BONDS OR UNDERTAKINGS ON BEHALF OF ANY PRINCIPAL. UTICA AGREES TO COPY OWNER ON ANY SUCH CERTIFICATION.

6) THIS AGREEMENT AND THE SECURITY PROVIDED SHALL BE FOR THE BENEFIT OF UTICA, ITS CO-SURETIES, AND ITS REINSURERS, AND ANY OTHER SURETY COMPANIES UTICA MAY REQUEST OR CAUSE TO EXECUTE BONDS FOR OR ON BEHALF OF ANY PRINCIPAL.

7) AT SUCH TIME AS UTICA, IN ITS SOLE DISCRETION, CONSIDERS THAT IT NO LONGER HAS ANY PRESENT OR POTENTIAL LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, UTICA WILL CONSENT TO THE TERMINATION OF THE AGREEMENT AND OF THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED, AND WILL DELIVER TO OWNER THE UNUSED PORTION OF ANY FUNDS THAT MAY HAVE BEEN RECEIVED UNDER THE TERMS OF THE AGREEMENT AND THE POLICY.

8) THIS AGREEMENT SHALL BE CUMULATIVE WITH, AND SHALL NOT LIMIT OR DIMINISH THE DUTIES OR RESPONSIBILITIES OF OWNER OR INSURED UNDER ANY OTHER DOCUMENT OR AGREEMENT ENTERED INTO FOR THE BENEFIT OF UTICA, NOR SHALL THIS AGREEMENT CONFLICT WITH OR DIMINISH ANY OTHER RIGHTS UTICA MAY EVER HAVE BY WAY OF SUBROGATED RIGHTS AGAINST OTHER PARTIES OR BY WAY OF OTHER SECURITY ARRANGEMENTS.

9) THE LIFE INSURANCE POLICY HEREINABOVE REFERRED TO SHALL BE ISSUED BY UTICA NATIONAL LIFE AND SHALL BEAR NUMBER 000021058A .

10) OWNER MAY AT ANYTIME SUBSTITUTE OTHER SECURITY FOR THE INTEREST IN THE HEREIN DESCRIBED LIFE INSURANCE POLICY PROVIDED THAT UTICA FIRST CONSENTS IN WRITING. SUCH CONSENT WILL NOT BE UNREASONABLY WITHHELD, BUT UTICA MUST FIRST BE SATISFIED THAT THE NEW SECURITY REPRESENTS NO DIMINUTION OF THE PROTECTION AFFORDED TO UTICA.

11) TO THE EXTENT THAT THE CASH VALUE OF SAID LIFE INSURANCE POLICY MAY EXCEED THE AGGREGATE AMOUNT OF UTICA LIABILITY UNDER ITS BONDS OR UNDERTAKING (OR SUCH OTHER AMOUNT AS OWNER AND UTICA MAY AGREE ON) SUCH EXCESS SHALL BE MADE AVAILABLE TO OWNER FOR ITS USE.

SIGNED THIS 27th DAY OF October 19 89

UTICA MUTUAL INSURANCE COMPANY

BY: [signature]

(OWNER) HAMILTON BROS COAL, INC.

BY: X James E. Hamilton Jr. Secretary

(INSURED) ROBERT E. HAMILTON

BY: X Robert E. Hamilton President

UTICA NATIONAL LIFE INSURANCE COMPANY

SURETY BOND AGREEMENT

THIS AGREEMENT MADE AS OF THE 27th DAY OF OCTOBER, 19 89 BY AND AMONG

Utica Mutual Insurance Company
(HEREINAFTER REFERRED TO AS OWNER) UTICA MUTUAL INSURANCE COMPANY (UTICA).

AND James E. Hamilton, Jr.
(INSURED), WITNESSETH THAT:

WHEREAS, UTICA HAS EXECUTED IN THE PAST AND MAY IN THE FUTURE EXECUTE SURETY BONDS FOR OR ON BEHALF OF Hamilton Bros. Coal, Inc. AND/OR ANY FIRMS, PARTNERSHIPS, OR CORPORATIONS IN WHICH James E. Hamilton, Jr. NOW HAS OR MAY HEREINAFTER ACQUIRE ANY INTEREST OF ANY KIND, SAID ENTITIES TO BE HERE SOMETIMES REFERRED TO AS PRINCIPALS: AND

WHEREAS, OWNER AND THE INSURED HAVE AGREED TO FURNISH UTICA SECURITY IN THE FORM OF AN ABSOLUTE ASSIGNMENT OF CASH VALUES HEREINAFTER DESCRIBED, TO PROTECT UTICA FROM LOSS, COST AND EXPENSE IN CONNECTION WITH SAID SURETY BONDS, AND

WHEREAS, IT IS THE INTENTION OF THE PARTIES HERETO THAT SAID ABSOLUTE ASSIGNMENT OF CASH VALUE SHALL BE FROM A LIFE INSURANCE POLICY ON THE LIFE OF INSURED, TO BE ASSIGNED AND CONVEYED TO UTICA AS BELOW DESCRIBED.

EXHIBIT
tabbies
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NOW, THEREFORE, THE PARTIES HERETO AGREE TO AS FOLLOWS:

1) EACH AND ALL OF THE PARTIES HERETO SHALL EXECUTE WHATEVER ASSIGNMENTS, OR OTHER DOCUMENTS OF ANY KIND WHATEVER, MAY BE NECESSARY TO ASSIGN AND CONVEY TO UTICA AND TO MAINTAIN IN UTICA THE CONTROL AND SECURITY INTEREST IN SAID POLICY, TO THE END THAT UTICA SHALL AT ALL TIMES HAVE THE RIGHT AND THE ABILITY TO SURRENDER THE POLICY AND RECEIVE THE SURRENDER VALUE, AND THE RIGHT AND ABILITY TO RECEIVE AN AMOUNT OF THE DEATH BENEFIT EQUIVALENT TO THE ACTUAL CASH VALUE OF THE POLICY, INCLUDING THE AMOUNT OF OUTSTANDING POLICY LOAN(S) AT TIME OF DEATH OF THE INSURED, AND SUCH OTHER RIGHTS AND ABILITIES AS ARE SET OUT IN SAID ASSIGNMENTS AND/OR OTHER DOCUMENTS.

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3) THIS AGREEMENT AND THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL TERMINATED BY WRITTEN CONSENT OF UTICA OR UNTIL ALL OF UTICA'S LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, SHALL HAVE BEEN FINALLY AND FULLY TERMINATED, TO THE SATISFACTION OF UTICA.

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R. HAMILTON
DEPOSITION EXHIBIT
2

TO MAKE ITS BEST EFFORT TO PLACE ACTUAL MONIES RECEIVED IN AN INCOME PRODUCING FUND MANAGED OR CONTROLLED BY UTICA NATIONAL LIFE OR ONE OF ITS AFFILIATES OR SUBSIDIARIES WITH EARNINGS ACCRUING TO BENEFIT OF OWNER.

5) UTICA MAY WITHDRAW ANY OR ALL OF THE CONTENTS OF THE CASH VALUE WITHOUT THE CONSENT OF OWNER UPON SUBMISSION OF A WRITTEN CERTIFICATION SIGNED BY AN AUTHORIZED OFFICER STATING THAT THEY HAVE INCURRED LIABILITY BY REASON OF EXECUTING BONDS OR UNDERTAKINGS ON BEHALF OF ANY PRINCIPAL. UTICA AGREES TO COPY OWNER ON ANY SUCH CERTIFICATION.

6) THIS AGREEMENT AND THE SECURITY PROVIDED SHALL BE FOR THE BENEFIT OF UTICA, ITS CO-SURETIES, AND ITS REINSURERS, AND ANY OTHER SURETY COMPANIES UTICA MAY REQUEST OR CAUSE TO EXECUTE BONDS FOR OR ON BEHALF OF ANY PRINCIPAL.

7) AT SUCH TIME AS UTICA, IN ITS SOLE DISCRETION, CONSIDERS THAT IT NO LONGER HAS ANY PRESENT OR POTENTIAL LIABILITY IN CONNECTION WITH BONDS EXECUTED FOR OR ON BEHALF OF ANY PRINCIPAL, UTICA WILL CONSENT TO THE TERMINATION OF THE AGREEMENT AND OF THE ASSIGNMENT AND CONVEYANCE HEREIN DESCRIBED, AND WILL DELIVER TO OWNER THE UNUSED PORTION OF ANY FUNDS THAT MAY HAVE BEEN RECEIVED UNDER THE TERMS OF THE AGREEMENT AND THE POLICY.

8) THIS AGREEMENT SHALL BE CUMULATIVE WITH, AND SHALL NOT LIMIT OR DIMINISH THE DUTIES OR RESPONSIBILITIES OF OWNER OR INSURED UNDER ANY OTHER DOCUMENT OR AGREEMENT ENTERED INTO FOR THE BENEFIT OF UTICA, NOR SHALL THIS AGREEMENT CONFLICT WITH OR DIMINISH ANY OTHER RIGHTS UTICA MAY EVER HAVE BY WAY OF SUBROGATED RIGHTS AGAINST OTHER PARTIES OR BY WAY OF OTHER SECURITY ARRANGEMENTS.

9) THE LIFE INSURANCE POLICY HEREINABOVE REFERRED TO SHALL BE ISSUED BY UTICA NATIONAL LIFE AND SHALL BEAR NUMBER 000021057A.

10) OWNER MAY AT ANYTIME SUBSTITUTE OTHER SECURITY FOR THE INTEREST IN THE HEREIN DESCRIBED LIFE INSURANCE POLICY PROVIDED THAT UTICA FIRST CONSENTS IN WRITING. SUCH CONSENT WILL NOT BE UNREASONABLY WITHHELD, BUT UTICA MUST FIRST BE SATISFIED THAT THE NEW SECURITY REPRESENTS NO DIMINUTION OF THE PROTECTION AFFORDED TO UTICA.

11) TO THE EXTENT THAT THE CASH VALUE OF SAID LIFE INSURANCE POLICY MAY EXCEED THE AGGREGATE AMOUNT OF UTICA LIABILITY UNDER ITS BONDS OR UNDERTAKING (OR SUCH OTHER AMOUNT AS OWNER AND UTICA MAY AGREE ON) SUCH EXCESS SHALL BE MADE AVAILABLE TO OWNER FOR ITS USE.

SIGNED THIS 27th DAY OF OCTOBER 19 89

UTICA MUTUAL INSURANCE COMPANY

BY: [signature]

(OWNER) HAMILTON BROS. CORP, INC.

BY: Robert E Hamilton

(INSURED) JAMES E. HAMILTON JR.

BY: James E Hamilton Jr

HO CLAIMS SERVICE
APR 21 2000

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

PENGAD 800-631-6989
R. Hamilton
DEPOSITION EXHIBIT
1
FEB 5/16/08

GENERAL AGREEMENT OF INDEMNITY

This Agreement entered into by and between the undersigned, herein called the Indemnitors, and the Utica Mutual Insurance Company of New Hartford, New York, herein called the Company, witnesseth:

WHEREAS, in the transaction of business certain bonds, undertakings and other writings obligatory in the nature of a bond have heretofore been, and may hereafter be, required by, for, or on behalf of the Indemnitors or any one or more of the parties included in the designation Indemnitors, and application has been made and will hereafter be made to the Company to execute such bonds, and as a prerequisite to the execution of such bond or bonds, the Company requires complete indemnification.

NOW, THEREFORE, in consideration of the premises, and the payment by the Company of the sum of One ($1.00) Dollar to each of the Indemnitors, receipt whereof is hereby acknowledged, and for other good and valuable considerations, the Indemnitors do, for themselves, their heirs, executors, administrators and assigns, jointly and severally, agree with the Company as follows:

1. The Indemnitors will pay to the Company, at its Home Office in the Town of New Hartford, New York, premiums and charges at the rates, and at the times specified in respect to each such bond in the Company's schedule of rates, which, with any additions or amendments thereto, is by reference made a part hereof, and will continue to pay the same where such premium or charge is annual, until the Company shall be discharged and released from any and all liability and responsibility upon and from each such bond or matters arising therefrom, and until the Indemnitors shall deliver to the Company at its Home Office in New Hartford, New York, competent written evidence satisfactory to the Company of its discharge from all liability on such bond or bonds.

2. The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of, such bonds, or any renewals or continuations thereof or substitutes therefor, including fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. In the event of payments by the Company, the Indemnitors agree to accept the voucher or other evidence of such payments as prima facie evidence of the propriety thereof, and of the Indemnitors' liability therefor to the Company.

3. If the Company shall set up a reserve to cover any claim, suit or judgment under any such bond, the Indemnitors will, immediately upon demand, deposit with the Company a sum of money equal to such reserve, such sum to be held by the Company as collateral security on such bond, and such sum and any other money or property which shall have been, or shall hereafter be, pledged as collateral security on any such bond shall, unless otherwise agreed in writing by the Company, be available, in the discretion of the Company, as collateral security on any other or all bonds coming within the scope of this Agreement.

4. The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability with which the Company may be subsequently charged under any such bond, shall notify the Company thereof in writing at its Home Office in the Town of New Hartford, New York.

5. The Company shall have the exclusive right to determine for itself and the Indemnitors whether any claim or suit brought against the Company or the Principal upon any such bond shall be settled or defended and its decision shall be binding and conclusive upon the Indemnitors.

6. The Company, and its designated agents, shall, at any and all reasonable times, have free access to the books and records of the Indemnitors.

EXHIBIT
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7. If such bond be given in connection with a contract, the Company is hereby authorized, but not required, to consent to any change in the contract or in the plans or specifications relating thereto; to make or guarantee advances or loans for the purpose of the contract without necessity of seeing to the application thereof, it being understood that the amount of all such advances or loans, unless repaid with legal interest by the Contractor to the Company when due, shall be conclusively presumed to be a loss hereunder; in the event the Indemnitors, or any of them, shall fail to pay any premium charge when due; or abandon, forfeit or breach such contract; or breach any bond given in connection therewith; or fail, neglect or refuse to pay for any labor or materials used in the prosecution of such contract; or have proceedings instituted against them, or any of them, alleging that they are insolvent, or for the appointment of a receiver or trustee for the benefit of creditors, whether such Indemnitor(s) are insolvent or not; or have proceedings instituted against them, or any of them, the effect of which may be to deprive any of them of the use of any part of the equipment used in connection with the work under the contract so as to hinder, delay or impede the normal and satisfactory progress of the work, the Company shall have the right, but not the obligation, to take possession of the work under the contract and under any other contract in connection with which the Company has given its bond or bonds within the purview of this General Agreement of Indemnity and, at the expense of the Indemnitors, to complete the contract(s), or cause, or consent, to the completion thereof. The Indemnitors hereby assign, transfer, and set over to the Company (to be effective as of the date of such bond or bonds, but only in the event of a default as aforesaid), all of their rights under the contract(s), including their right, title and interest in and to all subcontracts let in connection therewith; all machinery, plant, equipment, tools and materials which shall be upon the site of the work or elsewhere for the purposes of the contract(s), including all materials ordered for the contract(s), any and all sums due under the contract(s) at the time of such default, or which may thereafter become due, and the Indemnitors hereby authorize the Company to endorse in the name of the payee, and to receive and collect any check, draft, warrant or other instrument made or issued in payment of any such sum, and to disburse the proceeds thereof.

8. That it shall not be necessary for the Company to give the Indemnitors, or any one or more of them, notice of the execution of any such bonds, nor of any fact or information coming to the notice or knowledge of the Company affecting its rights or liabilities, or the rights or liabilities of the Indemnitors under any such bond executed by it, notice of all such being hereby expressly waived.

9. In the event of any claim or demand being made by the Company against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of a bond or bonds, the Company is hereby expressly authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and we hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

10. The Company may decline to execute any Bond applied for without incurring any liability whatever and without impairing the validity of this General Agreement of Indemnity. If the Company shall execute a bid or proposal bond, or any similar undertaking, it may nevertheless decline to execute any and all Bonds that may be required in connection with any award made on the proposal for which the bond or undertaken is given.

11. If the Company procures the execution of such bonds by other companies, or executes such bonds with cosureties, or reinsures any portions of such bonds with reinsuring companies, then all the terms and conditions of this Agreement shall apply and operate for the benefit of such other companies, cosureties and reinsurers as their interest may appear.

12. The liability of the Indemnitors hereunder shall not be affected by the failure of the Principal to sign any such bond, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

13. These covenants herein and also all collateral security, if any, at any time deposited with the Company concerning the said bond or bonds and any other former or subsequent bonds executed for the Indemnitors at their instance shall, at the option of the Company, be available in its behalf and for its benefit as well concerning any bond or undertaking applied for, and also concerning all other former or subsequent bonds and undertakings, executed for the Indemnitors or for others at their request.

14. This Agreement may be terminated the Indemnitors, or any one or more of the ies so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force.

15. Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee.

16. THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF.

17. This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of Hamilton Brothers Coal Inc.

18. IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of 19

HAMILTON BROTHERS COAL INC.

Thomas C Johnson
Witness

Robert E. Hamilton (L. S.)
Robert E. Hamilton, President

Box 157 Irvona Pa
Street or P. O. Box City State

Box 134, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Robert E. Hamilton (L. S.)
Robert E. Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

Anna Marie Hamilton (L. S.)
Anna Marie Hamilton, Individually

Street or P. O. Box City State

R.D. #1, Box #16, Irvona, PA 16656
Street or P. O. Box City State

Thomas C Johnson
Witness

James E. Hamilton Jr (L. S.)
James E. Hamilton, Jr., Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

Thomas C Johnson
Witness

Ethel M. Hamilton (L. S.)
Ethel M. Hamilton, Individually

Street or P. O. Box City State

Box #134, R.D. #1, Coalport, PA 16627
Street or P. O. Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE.

UticaLIFE

FEBRUARY 23, 1999

Box 530
Utica, NY 13503-0530
315-734-2000
1-800-274-1914
Fax: 315-734-2941

HAMILTON BROS COAL INC
RD #1 BOX 140
COALPORT, PA 16627

RE: INSURED: ROBERT E HAMILTON
POLICY #: 000021058A

Dear Policyowner:

Please be advised the above policy's Assignee, Utica Mutual Insurance Company, has exercised its right to cancel this policy and receive the surrender value. A check in the amount of $71,713.85 has been forwarded to them, representing the above referenced policy's surrender value. Therefore, coverage is terminated.

The surrender value was calculated as follows:

Gross Surrender Value	$71,713.85
Less Outstanding Loan (if any)	0.00
Less Surrender Charges (if any)	0.00
Less Federal Withholding (if any)	0.00
Less State Withholding (if any)	0.00
Plus Unprocessed Premium (if any)	0.00
Net Surrender Value	**$71,713.85**

As there was a gain upon distribution of these funds, please be advised that a taxable gain in the amount of $24,213.85 will be reported to the IRS. February 2000 you will receive a IRS Form 1099R for tax reporting purposes. Please complete the enclosed Form W-9 thereby verifying your Tax Identification Number. A return envelope has been enclosed for your convenience.

If you have any questions regarding this transaction, please call our Customer Services Help Line at 1-800-274-1914, extension 2673 between 8:00 a.m. and 4:15 p.m.

EXHIBIT tabbies D

Customer Services

Enclosure

William A. Rohrbach
Staff Attorney

P.O. Box 530, Utica, New York 13503-0530
Telephone (315) 734-2926
FAX (315) 734-2198

CM/RRR - P 567 625 843
& Regular

December 17, 1998

Robert Hamilton
RD #1, Box 16
Coalport, PA 16627

Re: ***Hamilton Bros. Coal Company***
Utica Mutual Life Insurance Policy #21058A

Dear Mr. Hamilton:

Please be advised that in accordance with a recent Cessation Order which the Pennsylvania Department of Environmental Protection has issued with regard to Hamilton Bros. Coal, Utica Mutual, in accordance with paragraph E.2. of the above referenced life insurance policy, intends to exercise its right to the proceeds of said policy.

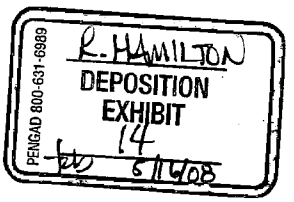
Please contact this office if you have any questions.

Very truly yours,

William A. Rohrbach
Staff Attorney

WAR/nvd
Enc.

cc: Rick Relf - Utica Life



UticaLIFE

FEBRUARY 23, 1999

Box 530
Utica, NY 13503-0530
315-734-2000
1-800-274-1914
Fax: 315-734-2941

HAMILTON BROS COAL INC
RD #1 BOX 140
COALPORT, PA 16627

RE: INSURED: JAMES E HAMILTON JR
POLICY #: 000021057A

Dear Policyowner:

Please be advised the above policy's Assignee, Utica Mutual Insurance Company, has exercised its right to cancel this policy and receive the surrender value. A check in the amount of $66,548.07 has been forwarded to them, representing the above referenced policy's surrender value. Therefore, coverage is terminated.

The surrender value was calculated as follows:

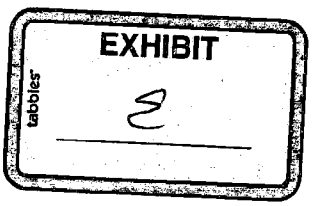
Gross Surrender Value	$66,548.07
Less Outstanding Loan (if any)	0.00
Less Surrender Charges (if any)	0.00
Less Federal Withholding (if any)	0.00
Less State Withholding (if any)	0.00
Plus Unprocessed Premium (if any)	0.00
Net Surrender Value	**$66,548.07**

As there was a gain upon distribution of these funds, please be advised that a taxable gain in the amount of $19,048.07 will be reported to the IRS. February 2000 you will receive a IRS Form 1099R for tax reporting purposes. Please complete the enclosed Form W-9 thereby verifying your Tax Identification Number. A return envelope has been enclosed for your convenience.

If you have any questions regarding this transaction, please call our Customer Services Help Line at 1-800-274-1914, extension 2673 between 8:00 a.m. and 4:15 p.m.

Customer Services

Enclosure



UticaLIFE

FEBRUARY 23, 1999

Box 530
Utica,NY 13503-0530
315-734-2000
1-800-274-1914
Fax: 315-734-2941

HAMILTON BROS COAL INC
RD #1 BOX 140
COALPORT, PA 16627

RE: INSURED: JAMES E HAMILTON JR
POLICY #: 000021057A

Dear Policyowner:

Please be advised the above policy's Assignee, Utica Mutual Insurance Company, has exercised its right to cancel this policy and receive the surrender value. A check in the amount of $66,548.07 has been forwarded to them, representing the above referenced policy's surrender value. Therefore, coverage is terminated.

The surrender value was calculated as follows:

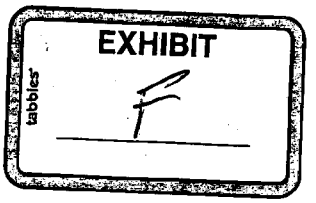
Gross Surrender Value	$66,548.07
Less Outstanding Loan (if any)	0.00
Less Surrender Charges (if any)	0.00
Less Federal Withholding (if any)	0.00
Less State Withholding (if any)	0.00
Plus Unprocessed Premium (if any)	0.00
Net Surrender Value	**$66,548.07**

As there was a gain upon distribution of these funds, please be

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

- - -

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,
vs. No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual,
Defendants.



- - -

Deposition of ROBERT E. HAMILTON

Friday, May 16, 2008

- - -

The deposition of ROBERT E. HAMILTON, one of the Defendants herein, called as a witness by the Plaintiff, pursuant to notice and the Pennsylvania Rules of Civil Procedure pertaining to the taking of depositions, taken before me, the undersigned, Teresa C. Berardi, a Notary Public in and for the Commonwealth of Pennsylvania, at the law offices of Sobel & Collins, 218 South Second Street, Clearfield, Pennsylvania 16830, commencing at 11:06 a.m., the day and date above set forth.

- - -

NETWORK DEPOSITION SERVICES
707 GRANT STREET, SUITE 1101
PITTSBURGH, PENNSYLVANIA 15219

- - -

ORIGINAL

A Yes.
Q Does that appear to be a copy of the General Agreement of Indemnity that you entered with Utica Mutual Insurance Company?
A Yes.
Q Can you turn to the third page of the document?
The first signature line on the right-hand column under the words "Hamilton Brothers Coal, Inc.," there's a typed name, "Robert E Hamilton, President," and a signature above.
Do you see what I'm referring to?
A Yes.
Q Is that your signature?
A Yes.
Q Thank you.
MR. GAILEY: I would like to enter this as Robert Hamilton Deposition Exhibit No. 1.
(Thereupon, Robert Hamilton Deposition Exhibit No. 1 was marked for identification.)
BY MR. GAILEY:
Q Put that aside, sir.

Q Could you turn to the first page of that document, please?

The document is entitled "Surety Bond Agreement"; is it not?

A Yes.

Q On the third line, unlike the preceding Surety Bond Agreement that said "James Hamilton" as the insured, this document says "Robert Hamilton"; does it not?

A Yes.

Q Could you flip over to the back page of the agreement on the bottom?

Is that your signature contained on the bottom of that document?

A Yes.

Q Thank you.

MR. GAILEY: I would like to enter this as Robert Hamilton Deposition Exhibit No. 3.

(Thereupon, Robert Hamilton Deposition Exhibit No. 3 was marked for identification.)

BY MR. GAILEY:

Q Sir, I'm going to hand you another document. Please take a moment to look at it.

You know, I don't see how I can be held responsible for special conditions and stuff that's in the permit that -- when no planning occurred.

And Utica always kept track of all the planning and what was going on.

For a three-year period, mining advanced, and no planning occurred, and no backfilling occurred.

When it's sold, it's not my company, it's out of my hands, I have no control. Not DEP or nobody tells me what's going on.

Q Sir, I just wanted to get what your position was.

A And all this is documented. It's documented with paperwork from their inspectors and in the permit.

Q When was the last time you spoke with Fred Kuzemchak?

A Oh, boy.

Probably maybe 1998, around in there. Right before he abandoned the job.

Q Earlier I asked you a question, if you knew what a novation was, and you said you didn't.

Let me ask you this way: Did you ever sign a contract with Utica National and Fred Kuzemchak where they were all parties to one contract?

A Not that I'm aware.

Q Another issue in this case, you filed a counterclaim in this case, if you recall.

Do you recall that?

A You'll have to give it to me to refresh myself.

Q How about I just make a representation to you.

A All right.

Q You filed a counterclaim stating that the cash surrender value of the life insurance policy was improper that Utica National did, which was put up for collateral for the initial agreement.

Sir, I'm going to hand you a couple documents related to the counterclaim, and I want you to take a look at them for me, if you would, please.

The first is a document, it's a letter to you from William Rohrbach, R-o-h-r-b-a-c-h, at Utica National.

A Okay.
Q What is the date of that letter?
A December 17, 1998.
Q Can you just basically summarize what that letter says?
A Basically, it's coming to us because we're the policyholders, that says, due to our recent cessation order, they intend to take the proceeds of the life insurance.
Q I'm going to hand you another document from Utica Life Insurance.
Take a look at that and let me know if you've seen it before.
A Yes, I have.
Q What is the date of that document?
A February 23rd, 1999.
Q Can you basically summarize what that document says?
A Basically states that they terminated the life insurance policy and give the proceeds to Utica Insurance.
Q What was the total amount of that forfeiture?
A $71,713.85.
Q Thank you, sir.

MR. GAILEY: I would like to enter these two documents as the next exhibit for this deposition.

(Thereupon, Robert Hamilton Deposition Exhibit No. 14 was marked for identification.)

BY MR. GAILEY:

Q Just one moment. I might be running out of questions for you.

Do you know if you have retained any experts yet in this trial, sir, in the defense of this matter?

A I don't know.

MR. GAILEY: I think that's all the questions I have for you right now.

Do you have any questions?

MR. COLLINS: No, I have no questions.

MR. GAILEY: There's one more area I would like to go over.

BY MR. GAILEY:

Q Sir, earlier you said that you had a health problem at the end of last year, was it?

A Yes.

December, I think it was the 19th, '07. I got where I couldn't get my breath.

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

- - -

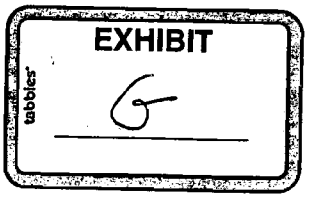
UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.) No. 03-798-CD

HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual,

Defendants.



- - -

Deposition of JAMES E. HAMILTON, JR.

Friday, May 16, 2008

- - -

The deposition of JAMES E. HAMILTON, JR., one of the Defendants herein, called as a witness by the Plaintiff, pursuant to notice and the Pennsylvania Rules of Civil Procedure pertaining to the taking of depositions, taken before me, the undersigned, Teresa C. Berardi, a Notary Public in and for the Commonwealth of Pennsylvania, at the law offices of Sobel & Collins, 218 South Second Street, Clearfield, Pennsylvania 16830, commencing at 1:24 p.m., the day and date above set forth.

- - -

NETWORK DEPOSITION SERVICES
707 GRANT STREET, SUITE 1101
PITTSBURGH, PENNSYLVANIA 15219

ORIGINAL

MR. GAILEY: Can we go off the record for a second?

(Discussion off the record.)

MR. GAILEY: On the record.

BY MR. GAILEY:

Q I'm going to hand you a document, sir, that I want you to take a quick look at.

Sir, that is an assignment of a life insurance agreement; is it not?

A Yeah.

Q Is that your signature at the bottom of that document?

A Yes.

Q Thank you, sir.

MR. GAILEY: I would like to enter that as Exhibit No. 2 for this deposition.

(Thereupon, James Hamilton Deposition Exhibit No. 2 was marked for identification.)

BY MR. GAILEY:

Q Sir, when was the last time you talked to Fred Kuzemchak?

A I wouldn't have any idea.

Q Did you ever meet the man?

A No.

he was saying?

A Yes.

Q Just one moment, sir.

Let me just go over a few more things.

I know I asked you about this before, but is there any particular thing that you would do for the company that your brother wouldn't do, that you could do, that you handled?

A Probably not.

Q This is something I might have wanted to ask your brother but I will ask you: How were business decisions made? Would you guys get together and discuss them? How did that work out?

A Generally we'd discuss them.

Q You would discuss whether or not you would like to purchase a certain -- or, go and try to mine a certain tract of land, things like that?

I mean, what types of things would you discuss, is what I'm getting at?

A More generally every day, you know, overall, you know, operation.

Q So there wasn't a major business decision that you were not a part of; is that a

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

SCHEDULING ORDER

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED 1CC Atty Gailey
12:44 BK
DEC 16 2008
GD
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

SCHEDULING ORDER

AND NOW the Court hereby schedules plaintiff's Motion for Summary Judgment for argument on February 5, 2009, in front of Judge Ammerman, at 2:30 o'clock ~~a.m.~~/p.m. Courtroom #1

By the Court:

Judge J. Ammerman J.

12/16/08

FILED

DEC 16 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/16/08

X You are responsible for serving all appropriate parties.

___ The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff vs. HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	No. 03-798-CD Type of Case: Civil Type of Pleading: Motion to Dismiss / Statute of Limitations Filed on Behalf of: Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, Defendants Counsel of Record for this Party: Ronald L. Collins, Esquire I.D. #36744 Sobel & Collins 218 South Second Street Clearfield, PA 16830 Telephone: (814) 765-5552 Fax: (814) 765-6210

FILED 3 cc
02:09 BOL Atty Collins
FEB 05 2009
$
William A. Shaw
Prothonotary/Clerk of Courts
GK

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

MOTION TO DISMISS / STATUTE OF LIMITATIONS

NOW comes the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, by and through their attorney, Ronald L. Collins, Esquire, who for their Motion to Dismiss / Statute of Limitations would respectfully set forth and aver as follows:

1. That the instant matter was commenced by the filing of a Civil Complaint on behalf of the Plaintiff, Utica Mutual Insurance Company on June 2, 2003. Attached hereto and incorporated herein by reference is a copy of the face sheet of the Complaint evidencing the date of filing as June 2, 2003.

2. That the said Complaint was based upon an Indemnification Agreement executed by the Defendants to secure certain Surety Bonds which had been obtained in the name of Hamilton Bros. Coal, Inc.

3. That the Plaintiff, Utica Mutual Insurance Company, was fully aware of the alleged default as to the Surety Bonds on December 17, 1998 and February 23, 1999 as such was indicated within correspondence received by the Defendants, Robert E. Hamilton and James E. Hamilton, Jr from the Plaintiff, Utica Mutual Insurance Company. Attached hereto and incorporated herein by reference are copies of said correspondence.

4. Said correspondence received from the Plaintiff, Utica Mutual Insurance Company, indicated that a default had occurred as to Pennsylvania Department of Environmental Protection Bonds and that life insurance policies held by the Plaintiff on the lives of the Defendants, Robert E. Hamilton and James E. Hamilton, Jr. were being forfeited such that payment could by made to the Department of Environmental Resources.

5. That the Plaintiff, Utica Mutual Insurance Company, has acknowledged the surrender of the insurance policies, the payment on the Bonds to the Department of Environmental Resources and their knowledge of the default in December, 1998 as set forth within Paragraph 44 of their Motion for Summary Judgment filed with the Court.

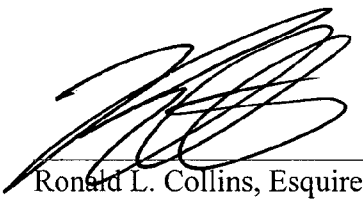
6. That the averments setting forth the Statute of Limitations defense were set forth within the New Matter filed as to the Plaintiff's Complaint as is required pursuant to the Pennsylvania Rules of Civil Procedure, Rule 1030 (a).

7. That as the basis for the Complaint against the Defendants Hamilton is the Indemnification Agreement, the filing of the Complaint is well beyond the four (4) year time period allowed in which to bring actions based upon a contract.

WHEREFORE, it is respectfully requested that your Honorable Court grant the Motion to Dismiss / Statute of Limitations filed by the Defendants, Robert E. Hamilton, Anna Marie

Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, and that the Court Order that the Complaint filed in this matter be dismissed with prejudice.

Respectfully submitted,



Ronald L. Collins, Esquire
Attorney for Defendants Hamilton

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL DIVISION

No.: 03-798-CD

COMPLAINT IN CIVIL ACTION

Code: _____

Filed on Behalf Of: PLAINTIFF UTICA MUTUAL INSURANCE COMPANY

Counsel of Record for This Party:

PAUL K. VEY, ESQUIRE
Pa. I.D. No. 30824

PIETRAGALLO, BOSICK & GORDON
Firm I.D. No. 834
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

(412) 263-2000

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

JUN 02 2003

Attest.

Prothonotary/
Clerk of Courts

William A. Rohrbach
Staff Attorney

P.O. Box 530, Utica, New York 13503-0530
Telephone (315) 734-2926
FAX (315) 734-2198

CM/RRR - P 567 625 843
& Regular

December 17, 1998

Robert Hamilton
RD #1, Box 16
Coalport, PA 16627

Re: ***Hamilton Bros. Coal Company***
Utica Mutual Life Insurance Policy #21058A

Dear Mr. Hamilton:

Please be advised that in accordance with a recent Cessation Order which the Pennsylvania Department of Environmental Protection has issued with regard to Hamilton Bros. Coal, Utica Mutual, in accordance with paragraph E.2. of the above referenced life insurance policy, intends to exercise its right to the proceeds of said policy.

Please contact this office if you have any questions.

Very truly yours,

William A. Rohrbach

William A. Rohrbach
Staff Attorney

WAR/nvd
Enc.

cc: Rick Relf - Utica Life

UTICA NATIONAL LIFE INSURANCE COMPANY
NEW HARTFORD, NEW YORK

ASSIGNMENT OF LIFE INSURANCE POLICY AS COLLATERAL

A. For Value Received the undersigned hereby assign, transfer and set over to Utica Mutual Insurance Company

180 Genesee St., New Hartford, NY 13413

its successors and assigns, (herein called the "Assignee") Policy No. 000021058A

issued by the UTICA NATIONAL LIFE INSURANCE COMPANY
(herein called the "Insurer") and any supplementary contracts issued in connection therewith (said policy and contracts being herein called the "Policy"), upon the life of Robert Hamilton

of Rd #1, Box 16, Coalport, PA 16627 and all claims, options, privileges, rights, title and interest therein and thereunder (except as provided in Paragraph C hereof), subject to all the terms and conditions of the Policy and to all superior liens, if any, which the Insurer may have against the Policy. The undersigned by this instrument jointly and severally agree and the Assignee by the acceptance of this assignment agrees to the conditions and provisions herein set forth.

B. It is expressly agreed that, without detracting from the generality of the foregoing, the following specific rights are included in the assignment and pass by virtue hereof:
1. The sole right to collect from the Insurer the net proceeds of the Policy, but only to the extent of the outstanding amount of any Liabilities, as described in Paragraph D hereof, existing between the Insured or Owner and the Assignee.
2. The sole right to surrender the Policy and receive the surrender value thereof at any time provided by the terms of the Policy and at such other times as the Insurer may allow, subject to Paragraph E. The amount paid to the Assignee pursuant to such surrender shall be limited to the amount of any outstanding Liabilities existing between the Insured or Owner and the Assignee.
3. The sole right to obtain one or more loans or advances on the Policy, either from the Insurer or, at any time, from other persons, and to pledge or assign the Policy as security for such loans or advances; subject to Paragraph E.
4. The sole right to collect and receive all distributions or shares of surplus, dividend deposits or additions to the Policy now or hereafter made or apportioned thereto, and to exercise any and all options contained in the Policy with respect thereto; provided, that unless and until the Assignee shall notify the Insurer in writing to the contrary, the distributions or shares of surplus, dividend deposits and additions shall continue on the plan in force at the time of this assignment; and
5. The sole right to exercise all nonforfeiture rights permitted by the terms of the Policy or allowed by the Insurer and to receive all benefits and advantages derived therefrom.

C. It is expressly agreed that the following specific rights, so long as the policy has not been surrendered, are reserved and excluded from this assignment and do not pass by virtue hereof:
1. The right to collect from the Insurer any disability benefit payable in cash that does not reduce the amount of insurance;
2. The right to designate and change the beneficiary;
3. The right to elect any optional mode of settlement permitted by the Policy or allowed by the Insurer; but the reservation of these rights shall in no way impair the right of the Assignee to surrender the Policy completely with all its incidents or impair any other right of the Assignee hereunder, and any designation or change of beneficiary or election of a mode of settlement shall be made subject to this assignment and to the rights of the Assignee hereunder.

D. This assignment is made and the Policy is to be held as collateral security for any and all liabilities of the Insured or Owner, or any of them, to the Assignee, either now existing or that may hereafter arise in the ordinary course of business between the Insured or Owner and the Assignee (all of which liabilities secured or to become secured are herein called "Liabilities").

E. The Assignee covenants and agrees with the undersigned as follows:
1. That any balance of sums received hereunder from the Insurer remaining after payment of the then existing Liabilities, matured or unmatured, shall be paid by the Assignee to the persons entitled thereto under the terms of the Policy had this assignment not been executed;
2. That the Assignee will not exercise either the right to surrender the Policy or (except for the purpose of paying premiums) the right to obtain policy loans from the Insurer, until there has been default in any of the Liabilities or a failure to pay any premium when due, nor until twenty days after the Assignee shall have mailed, by first-class mail, to the undersigned at the addresses last supplied in writing to the Assignee specifically referring to this assignment, notice of intention to exercise such right; and
3. That the Assignee will upon request forward without unreasonable delay to the Insurer the Policy for endorsement of any designation or change of beneficiary or any election of an optional mode of settlement.

F. The insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, or the validity or the amount of the Liabilities or the existence of any default therein, or the giving of any notice under Paragraph E (2) above or otherwise, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The sole signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned hereby and the sole receipt of the Assignee for any sums received shall be a full discharge and release therefor to the Insurer. Checks for all or any part of the sums payable under the Policy and assigned herein, shall be drawn to the exclusive order of the Assignee if, when, and in such amounts as may be, requested by the Assignee.

G. The Assignee shall be under no obligation to pay any premium, or the principal of or interest on any loans or advances on the Policy whether or not obtained by the Assignee, or any other charges on the Policy, but any such amounts so paid by the Assignee from its own funds, shall become a part of the Liabilities hereby secured, shall be due immediately, and shall draw interest at a rate fixed by the Assignee from time to time, not exceeding the maximum rate of interest permitted by the laws of the State of New York.

H. The exercise of any right, option, privilege or power given herein to the Assignee shall be at the option of the Assignee, but (except as restricted by Paragraph E (2) above) the Assignee may exercise any such right, option, privilege or power without notice to, or assent by, or affecting the liability of, or releasing any interest hereby assigned by the undersigned, or any of them.

I. The Assignee may take or release other security, may release any party primarily or secondarily liable for any of the Liabilities, may grant extensions, renewals or indulgences with respect to the Liabilities, or may apply to the Liabilities in such order as the Assignee shall determine, the proceeds of the Policy hereby assigned or any amount received on account of the Policy by the exercise of any right permitted under this assignment, without resorting or regard to other security.

J. In the event of any conflict between the provisions of this assignment and provisions of the note or other evidence of any Liability, with respect to the Policy or rights of collateral security therein, the provisions of this assignment shall prevail.

K. Each of the undersigned declares that no proceedings in bankruptcy are pending against him and that his property is not subject to any assignment for the benefit of creditors.

Signed and sealed this 27th day of OCTOBER 19 89

John W. Hamilton
Witness

X Robert J. Hamilton
Insured or Owner

Witness

Address

Beneficiary

Address

10-C-27 Ed. 6-85

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On the _____ day of _____ 19 ____,

before me personally came _____,

to me known to be the individual _____ described in and who executed the assignment on the reverse side hereof and acknowledged

to me that _____ he _____ executed the same.

_____
Notary Public

My commission expires _____

CORPORATE ACKNOWLEDGMENT

STATE OF Pennsylvania

COUNTY OF Clearfield

On the 27th day of October 19 89,

before me personally came Robert Hamilton,

who being by me duly sworn, did depose and say that he resides in Coalport, PA

_____ that he is the President of Hamilton Bros. Coal Co., the

corporation described in and which executed the assignment on the reverse side hereof; and acknowledged to me that through this

he has executed the same.

Edna Weaver
Notary Public

Notarial Seal
Edna Weaver, Notary Public
Johnstown, Cambria County
My Commission Expires Oct. 15, 1990

My commission expires _____

Duplicate received and filed at the home office of the Insurer in New Hartford, New York, this 1st

day of November 19 89

Utica National Life Ins. Co.

By Richard S. Reff.
Authorized Officer

UticaLIFE

FEBRUARY 23, 1999

HAMILTON BROS COAL INC
RD #1 BOX 140
COALPORT, PA 16627

Box 530
Utica, NY 13503-0530
315-734-2000
1-800-274-1914
Fax: 315-734-2941

RE: INSURED: ROBERT E HAMILTON
POLICY #: 000021058A

Dear Policyowner:

Please be advised the above policy's Assignee, Utica Mutual Insurance Company, has exercised its right to cancel this policy and receive the surrender value. A check in the amount of $71,713.85 has been forwarded to them, representing the above referenced policy's surrender value. Therefore, coverage is terminated.

The surrender value was calculated as follows:

Gross Surrender Value	$71,713.85
Less Outstanding Loan (if any)	0.00
Less Surrender Charges (if any)	0.00
Less Federal Withholding (if any)	0.00
Less State Withholding (if any)	0.00
Plus Unprocessed Premium (if any)	0.00
Net Surrender Value	**$71,713.85**

As there was a gain upon distribution of these funds, please be advised that a taxable gain in the amount of $24,213.85 will be reported to the IRS. February 2000 you will receive a IRS Form 1099R for tax reporting purposes. Please complete the enclosed Form W-9 thereby verifying your Tax Identification Number. A return envelope has been enclosed for your convenience.

If you have any questions regarding this transaction, please call our Customer Services Help Line at 1-800-274-1914, extension 2673 between 8:00 a.m. and 4:15 p.m.

Customer Services

Enclosure

UticaLIFE

FEBRUARY 23, 1999

Box 530
Utica,NY 13503-0530
315-734-2000
1-800-274-1914
Fax: 315-734-2941

HAMILTON BROS COAL INC
RD #1 BOX 140
COALPORT, PA 16627

RE: INSURED: JAMES E HAMILTON JR
POLICY #: 000021057A

Dear Policyowner:

Please be advised the above policy's Assignee, Utica Mutual Insurance Company, has exercised its right to cancel this policy and receive the surrender value. A check in the amount of $66,548.07 has been forwarded to them, representing the above referenced policy's surrender value. Therefore, coverage is terminated.

The surrender value was calculated as follows:

Gross Surrender Value	$66,548.07
Less Outstanding Loan (if any)	0.00
Less Surrender Charges (if any)	0.00
Less Federal Withholding (if any)	0.00
Less State Withholding (if any)	0.00
Plus Unprocessed Premium (if any)	0.00
Net Surrender Value	**$66,548.07**

As there was a gain upon distribution of these funds, please be advised that a taxable gain in the amount of $19,048.07 will be reported to the IRS. February 2000 you will receive a IRS Form 1099R for tax reporting purposes. Please complete the enclosed Form W-9 thereby verifying your Tax Identification Number. A return envelope has been enclosed for your convenience.

If you have any questions regarding this transaction, please call our Customer Services Help Line at 1-800-274-1914, extension 2673 between 8:00 a.m. and 4:15 p.m.

Customer Services

Enclosure

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the Motion To Dismiss / Statute of Limitations upon the following person by personal service addressed as follows:

Matthew D. Gailey, Esquire
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

Ronald L. Collins, Esquire
Attorney for Defendants Hamilton

DATED: February 5, 2009

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

UTICA MUTUAL INSURANCE CO.	)	
	)	
VS.	)	NO. 03-798-CD
	)	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an ind., ANNA MARIE HAMILTON, an ind., JAMES E. HAMILTON, JR., an ind., and ETHEL M. HAMILTON, an ind.	)	

O R D E R

NOW this 5th day of February, 2009, following argument on the Plaintiff's Motion for Summary Judgment and the Defense Motion to Dismiss based upon the Statute of Limitations which the Court construes procedurally to be a Motion for Summary Judgment, it is the ORDER of this Court that counsel for both parties have no more than thirty (30) days from this date in which to submit any additional brief to the Court and file documents with the record.

BY THE COURT,

Judge J. Cammerman

President Judge

FILED
01:55BY
FEB 06 2009
William A. Shaw
Prothonotary/Clerk of Courts

Copies - See attached

03-798-CD
Utica Mutual Insurance vs. Hamilton Brothers et al

Paul K. Vey, Esq.
William Wyrick, Esq.
Robert J. Monahan, Esq.
Matthew D. Gailey, Esq.
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

Hamilton Brothers Coal, Inc.
C/o Fred Kuzemachak
RD 2 Box 563
Clymer, PA 15728

Ronald Collins, Esq.

Evergreen Insurance Associates, Inc.
PO Box 505
Ebensburg, PA 15931

Commonwealth of PA
Department of Environmental Protection
Hawk Run District Office
Empire Road
Hawk Run, PA 16840

Fred Kuzemchak
Mining RD 2 Box 563
Clymer, PA 15728

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

FILED
m/ 1:50 cm
FEB 12 2009
William A. Shaw
Prothonotary/Clerk of Courts

no further address in File

UTF returned on 2/13/2009 to
186 Enterprise Drive
Phillipsburg PA 16866

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02/06/2009
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Commonwealth of PA
Department of Environmental Protection
Hawk Run District Office
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Hawk Run, I

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16830@0549

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

UTICA MUTUAL INSURANCE CO.	)	
	)	
VS.	)	NO. 03-798-CD
	)	
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an ind., ANNA MARIE HAMILTON, an ind., JAMES E. HAMILTON, JR., an ind., and ETHEL M. HAMILTON, an ind.	)	

O R D E R

NOW this 5th day of February, 2009, following argument on the Plaintiff's Motion for Summary Judgment and the Defense Motion to Dismiss based upon the Statute of Limitations which the Court construes procedurally to be a Motion for Summary Judgment, it is the ORDER of this Court that counsel for both parties have no more than thirty (30) days from this date in which to submit any additional brief to the Court and file documents with the record.

BY THE COURT,
/S/ Fredric J Ammerman

President Judge

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

FEB 06 2009

Attest. William L. Ammerman
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03–798-CD

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS/STATUTE OF LIMITATIONS

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED NOCC
MAR 02 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

CIVIL ACTION

No. 03 – 798 – CD

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS/ STATUTE OF LIMITATIONS

AND NOW, comes Plaintiff, Utica Mutual Insurance Company ("Utica Mutual"), by and through its attorneys, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and files the following Response to Defendants' Motion to Dismiss/Statute of Limitations, averring as follows:

1. The averments of Paragraph 1 of Defendants' Motion to Dismiss are admitted.

2. The averments of Paragraph 2 of Defendants' Motion to Dismiss are admitted.

3. The averments of Paragraph 3 of Defendants' Motion to Dismiss contain conclusions of law to which no response is required. To the extent a response is required, the averments of Paragraph 3 of Defendants' Motion to Dismiss are denied and strict proof thereof is demanded at time of trial.

4. The averments of Paragraph 4 of Defendants' Motion to Dismiss are neither admitted nor denied, as the correspondence attached to the Motion to Dismiss speak for themselves.

5. The averments of Paragraph 5 of Defendants' Motion to Dismiss are denied.

6. The averments of Paragraph 6 of Defendants' Motion to Dismiss are denied.

7. The averments of Paragraph 7 of Defendants' Motion to Dismiss are denied.

WHEREFORE, it is respectfully requested the Honorable Court deny the Defendants' Motion to Dismiss.

Plaintiff's Statement of Relevant Facts in Opposition to Defendants' Motion to Dismiss

8. Plaintiff incorporates herein by reference Paragraphs 1 through 7 of this Response to Motion to Dismiss as though set forth herein at length.

9. The instant matter in this case was brought by Plaintiff, Utica Mutual Insurance Co., on June 2, 2003. This matter was brought to recover monies paid pursuant to an indemnification contract, which was personally executed by the Defendants, Robert Hamilton, James Hamilton, Anne Marie Hamilton and Ethel Hamilton.

10. The recovery sought pursuant to the indemnification claim contained in the Plaintiff's Complaint is related to monies paid to the Pennsylvania Department of Environmental Protection, beginning on January 12, 2000. Copies of the relevant checks made payable to the Pa. Dept. of Environmental Protection are attached hereto as Exhibit "A".

11. The Plaintiff's Complaint deals solely with the Defendants' breach of the indemnification agreement, and in no way addresses the surety bond agreement that is the subject of the Defendants' Counterclaim and Motion to Dismiss based on the statute of limitations.

12. In the year 1998 the Plaintiff learned of the Defendants' default of the surety bond agreement. However, that knowledge in no way caused the Plaintiff any damage pursuant to the indemnification contract, which is the subject of the Plaintiff's lawsuit in this matter.

13. The Defendants have failed to preserve the affirmative defense of statute of limitations as required by Pennsylvania Rule of Civil Procedure 1032.

14. The Defendants filed preliminary objections to the Plaintiff's Complaint, First Amended Complaint and Second Amended Complaint, raising defenses other than statute of limitations concerns.

15. The Defendants only filed an Answer to the Plaintiff's Second Amended Complaint, wherein the Defendants failed to raise the affirmative defense of statute of limitations. A copy of the Defendants' Answer, New Matter and Counterclaim to Plaintiff's Second Amended Complaint is attached hereto as Exhibit "B".

Argument

I. The Defendants Have Waived the Affirmative Defense of Statute of Limitations.

16. Plaintiff incorporates by reference Paragraphs 1 through 15 of this Response as though set forth herein at length.

17. Pennsylvania Rule of Civil Procedure 1032, Waiver of Defenses, states as follows:

> (a) A party waives all defenses and objections which are not presented either by preliminary objection, answer or reply, except a defense which is not required to be pleaded under Rule 1030(b), Defense of Failure to State a Claim Upon Which Relief Can be Granted, the defense of failure to join an indispensible party, the objection of failure to state a legal defense to a claim, defenses of failure to exercise or exhaust a statutory remedy, and an adequate remedy at law or any other non-waivable defense or objection.

18. The statute of limitations is an affirmative defense that must be plead by a party or it is waived pursuant to Pa. R. C. P. 1032.

19. The Defendants have failed to preserve the affirmative defense of statute of limitations, and thereby any potential defense of statute of limitations is hereby waived.

II. Even If the Defendants Had Not Waived Their Affirmative Defense of Statute of Limitations, the Defendants Have Incorrectly Interpreted the Statute of Limitations Defense Based on the Facts in This Matter.

20. The statute of limitations for indemnification actions is four years. See 42 Pa. C.S.A. § 5525(4).

21. The following is the standard for which begins the statute of limitations for indemnity actions:

> A cause of action for indemnity does not accrue until the indemnitee's liability is affixed by a judgment against, or payment in settlement by, the indemnitee. Thermo King Corp. v. Strick Corp., 467 F.Supp. 75, 77 (W.D. Pa.) Aff'd. 609 F.2d 503 (3d. Cir. 1979), cited in the case of Bridgestone/Firestone, Inc. and Dayton Tire and Rubber Co. v. Carr's Tire Service, Inc., et al., 1992 U.S. Dist. LEXIS 5851 (E.D. Pa. 1992).

22. The Bridgestone/Firestone matter has facts which are similar to the facts in this matter. In Bridgestone, there was a separate and distinct claim made by Bridgestone against Carr's Tire Service, Inc., alleging fraud. Bridgestone first became aware of this fraud in 1983. However, it was not until 1988 when the I. R. S. forced the Plaintiff, Bridgestone, to make payments for taxes due related to the Defendants' fraud. The Plaintiffs' brought their cause of action in 1990, alleging one count of fraud as well as a count of indemnification, among two more unrelated counts.

23. The court held that the Plaintiffs' count for fraud against the Defendants had expired, as the Plaintiffs knew of the fraud approximately seven years prior to the filing of the Complaint.

24. However, the court ruled differently with regard to the statute of limitations claim based upon their indemnification claim, by stating that when the Plaintiffs began to make partial payments to the I. R. S. in February, 1988, that began to run the statute of limitations, thereby allowing their filing of an action in November of 1990 to be within the four year statute of limitations period. See Bridgestone at 5851.

25. Like Bridgestone, this Court should clearly see that the indemnification action statute of limitations began to run once the indemnities' liability was "fixed by payment and settlement by the indemnitee." As stated above, the Plaintiffs began to make payment and settlement as an indemnitee on January 12, 2000, which was within the four-year statute of limitations from the date of the filing of their Complaint in July, 2003.

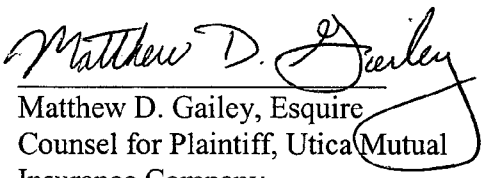
26. The fact that the Plaintiff may have been aware of a default on the surety bond agreement should be viewed in the same manner as Bridgestone's knowledge of Carrs' fraud. That court refused to bar the indemnification claim, as the date of Bridgestone's knowledge of the fraud claim was not the date from which the indemnification claims statute of limitations should begin to run. The indemnification statute of limitations began to run when Bridgestone made payment pursuant to their indemnification obligation. The same reasoning should be applied in this matter, which would defeat Defendants' argument that the statute of limitations for the Plaintiff's indemnification claim began to run in December of 1998, when the Plaintiff was aware of the Defendants' default on a separate agreement.

27. Pursuant to the clearly stated Pennsylvania law above, the statute of limitations for an indemnification action begins on a date either for a judgment against or payment in settlement, by the indemnitee, and this date was clearly within the four-year statute of limitations, therefore, the Defendants' Motion for Dismissal should be defeated.

WHEREFORE, based on the proceeding, the Plaintiff requests that this Honorable Court deny the Defendants' Motion to Dismiss/Statute of Limitations.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP



Matthew D. Gailey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Plaintiff's Response to Defendants' Motion to Dismiss/Statute of Limitations** was served upon the following by first class mail, postage pre-paid, this 26th day of February, 2009:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

By: Matthew D. Gailey
Matthew D. Gailey, Esquire
Attorney for Plaintiff

UTICA NATIONAL INSURANCE GROUP
Insurance that starts with you.

COMMONWEALTH OF PENNSYLVANIA
<DEPT OF ENV. PROTECTION
BUREAU OF OFFICE SYSTEMS
BONDING SECTION
HARRISBURG PA 17105-8766

CLAIM NUMBER	PAYMENT DESCRIPTION	AMOUNT OF CHECK	CHECK NO.	DATE OF ISSUE
0000705733	BOND FORFEITURE	$108,380.00	9022720	05/07/2001

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT:
FRANK MADIA TELEPHONE:(315) 734-2000

EVERGREEN INS ASSOC INC U9216

PAYMENT IN FULL FOR BOND FORFEITURE-HAMILTON NO. 2 PERMIT OPERATION-BOND #'S SU 1366516, SU44373, SU 44375 & SU 1635678.

2271 PA

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND - NOT A WHITE BACKGROUND

UTICA NATIONAL INSURANCE GROUP
P. O. Box 530
Utica, NY 13503-0530

FLEET BANK
HARTFORD, CT 06115

DATE OF ISSUE
05/07/2001

9022720 51-44 / 119

AMOUNT OF CHECK
********108,380.00
PLEASE CASH PROMPTLY

FO	CLAIM NUMBER	LOSS DATE	INSURED
Z1	0000705733	12/02/1998	HAMILTON BROTHERS COAL INC

FOR BOND FORFEITURE

PAY ONE HUNDRED EIGHT THOUSAND, THREE HUNDRED EIGHTY AND 00/100 ---------- DOLLARS

TO THE ORDER OF COMMONWEALTH OF PENNSYLVANIA
DEPT OF ENV. PROTECTION
BUREAU OF OFFICE SYSTEMS
BONDING SECTION
HARRISBURG PA 17105-8766

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AUTHORIZED SIGNATURE

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EXHIBIT
tabbies
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UTICA NATIONAL INSURANCE GROUP
Insurance that starts with you.

COMMONWEALTH OF PENNSYLVANIA
DEP-BONDING DIVISION
P.O. BOX 8766
HARRISBURG PA 17105-8766

CLAIM NUMBER	PAYMENT DESCRIPTION	AMOUNT OF CHECK	CHECK NO	DATE OF ISSUE
0000705735		$2,200.00	8831745	01/10/2000

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT
JOLENE CASATELLI TELEPHONE:(315) 734-2000

EVERGREEN INS ASSOC INC ,U9216
PAYMENT ON BOND NO SU1545137

2271 PA

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UTICA NATIONAL INSURANCE GROUP
P. O. Box 530
Utica, NY 13503-0530

FLEET BANK
HARTFORD, CT 06115

DATE OF ISSUE
01/10/2000

8831745 51-44 119

AMOUNT OF CHECK
**********2,200.00

PLEASE CASH PROMPTLY

FO	CLAIM NUMBER	LOSS DATE	INSURED
Z1	0000705735	12/02/1998	HAMILTON BROTHERS COAL IN

FOR

PAY TWO THOUSAND, TWO HUNDRED AND 00/100 ---------- DOLLARS

TO THE ORDER OF COMMONWEALTH OF PENNSYLVANIA
DEP-BONDING DIVISION
P.O. BOX 8766
HARRISBURG PA 17105-8766

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W. Craig Hunter
John R. Brown
AUTHORIZED SIGNATURE

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⑈8831745⑈ ⑆011900445⑆ 5705⑈

UTICA NATIONAL INSURANCE GROUP
Insurance that starts with you.

COMMONWEALTH OF PENNSYLVANIA
DEP- BONDING DIVISION
P O BOX 8766
HARRISBURG PA 17105-8766

CLAIM NUMBER	PAYMENT DESCRIPTION	AMOUNT OF CHECK	CHECK NO.	DATE OF ISSUE
0000705733		$58,500.00	8831314	01/10/2000

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT
JOLENE CASATELLI TELEPHONE:(315) 734-2000

EVERGREEN INS ASSOC INC U9216
PAYMENT ON BOND NO. SU1554222

2271 PA

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UTICA NATIONAL INSURANCE GROUP
P. O. Box 530
Utica, NY 13503-0530

FLEET BANK
HARTFORD, CT 06115

DATE OF ISSUE
01/10/2000

8831314 51-44 119

AMOUNT OF CHECK
**********58,500.00

PLEASE CASH PROMPTLY

FOR CLAIM NUMBER Z1 0000705733 LOSS DATE 12/02/1998 INSURED HAMILTON BROTHERS COAL INC

PAY FIFTY-EIGHT THOUSAND, FIVE HUNDRED AND 00/100 ——— DOLLARS

TO THE ORDER OF COMMONWEALTH OF PENNSYLVANIA
DEP- BONDING DIVISION
P.O BOX 8766
HARRISBURG PA 17105-8766

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AUTHORIZED SIGNATURE

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UTICA NATIONAL INSURANCE GROUP
Insurance that starts with you.

COMMONWEALTH OF PENNSYLVANIA
DEP-BONDING DIVISION
P O BOX 8766
HARRISBURG PA 17105-8766

CLAIM NUMBER	PAYMENT DESCRIPTION	AMOUNT OF CHECK	CHECK NO.	DATE OF ISSUE
0000705734		$13,900.00	8831746	01/10/2000

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT
JOLENE CASATELLI TELEPHONE:(315) 734-2000

EVERGREEN INS ASSOC INC U9216
PAYMENT FOR BOND NO. SU1635674

2271 PA

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UTICA NATIONAL INSURANCE GROUP
P. O. Box 530
Utica, NY 13503-0530

FLEET BANK
HARTFORD, CT 06115

DATE OF ISSUE
01/10/2000

8831746 51-44 119

AMOUNT OF CHECK
**********13,900.00

PLEASE CASH PROMPTLY

FO CLAIM NUMBER LOSS DATE INSURED
Z1 0000705734 12/02/1998 HAMILTON BROTHERS COAL INC

FOR

PAY THIRTEEN THOUSAND, NINE HUNDRED AND 00/100 ——— DOLLARS

TO THE ORDER OF COMMONWEALTH OF PENNSYLVANIA
DEP-BONDING DIVISION
P.O BOX 8766
HARRISBURG PA 17105-8766

000000000

W. Craig Hatch
John R. Brooks
AUTHORIZED SIGNATURE

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⑈8831746⑈ ⑆011900445⑆ 5705⑈

UTICA NATIONAL INSURANCE GROUP
Insurance that starts with you.

COMMONWEALTH OF PENNSYLVANIA
DEP-BONDING DIVISION
P.O. BOX 8766
HARRISBURG PA 17105-8766

CLAIM NUMBER	PAYMENT DESCRIPTION	AMOUNT OF CHECK	CHECK NO	DATE OF ISSUE
0000707313		$20,900.00	8831316	01/10/2000

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT
JOLENE CASATELLI TELEPHONE:(315) 734-2000

EVERGREEN INS ASSOC INC U9216
PAYMENT ON BOND NO SU1524284

2271 PA

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UTICA NATIONAL INSURANCE GROUP
P. O. Box 530
Utica, NY 13503-0530

FLEET BANK
HARTFORD, CT 06115

DATE OF ISSUE
01/10/2000

8831316 51-44 119

AMOUNT OF CHECK
**********20,900.00

PLEASE CASH PROMPTLY

FOR
FO CLAIM NUMBER LOSS DATE INSURED
Z1 0000707313 02/18/1997 HAMILTON BROTHERS COAL INC

PAY TWENTY THOUSAND, NINE HUNDRED AND 00/100 ——— DOLLARS

TO THE ORDER OF COMMONWEALTH OF PENNSYLVANIA
DEP-BONDING DIVISION
P.O. BOX 8766
HARRISBURG PA 17105-8766

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AUTHORIZED SIGNATURE

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

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UTICA NATIONAL INSURANCE GROUP
Insurance that starts with you.

COMMONWEALTH OF PENNSYLVANIA
DEP-BONDING DIVISION
P.O. BOX 8766
HARRISBURG PA 17105-8766

CLAIM NUMBER	PAYMENT DESCRIPTION	AMOUNT OF CHECK	CHECK NO.	DATE OF ISSUE
0000705737		$25,500.00	8831315	01/10/2000

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT
JOLENE CASATELLI **TELEPHONE:(315) 734-2000**

EVERGREEN INS ASSOC INC U9216
PAYMENT ON BOND NO SU1700538

2271 PA

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND - NOT A WHITE BACKGROUND

UTICA NATIONAL INSURANCE GROUP
P. O. Box 530
Utica, NY 13503-0530

FLEET BANK
HARTFORD, CT 06115

DATE OF ISSUE
01/10/2000

8831315 51-44 / 119

AMOUNT OF CHECK
********25,500.00

PLEASE CASH PROMPTLY

FOR: CLAIM NUMBER: Z1 0000705737 LOSS DATE: 12/02/1998 INSURED: HAMILTON BROTHERS COAL INC

PAY TWENTY-FIVE THOUSAND, FIVE HUNDRED AND 00/100 ——— DOLLARS

TO THE ORDER OF COMMONWEALTH OF PENNSYLVANIA
DEP-BONDING DIVISION
P.O. BOX 8766
HARRISBURG PA 17105-8766

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AUTHORIZED SIGNATURE

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

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UTICA NATIONAL INSURANCE GROUP
Insurance that starts with you.

COMMONWEALTH OF PENNSYLVANIA
DEP-BONDING DIVISION
P.O. BOX 8766
HARRISBURG PA 17105-8766

CLAIM NUMBER	PAYMENT DESCRIPTION	AMOUNT OF CHECK	CHECK NO.	DATE OF ISSUE
0000707314		$52,400.00	8831317	01/10/2000

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT:
JOLENE CASATELLI TELEPHONE:(315) 734-2000

EVERGREEN INS ASSOC INC U9216
PAYMENT ON BOND NO. SU1700550

2271 PA

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND - NOT A WHITE BACKGROUND

UTICA NATIONAL INSURANCE GROUP
P.O. Box 530
Utica, NY 13503-0530

FLEET BANK
HARTFORD, CT 06115

DATE OF ISSUE
01/10/2000

8831317 51-44 119

AMOUNT OF CHECK
**********52,400.00

PLEASE CASH PROMPTLY

FO CLAIM NUMBER LOSS DATE INSURED
Z1 0000707314 12/09/1998 HAMILTON BROS. COAL INC

FOR

PAY FIFTY-TWO THOUSAND, FOUR HUNDRED AND 00/100 ——— DOLLARS

TO THE ORDER OF COMMONWEALTH OF PENNSYLVANIA
DEP-BONDING DIVISION
P.O. BOX 8766
HARRISBURG PA 17105-8766

000000000

AUTHORIZED SIGNATURE

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

⑈8831317⑈ ⑆011900445⑆ 5705⑈

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff V. HAMILTON BROTHERS COAL, INC., A Pennsylvania Corporation, ROBERT E. HAMILTON,, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	NO. 2003-798-CD Type of Document: Answer, New Matter and Counterclaim Filed by: Ronald L. Collins, Esquire Sobel & Collins 218 South Second Street Clearfield, PA. 16830 Attorney I.D. 36744 (814) 765-5552 (814) 765-6210

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

OCT 23 2006

Attest.

Prothonotary/
Clerk of Courts

EXHIBIT

tabbies

B

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
V.	:	No: 03-798-CD
HAMILTON BROTHERS COAL, INC., ROBERT E. HAMILTON, an individual, ANNA M. HAMILTON, an individual, JAMES E. HAMILTON, JR., ETHEL M. HAMILTON, an individual, Defendants	:	

NOTICE TO PLEAD

TO: UTICA MUTUAL INSURANCE COMPANY

You are hereby notified to plead to the within new Matter and Counterclaim within twenty (20) days of service hereof or a default judgment may be entered against you.

Ronald L. Collins, Esquire
Attorney for Defendants

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff V. HAMILTON BROTHERS COAL, INC, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual, Defendants	:	NO. 03-798-CD

ANSWER, NEW MATTER AND COUNTERCLAIM

AND NOW, comes the Defendants, Robert E. Hamilton, an individual, Anna Marie Hamilton, an individual, James E. Hamilton, Jr., an individual and Ethel M. Hamilton, an individual, by and through their attorney, Ronald L. Collins, Esquire, and files the foregoing Answer, New Matter and Counterclaim and respectfully avers as follows:

ANSWER

NOW COMES the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton, by and through their attorney, Ronald L. Collins, Esquire, who respectfully sets forth the Defendants Answer to Plaintiff's Second Amended Complaint as follows:

1. Paragraph One of the Second Amended Complaint is admitted to the extent stated.

2. Paragraph Two of the Second Amended Complaint is denied. It is specifically denied that Hamilton Brothers Coal, Inc. is a Pennsylvania Corporation with its principal place of business at R.D. #1, Box 16, Irvona, Pennsylvania. It would be

specifically averred that since June 25, 1996, that Hamilton Brothers Coal, Inc. has not maintained the address as set forth within Plaintiff's Second Amended Complaint but rather maintained an address of : Mr. Fred Kuzemchak, Sr., President, Hamilton Brothers Coal Company, Inc., R.R.#2, Box 563, Clymer, Pennsylvania 15728. Strict proof of the averment set forth in Paragraph Two of the Second Amended Complaint would be demanded at the time of trial and hearing in this matter.

3. Paragraph Three of the Second Amended Complaint would be admitted to the extent stated.

4. Paragraph Four of the Second Amended Complaint would be admitted to the extent stated.

5. Paragraph Five of the Second Amended Complaint would be admitted to the extent stated.

6. Paragraph Six of the Second Amended Complaint would be denied in part and would be such that the Plaintiff's can not provide a responsive averment as to the same. It would be specifically denied that at all times relevant to the instant matter, that the Defendant's conducted surface mining activities in Beccaria Township, Clearfield County, Pennsylvania pursuant to Commonwealth of Pennsylvania, Department of Environmental Protection Permit Numbers 17880122, 17910122 and 17930116. It would be specifically denied that the individual Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton ever conducted surface mining activities in Beccaria Township, Clearfield County, Pennsylvania pursuant to the Department

of Environmental Protection permits set forth within this paragraph. It would be further averred that the Defendant's after inquiry and investigation are without sufficient information to fully admit or deny portions of Plaintiff's Second Amended Complaint, Paragraph Six, as complete copies of the Environmental Protection Permits 178 80122, 17910122 and 17930116 have not been attached to the Second Amended Complaint or supplied to the Defendants. Strict proof of the denied averments of Paragraph Six of the Second Amended Complaint would be demanded at time of trial and hearing in t his matter.

7. Paragraph Seven of the Second Amended Complaint would be denied as stated. It would be specifically denied that the individual Defendant's, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton were required to individually post surety bonds in connection with any contracts. Strict proof thereof would be demanded at the time of trial and hearing in this matter.

8. Paragraph Eight of the Second Amended Complaint would be denied as stated. It would be specifically denied that the individual Defendants Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton, individually, contracted with the Plaintiff, Utica, for surety bonds bearing Surety Bond Numbers SU1524284, SU1545137, SU1554222, SU1635674, SU1700538, SU1700550, SU1366516, SU1635678, SU44373, SU44374 and SU44375. Strict proof of the averments made within Paragraph Eight of the Second Amended Complaint would be demanded at the time of trial and hearing in this matter.

9. Paragraph Nine of the Second Amended Complaint would be admitted to the extent stated. The Defendant's would aver and would deny that said Indemnity

Agreement does apply to any Surety Bonds or extension of Surety Bonds which were put into place after June 25, 1996. Strict proof of the denied portion of the averment set forth within Paragraph Nine of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

10. Paragraph Ten of the Second Amended Complaint would be denied. It is specifically denied that the individual Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton commenced work on those areas covered by Department of Environmental Protection Permit Numbers 1780122, 178910122 and 17930116. Defendant's would further specifically deny that the individual Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton were defaulting or ever defaulted on any obligations under the three permit numbers set forth above. Strict proof thereof would be demanded at time of trial and hearing in this matter.

11. Paragraph Eleven of the Second Amended Complaint would be denied. It would be specifically denied that the Plaintiff, Utica, was required to make payment to the Department of Environmental Protection on January 12, 2000 of any sums pursuant to any default or action of the individual Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton. Strict proof the denied averment of Paragraph Eleven of the Second Amended Complaint would be demanded at time of trial and hearing in this matter.

12. Paragraph Twelve of the Second Amended Complaint would be denied. It would be specifically denied that the Plaintiff, Utica, was required to make payment to the Department of Environmental Protection on May 8, 2001 of any sums

pursuant to any default or action of the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton.

13. Paragraph Thirteen of the Second Amended Complaint would be denied. It would be specifically denied that the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton are in any fashion obligated or required to indemnify Utica for any sums of money including but not limited to attorneys fees and costs associated with regard to this alleged default of Hamilton Brothers Coal, Inc. under the permits set forth above. Strict proof thereof would be demanded at the time of trial and hearing in this matter.

14. Paragraph Fourteen of the Second Amended Complaint would be denied. It would be specifically denied that the individual Defendants owe the Plaintiff, Utica, $155,458.09 for any costs whatsoever associated in regard to any payment made by Utica to the Department of Environmental Protection. Strict proof of the denied averment of Paragraph Fourteen of the Second Amended Complaint would be demanded at the time of trial or hearing in this matter.

15. Paragraph Fifteen of the Second Amended Complaint would be denied. It would be specifically denied that the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton in any fashion breached the Indemnity Agreement referred to in Paragraph Nine above, should said Indemnity Agreement be found to exist, as well as it would be specifically denied that the individual Defendants Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton are obligated in any fashion to reimburse ongoing attorney's fees associated in regard to this matter. Strict proof

of the denied averments of Paragraph Fifteen would be demanded at the time of trial or hearing in this matter.

16. Paragraph Sixteen of the Second Amended Complaint would be denied. It would be specifically denied that the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton have caused any injury to the Plaintiff, Utica, such that any form of compensation is due and owing. Strict proof thereof would be demanded at the time of trial or hearing in this matter.

WHEREFORE, the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton respectfully request that your Honorable Court deny the Plaintiff, Utica Mutual Insurance Company's request for judgment and that your Honorable Court dismiss the Second Amended Complaint filed by the Plaintiff. It is further respectfully requested that your Honorable Court deny the Plaintiff any counsel fees, interest, costs or any other sum associated with regard to this matter.

NEW MATTER

NOW COMES the Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton by and through their attorney, Ronald L. Collins, Esquire, who respectfully sets forth the Defendant's New Matter to the Second Amended Complaint and would respectfully set forth and aver as follows:

17. Paragraphs One through Sixteen of the Answer set forth above would be incorporated herein by reference as if the same were set forth in full at length.

18. That on June 25, 1996, Hamilton Brothers Coal, Inc. was sold to Fred Kuzemchak Mining.

19. That as a result of said sale of the corporation, Hamilton Brothers Coal, Inc., the individual Defendant's Robert E. Hamilton, James E. Hamilton, Jr. no longer retained any ownership, interest, control or in any fashion were involved in the mining operations of Hamilton Brothers Coal, Inc. subsequent to that date.

20. That as of the date of the conveyance to Kuzemchak, Hamilton Brothers Coal, Inc. was in full compliance with all regulations and permit requirements and was in full conformity with all regulations of the Pennsylvania Department of Environmental Protection.

21. That as of the date of the conveyance to Kuzemchak, Hamilton Brothers Coal, Inc. was not the subject of any Notices of Violation or Cessation Orders of the Pennsylvania Department of Environmental Protection.

22. That as of December 17, 1998, the Plaintiff, Utica Mutual Insurance Company was fully aware of the alleged default in the Surety Bonds as such was indicated within correspondence received by the Defendants Robert E. Hamilton and James E. Hamilton, Jr. on that same date.

23. That the instant matter was commenced by Civil Complaint filed June 2, 2003, against the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton based upon the Indemnification Agreement set forth as Exhibit B to Plaintiff's Second Amended Complaint.

24. That by letter dated December 17, 1998, the Defendant, Robert E. Hamilton was notified by the Plaintiff, Utica Mutual Insurance Company that a default had occurred as to Pennsylvania Department of Environmental Protection Bonds and that the life insurance policy held by the Plaintiff, Utica Mutual Life Insurance in

the name of Robert E. Hamilton was being forfeited such that payment could be made to the Department of Environmental Services.

25. That at the time of said forfeiture the value of said policy was $71,713.85.

26. That by letter dated December 17, 1998, the Defendant, James E. Hamilton, Jr. was notified by the Plaintiff, Utica Mutual Insurance Company, that a default had occurred as to Pennsylvania Department of Environmental Protection Bonds and that the life insurance policy held by the Plaintiff, Utica Mutual Life Insurance in the name of James E. Hamilton, Jr. was being forfeited such that payment could be made to the Department of Environmental Services.

27. That at the time of the forfeiture the value of said policy was in an amount in excess of $55,103.56.

28. That after the sale of June 25, 1996, Hamilton Brothers Coal, Inc. continued to be operated by Fred Kuzemchak Mining.

29. That from June 25, 1996 through the Notice of Default on December 17, 1998, Hamilton Brothers Coal, Inc. while being operated by Fred Kuzemchak Mining, fell out of compliance with Department of Environmental Protection regulations such that various violations were cited with said violations continuing in effect up through and including the date of the Cessation Order.

30. That despite the fact that Hamilton Brothers Coal, Inc. during that time period set forth within the immediately preceding paragraph was not in compliance with Department of Environmental Protection regulations, the Department in violation of its own regulations allowed the extension, amendment, restructuring and/or modified or extended those bonds which were covering the areas being mined by

Hamilton Brothers Coal, Inc.

31. That from June 25, 1996 through the date of the Notice of Default on December 17, 1998, the Plaintiff, Utica Mutual Insurance Company through its agent, Evergreen Insurance Associated, Inc. were aware of the sale of Hamilton Brothers Coal, Inc. to Fred Kuzemchak Mining.

32. That from June 25, 1996 through the date of the Notice of Default on December 17, 1998, the Plaintiff, Utica Mutual Insurance Company, through its agent, Evergreen Insurance Associates, Inc. was aware of the fact that the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton were no longer associated with the operation of Hamilton Brothers Coal, Inc.

33. That from June 25, 1996 through the date of the Notice of Default on December 17, 1998 and thereafter, the Plaintiff, Utica Mutual Insurance company, through its agent, Evergreen Insurance Associates, Inc. continued to bill Hamilton Brothers Coal, Inc. at the address of Fred Kuzemchak Mining for Surface Mining Bonds some of which are those same Surety Bonds set forth within Plaintiffs Second Amended Complaint as well as allowed modification of the bonds by the Department of Environmental Protection such that various acres of support and collateral letters of credit were used in order to modify the former acres of support such that mining could be commenced thereon.

34. That the net effect of such action set forth in paragraph thirty three above is that the same increased the liability and exposure of the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton.

35. On December 2, 1997, after the sale of Hamilton Brothers Coal, Inc. more modifications were done to Utica Surety Bond SU1700550 such that more acreage was added to both the mining and support bonds.

36. That the net effect of such action set forth in paragraph thirty three above is that the same increased the liability and exposure of the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton.

37. That from June 25, 1996 through the date of the Notice of Default on December 17, 1998 and thereafter, the Plaintiff, Utica Mutual Insurance, Inc., allowed modification of the bonds by the Department of Environmental Protection such that various acres of support and mining were modified thereby increasing and allowing the mining activities on the permitted properties as well as such that the liability of the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton was increased.

38. That the net effect of such action is that the same increased the liability and exposure of the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton.

39. That at no time did the Plaintiff, Utica Mutual Insurance Company notify the Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton that the individual bonds and/or permits set forth within Plaintiff's Second Amended Complaint were being renewed, modified, altered, transferred so as to increase the liability under the bonds or any other action such as would have the effect of increasing the liability under the Indemnification Agreement executed by the individual Defendants, Robert E. Hamilton, Anna M.

Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton.

40. That the Department of Environmental Protection as of March 9, 1999, granted a partial release of Permit Number 17930116 and refunded money back to Hamilton Brothers Coal, Inc. and refunded/credited money back to Hamilton Brothers Coal, Inc. and/or Utica Mutual Insurance Company.

41. That said refunding/credit of a portion of the bond money associated in regard to Permit Number 17930116 was refunded to Hamilton Brothers Coal, Inc. and/or Utica Mutual Insurance Company on March 9, 1999, despite the fact that the Plaintiff, Utica Mutual Insurance Company had previously forfeited the Defendant, Robert E. Hamilton and James E. Hamilton Jr.'s life insurance policies as of December 17, 1998.

WHEREFORE, it is respectfully requested that your Honorable Court dismiss the Complaint filed against the individual Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton and that your Honorable Court award the Defendants counsel fees, costs and expenses associated with regard to the defense of the instant matter.

COUNTERCLAIM

AND NOW, comes the Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton by and through their attorney, Ronald L. Collins, Esquire who respectfully sets forth the Defendants Counterclaim as follows:

42. Paragraph One through Forty-One of the Answer and New Matter set forth above would be incorporated herein by reference as if the same were set forth at length.

43. That by letter dated December 17, 1998, the life insurance policy of Robert E.

Hamilton was forfeited for the alleged purpose of payment of obligations due and owing the Department of Environmental Protection as a result of a Cessation Order which had been issued.

44. That said life insurance policy at the time of its forfeiture had a cash surrender value in the amount of $71,713.85.

45. That said forfeiture and surrender of the policy was improper in that Robert E. Hamilton as of June 25, 1996 was no longer an owner of Hamilton Brothers Coal, Inc. nor was he associated with regard to the same such that he should be obligated for any default of Hamilton Brothers Coal, Inc. obligations.

46. That by letter December 17, 1998, the life insurance policy of James E. Hamilton, Jr. was forfeited for the alleged purpose of payment of obligations due and owing the Department of Environmental Protection as a result of the Cessation Order which had been issued.

47. That said life insurance policy at the time of its forfeiture had a cash surrender value in an amount in excess of $55,103.50.

48. That said forfeiture and surrender of the policy was improper in that James E. Hamilton, Jr. as of June 25, 1996 was no longer an owner of Hamilton Brothers Coal, Inc. nor was he associated with regard to the same such that he should be obligated for any default of Hamilton Brothers Coal, Inc. obligations.

49. That the Defendants, Robert E. Hamilton and James E. Hamilton, Jr. have suffered injury as a result of the actions of the Plaintiff, Utica Mutual Insurance Company in an amount in excess of $126,817.35.

50. That since the date of the forfeiture of each individual policy the Defendants,

Robert E. Hamilton and James E. Hamilton, Jr. have suffered the additional loss of the gain and interest which would have accrued as to said life insurance policies from December 17, 1998 through the present day as well as loss which will continue to accrue into the future which can no longer be obtained due to the cashing in of said policies and the loss of the insurance value which was available to each of the individual Defendants, Robert E. Hamilton and James E. Hamilton, Jr., at the time said policies were forfeited. Said future damages are in an unliquidated amount.

51. That the Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton have further had to expend counsel fees, costs and ongoing counsel fees in regard to the assertion of this Counterclaim.

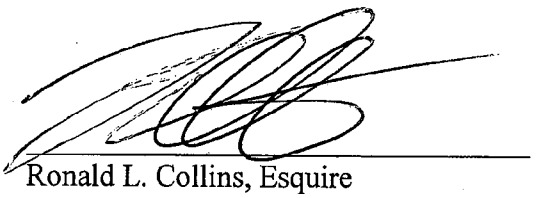
52. That the conduct of the Plaintiff, Utica Mutual Insurance Company in forfeiting the insurance policies improperly and in commencing this action to collect on the Indemnification Agreement constitutes an arbitrary, vexatious and/or bad faith act such that the Defendants would request punitive damages in an unliquidated amount to compensate the Defendants as a result of the Plaintiffs improper act.

WHEREFORE, the Defendants, Robert E. Hamilton, Anna M. Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton demand judgment against the Plaintiff, Utica Mutual Insurance Company in the liquidated amount in excess of $126,817.35, plus counsel fees, costs and expenses, interest, accrued interest from 1998 to the present date on the forfeited life

insurance policies as well as punitive damages in an unliquidated amount.

JURY TRIAL DEMANDED

Respectfully Submitted:



Ronald L. Collins, Esquire
Attorney for Defendants

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL INC., ROBERT E. HAMILTON, ANNA MARIE HAMILTON; JAMES E. HAMILTON, JR. and ETHEL M. HAMILTON, Defendants	:	

VERIFICATION

I verify that the statements made in the forgoing Answer, New Matter and Counterclaim 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.

Robert E. Hamilton

Anna Marie Hamilton

James E. Hamilton, Jr.

Ethel M. Hamilton

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	NO. 03-798-CD
V.	:	
HAMILTON BROTHERS COAL, INC., ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, and individual, Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within document was served this 23 day of October, 2006, upon the following by U.S. Mail, postage prepaid, via certified mail, return receipt requested to:

Matthew D. Gailey, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA. 15219

Respectfully submitted:

Ronald L. Collins, Esquire
Attorney for Defendant

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

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 - CD

SCHEDULING ORDER

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED 1cc
014:00 BCA Atty Gailey
MAR 02 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03 – 798 – CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	
Defendants.	

SCHEDULING ORDER

AND NOW the Court hereby schedules Plaintiff's Response to Defendants' Motion to Dismiss/Statute of Limitations for argument on April 15, 2009, in front of Judge Ammerman, at 1:30 o'clock ~~a.m.~~/p.m.

By the Court:

Fredric J Ammerman
_____ J.
3/2/09

#1486168

FILED

MAR 02 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 3/2/09

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03–798-CD

PRAECIPE FOR ENTRY OF TRANSCRIPTS UPON THE DOCKET

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

Matthew D. Gailey, Esquire
Pa. I. D. #90920

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED NO CC
M 10:24 BA
APR 30 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03 – 798 – CD

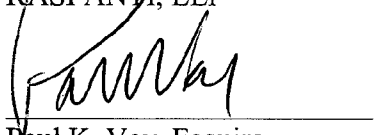
PRAECIPE FOR ENTRY OF TRANSCRIPTS UPON THE DOCKET

TO THE PROTHONOTARY:

KINDLY enter onto the docket of the above-captioned action, the deposition transcripts of Robert E. Hamilton (transcript dated May 16, 2008) and James E. Hamilton, Jr. (transcript dated May 16, 2008), the originals of which are attached hereto.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP



Paul K. Vey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Praecipe for Entry of Transcripts Upon the Docket** was served upon the following by first class mail, postage pre-paid, this 28th day of April, 2009, addressed as follows:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

By: _____
Paul K. Vey, Esquire
Attorney for Plaintiff

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

FILED
01:05:30
JUN 02 2009
William A. Shaw
Prothonotary/Clerk of Courts
Copies to parties
listed on attached
sheet

UTICA MUTUAL INSURANCE COMPANY Plaintiff,	:	
vs.	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual. Defendants	:	

OPINION

On June 2, 2003 the Utica Mutual Insurance Company's (hereinafter "Plaintiff") initiated a cause of action against Hamilton Brothers Coal, Inc., Robert Hamilton, Anna Marie Hamilton, James Hamilton and Ethel Hamilton's (Collectively "Defendants"), alleging breach of indemnity agreement. Plaintiff has filed a Motion for Summary Judgment and the individual Defendants have filed a Motion to Dismiss, pursuant to the Statute of Limitations, 42 Pa.C.S.A. §5525.

Generally, a statute of limitations defense shall be set forth in a responsive pleading under the heading New Matter. Pa.R.C.P. §1030. The contents of a pleading shall include the material facts on which a cause of action or defense is based. Pa.R.C.P. §1019. "There is no necessity to name the defense asserted so long as facts sufficient to constitute the defense are pled." *Iorfida v. Mary Robert Realty Co., Inc.*, 539 A.2d 383, 387 (Pa.Super.,1988), citing Pa.R.C.P. § 1019. Pursuant to 42 Pa.C.S.A. §5525, contract actions and proceeding must commence within four (4) years.

Defendants conducted mining operations in Beccaria Township, Clearfield County, while operating as Hamilton Brothers Corporation. The Defendants obtained surety bonds for

their mining permits, in compliance with Pennsylvania Environmental Department Protection("DEP") regulations. Defendants obtained the surety bonds from Plaintiff, in their capacity as an insurance company. The Defendants executed an Indemnity Agreement, indemnifying Plaintiff from any financial liability. Plaintiff held Defendants', Robert Hamilton and James Hamilton, life insurance policies as collateral, which were to be forfeited in the event the bonds came into default. On or about June 25, 1996, the Defendants sold the mining permits to Fred Kuzemchak. Thereafter, the mining permits' bonds came into default with DEP. Consequently, Defendants', Robert Hamilton and James Hamilton, life insurance policies were surrendered to Plaintiff. At the time the bonds were forfeited, Robert Hamilton's policy was valued at $71,713.85 and James Hamilton's policy was valued at $66,548.07. The Plaintiff notified Defendants Robert and James Hamilton that it had cancelled the life insurance policies and received the surrender value through letters dated December 17, 1998 and February 23, 1999. See *Exhibits D* attached to *Plaintiff's Motion for Summary* Judgment. According to the Plaintiff, Defendants owe an additional $155,458.09 plus interest and costs associated with payments made to DEP for the defaulted bonds.

On June 2, 2003 the Plaintiff initiated a cause of action against the Defendants alleging breach of indemnity agreement. "...[T]he statute of limitations begins to run as soon as "the plaintiff knows, or reasonably should know, (1) that he has been injured, and (2) that his injury has been caused by another party's conduct." *Bohus v. Beloff*, 950 F.2d 919, 924 (3rd Cir. 1991). Here, the Defendants provided the essential dates on which the Plaintiff discovered the surety bonds were in default, December 17, 1998 and February 23, 1999. The dates were supported on the record in the form of letter communications from the Plaintiff to the Defendants addressing the defaulted surety bonds. This Court finds that the Plaintiff

discovered its alleged injury no later than February 23, 1999. Hence, as of February 23, 2003, the Plaintiff was barred from initiating a cause of action regarding the indemnity contract, excluding any elements of fraud or concealment, which the Plaintiff does not contend. The Plaintiff initiated a cause of action against the Defendants on June 2, 2003. The Defendants properly pleaded the affirmative defense of statute of limitations by way of New Matter in paragraphs twenty-two (22) through twenty-six (26), even though the words "statute of limitations" were not specifically pled. *Defendant's Answer, New Matter and Counterclaim*, paragraph 22-26. Therefore, the Plaintiff's cause of action was filed beyond the applicable statute of limitations and is precluded.

ORDER

AND NOW, this 2nd day of June 2009, upon consideration of Utica Mutual Insurance Company's Motion for Summary Judgment and Robert Hamilton, Anna Marie Hamilton, James Hamilton and Ethel Hamilton's Motion to Dismiss, pursuant to the Statute of Limitations, it is the ORDER of this Court as follows:

1. Plaintiff, Utica Mutual Insurance Company's Motion for Summary Judgment is hereby DENIED.
2. Defendants Robert Hamilton, Anna Marie Hamilton, James Hamilton and Ethel Hamilton's Motion to Dismiss, pursuant to the Statute of Limitations, is hereby GRANTED. The Plaintiff's Complaint against the said individual Defendants is DISMISSED.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

03-798-CD
Utica Mutual Insurance vs. Hamilton Brothers et al

1CC:

Paul K. Vey, Esq.
William Wyrick, Esq.
Robert J. Monahan, Esq.
Matthew D. Gailey, Esq.
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

Hamilton Brothers Coal, Inc.
C/o Fred Kuzemachak
RD 2 Box 563
Clymer, PA 15728

Ronald Collins, Esq.

Evergreen Insurance Associates, Inc.
PO Box 505
Ebensburg, PA 15931

Commonwealth of PA
Department of Environmental Protection
186 Enterprise Drive
Philipsburg, PA 16866

Fred Kuzemchak
Mining RD 2 Box 563
Clymer, PA 15728

1CC - D. McKesell
Law Library

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03–798-CD

MOTION FOR RECONSIDERATION

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED ICC Atty Vey
m/10:45BD
JUN 26 2009
William A. Shaw
Prothonotary/Clerk of Courts
GIU

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

CIVIL ACTION

No. 03 – 798 – CD

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

MOTION FOR RECONSIDERATION

AND NOW comes plaintiff, Utica Mutual Insurance Company, by its counsel, Pietragallo Gordon Alfano Bosick & Raspanti, LLP and Paul K. Vey, Esquire, and files the following Motion for Reconsideration:

1. In connection with the above-referenced case, this Honorable Court entered an Order dated June 2, 2009 disposing of some but not all of the issues in the instant case.

2. In connection with its Order, the Court concluded that the claim under the indemnification agreement between the individual defendants and Utica Mutual Insurance Company is time-barred.

3. As support for the Court's conclusion, court referred to the lateral agreement found that the forfeiture of the life insurance policies in the instant case set the period of limitations running.

4. In fact, the claim in the instant case is based upon the Indemnification Agreement; and, respectfully, has no relation to the collateral agreement.

5. It is manifest under Pennsylvania law that a cause of action for an indemnity based upon a contract such as in the instant case, accrues at no time other than the time at which the indemnity actually makes payment upon an obligation. It is that date, and no other, than triggers the indemnity agreement and the period of limitations. Simply stated, under the terms of the indemnity agreement, the claim is not ripe and no damages have occurred until such time as Utica was required to make payment to the Department of Environmental Resources in the instant case.

6. The record clearly demonstrates that such payment was made within four years of the time that the lawsuit was commenced in this case on the indemnity agreement.

7. Your movant most respectfully, but quite ardently, requests that reconsideration of the court's prior ruling is appropriate.

WHEREFORE, the plaintiff respectfully requests that this Honorable Court grant reconsideration in connection with the above-referenced case.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP

Paul K. Vey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion for Reconsideration was served upon the following by first class mail, postage pre-paid, this 23 day of June, 2009, addressed as follows:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

By: _____
Paul K. Vey, Esquire
Attorney for Plaintiff

#1541456

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

CIVIL ACTION

No. 03 – 798 – CD

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

ORDER OF COURT

AND NOW, to-wit, this 29 day of June, 2009, upon consideration of the with Motion for Reconsideration, it is hereby ORDERED, ADJUDGED and DECREED that:

The Motion is denied. FJA

By the Court:

_____, J.

FILED 1cc
04:00 BL Atty Vey
JUN 29 2009
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/29/09

X You are responsible for serving all appropriate parties.

___ The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

FILED

JUN 29 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03–798-CD

NOTICE OF INTENTION TO TAKE DEFAULT JUDGMENT

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED no cc
m/10:53 BL
JUL 15 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,
vs.

CIVIL ACTION

No. 03 – 798 – CD

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,
Defendants.

NOTICE OF PRAECIPE TO ENTER JUDGMENT BY DEFAULT

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. **UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE**, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS.

YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOAUT HRIGIN LAWYER.

IF YOU CAN NOT AFFOR TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Clearfield County Court of Common Pleas
230 East Market Street, Clearfield, PA 16830
Phone: 814-765-2641

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

By:_____
Paul K. Vey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Notice of Praecipe to Enter Judgment by Default was served upon the following by first class mail, postage pre-paid, this 13 day of July, 2009, addressed as follows:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

By: _____
Paul K. Vey, Esquire
Attorney for Plaintiff

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	No. 03-798-CD
	:	Type of Case: Civil
vs.	:	
	:	Type of Pleading: Motion to Strike Notice of Praecipe to Enter Judgment by Default and Motion for Counsel Fees
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	Filed on Behalf of: Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton, Defendants
	:	Counsel of Record for this Party: Ronald L. Collins, Esquire I.D. #36744
	:	Sobel & Collins 218 South Second Street Clearfield, PA 16830 Telephone: (814) 765-5552 Fax: (814) 765-6210

FILED 3cc Atty Collins
9/3:14cm
JUL 22 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

MOTION TO STRIKE NOTICE OF PRAECIPE TO ENTER JUDGMENT BY DEFAULT AND MOTION FOR COUNSEL FEES

NOW, comes the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton by and through their attorney, Ronald L. Collins, Esquire, who respectfully sets forth their Motion to Strike Notice of Praecipe to Enter Judgment by Default and Motion for Counsel Fees and would aver as follows:

MOTION TO STRIKE NOTICE OF PRAECIPE TO ENTER JUDGMENT BY DEFAULT

1. That instant counsel, Ronald L. Collins, Esquire is currently attorney of record in the above captioned matter representing the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton.

2. That the Defendant, Hamilton Brothers Coal, Inc. is to the knowledge of instant counsel not represented by any attorney nor from a review of the docket entries has Hamilton Brothers Coal , Inc. ever been served with any of the Complaints, Amended Complaints or pleadings in this matter by any of the parties.

3. That the Plaintiff, Utica Mutual Insurance Company, has filed of record on July 15, 2009 a Notice of Praecipe to Enter Judgment by Default and served a copy thereof upon instant counsel who represents only the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton. Attached hereto and incorporated herein by reference as Exhibit "A" is a complete copy of the pleading and the transmittal letter.

4. That the Notice of Praecipe to Enter Judgment by Default does not indicate on its face as to which of the Defendants it is directed or intended to provide notice to.

5. That the Notice of Praecipe to Enter Judgment by Default has attached thereto a Certificate of Service which shows that it was solely served upon instant counsel and no one else.

6. That the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton, represented by instant counsel, have fully filed responsive pleadings and other matters in the case to the point that the Court by Order dated June 2, 2009 granted the Defendant's, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton Motion to Dismiss and dismissed the Complaint filed against them.

7. That there is no basis for the filing of said Notice of Praecipe to Enter Judgment by Default as to the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton nor is there a basis for service upon instant counsel of the Notice as instant counsel does not represent Hamilton Brothers Coal, Inc.

8. That throughout the course of this litigation, the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton through numerous pleadings have set forth that they are not Hamilton Brothers Coal, Inc. to the extent that the Court by Order dated February 28, 2006 directed that service as to Hamilton Brothers, Coal, Inc. was not to be made upon the individuals, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton. Attached hereto and incorporated herein by reference as Exhibit "B" is a complete copy of said Order of Court.

9. That the filing of the Notice of Praecipe to Enter Judgment by Default without designation as to which of the Defendants it is directed and the service of such solely upon instant counsel creates the impression that the individual Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton are to be held in default for failure to respond and any Judgment granted as a result thereof may be assumed or read by creditors and others looking at the docket to apply to the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton individually.

WHEREFORE, the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton would respectfully request that your Honorable Court issue an Order striking the filing of the Notice of Praecipe to Enter Judgment by Default as to the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton and such other Order as the Court may deem necessary to clarify on the docket that any default judgment is not entered as to the individual Hamilton Defendants.

MOTION FOR COUNSEL FEES

10. That the averments of Paragraphs 1 through 9 of the above Motion to Strike Notice of Praecipe to Enter Judgement by Default would be incorporated herein by reference as if the same were set forth in full at this point.

11. That as a direct result of those matter and averments set forth above, the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton have had to have instant counsel file the instant Motion to Strike Notice of Praecipe to Enter Judgment by Default in order to protect the record and assure that a default judgment is not entered as to the individual Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton whom have already obtained dismissal of the Complaint which had been filed against them.

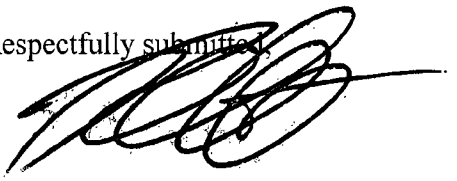
12. That it is anticipated that it will be necessary for instant counsel to attend a hearing before the Court at which time the matter will be argued.

13. That Counsel fees in regard to the filling of the instant Motion and the attendance at the argument will be in the amount of $750.00.

14. That the filing of the instant Motion should be unnecessary in light of the current standing of the case.

WHEREFORE, the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton and Ethel M. Hamilton would respectfully request that your Honorable Court issue an Order awarding Counsel fees in the matter in the amount of $750.00

Respectfully submitted,



Ronald L. Collins, Esquire
Attorney for Defendants
Robert E. Hamilton, Anna Marie Hamilton,
James E. Hamilton and Ethel M. Hamilton.

PIETRAGALLO
PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP
ATTORNEYS AT LAW

38TH FLOOR ONE OXFORD CENTRE PITTSBURGH, PA 15219
412.263.2000 FAX: 412.263.2001
WWW.PIETRAGALLO.COM

DIRECT DIAL NO.: 412.263. 1823
FILE NO.: UM 40122
E-MAIL: PKV@Pietragallo.com

July 13, 2009

William D. Shaw, Clerk of Courts & Prothonotary
Clearfield County
PO Box 549
Clearfield, PA 16830-0361

Re: Utica Mutual Insurance Company v. Hamilton Brothers Coal, Inc., Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr., and Ethel M. Hamilton
In the Court of Common Pleas of Clearfield County, Pennsylvania
Case No. 03-798-CD

Dear Mr. Shaw:

Enclosed please find a Notice of Praecipe to Enter Judgment by Default for filing on behalf of the Plaintiff, Utica Mutual Insurance Company.

Please file the original and return a time-stamped copy of the cover sheet in the pre-addressed, stamped envelope that is also enclosed.

Thank you very kindly for your assistance with this filing by mail.

Very truly yours,

Paul K. Vey

Paul K. Vey

PKV/svm
Enclosure
cc: Court Administrator, Civil Division (w/enc.)
cc: Ronald L. Collins, Esq. (wo/enc.)

Exhibit A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03–798-CD

NOTICE OF INTENTION TO TAKE DEFAULT JUDGMENT

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,
Defendants.

CIVIL ACTION

No. 03 – 798 – CD

NOTICE OF PRAECIPE TO ENTER JUDGMENT BY DEFAULT

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. **UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE**, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS.

YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOAUT HRIGIN LAWYER.

IF YOU CAN NOT AFFOR TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Clearfield County Court of Common Pleas
230 East Market Street, Clearfield, PA 16830
Phone: 814-765-2641

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

By: _____
Paul K. Vey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Notice of Praecipe to Enter Judgment by Default was served upon the following by first class mail, postage pre-paid, this 13 day of July, 2009, addressed as follows:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

By: _____
Paul K. Vey, Esquire
Attorney for Plaintiff

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

FILED
0/2:16 BH
MAR 01 2006
William A. Shaw
Prothonotary/Clerk of Courts
Copies-see attached

ORDER

NOW this 28 day of February, 2006 upon consideration of the Preliminary Objections to Plaintiff's Amended Complaint filed by the Defendants, Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr. and Ethel M. Hamilton and the Court having held argument thereon it is the ORDER of this Court that said Preliminary Objection be and are hereby granted as follows:

1. The Plaintiff is directed to file an Amended Complaint and attach thereto complete copies of all documents by way of Indemnity Agreements, Surety Bonds and/or Permits which are the basis for the claim asserted by the Plaintiffs against the Defendants.

2. The Plaintiff is directed to make service of said Amended Complaint upon each of the specific Defendants named to include specifically service upon the Defendant

Hamilton Brothers Coal, Inc. which service as to Hamilton Brothers Coal, Inc. is not to be made upon Robert E. Hamilton, Anna Marie Hamilton, James E. Hamilton, Jr and/or Ethel M. Hamilton.

BY THE COURT



Fredric J. Ammerman
President Judge

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify this 22nd day of July, 2009, a copy of the foregoing Motion to Strike Notice of Praecipe to Enter Judgment by Default and Motion for Counsel Fees has been served upon the following and in the manner indicated below:

Service by first class mail, postage prepaid addressed as follows:

Paul K. Vey, Esquire
Pietragallo Gordan Alfano Bosick & Raspanti, LLP
38th Floor, One Oxford Centre
Pittsburgh, Pa. 15219

Respectfully Submitted,

Ronald L. Collins, Esquire
Attorney for Defendants
Robert E. Hamilton, Anna Marie Hamilton,
James E. Hamilton and Ethel M. Hamilton

FILED

JUL 22 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff	:	
vs.	:	
	:	No. 03-798-CD
HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, and individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, Defendants	:	

ORDER

NOW, this 23rd day of July, 2009 upon consideration of the Motion to Strike Notice of Praecipe to Enter Judgment by Default and Motion for Counsel Fees filed as to the above captioned matter it is the ORDER of this Court hearing on the said Motions shall be held on the 11th day of September 2009 at 10:30 o'clock A. M. in Courtroom Number 1 of the Clearfield County Courthouse.

BY THE COURT,

Fredric J. Ammerman

FREDRIC J. AMMERMAN
PRESIDENT JUDGE

FILED 4cc
01:45 PM Atty Collins
JUL 23 2009
GV
William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 23 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/23/09

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,

Defendants.

CIVIL ACTION

No. 03–798-CD

PRAECIPE TO WITHDRAW NOTICE OF INTENTION TO TAKE DEFAULT JUDGMENT

Filed on behalf of plaintiff:
UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED NO CC
10:41 BOH
JUL 29 2009
(GW)
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff, vs.	CIVIL ACTION No. 03 – 798 – CD

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,
Defendants.

PRAECIPE TO WITHDRAW
NOTICE OF INTENTION TO TAKE DEFAULT JUDGMENT

TO THE PROTHONOTARY:

KINDLY file the instant Praecipe to Withdraw Notice of Intention to Enter Default Judgment in the above-referenced case, which was filed in error.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

By:_____
Paul K. Vey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PRAECIPE TO WITHDRAW NOTICE OF INTENTION TO TAKE DEFAULT JUDGMENT** was served upon the following by first class mail, postage pre-paid, this 27 day of July, 2009, addressed as follows:

Ronald L. Collins, Esq.
Sobel & Collins
218 South Second Street
Clearfield, PA 16830

By: _____
Paul K. Vey, Esquire
Attorney for Plaintiff

UA

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

UTICA MUTUAL INSURANCE COMPANY, :
Plaintiff

v. : No. 03-798-CD

HAMILTON BROTHERS COAL, INC., a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual, and ETHEL M. HAMILTON, an individual, :
Defendants

FILED
AUG 04 2009
m/12:45/cc
William A. Shaw
Prothonotary/Clerk of Courts
5 cert to Atty

: **PRAECIPE TO WITHDRAW MOTION TO STRIKE NOTICE OF PRAECIPE TO ENTER JUDGEMENT BY DEFAULT**

: Filed on behalf of:
Paul E. Greene, Defendant

: Counsel for this party:
Ronald L. Collins, Esquire

: Supreme Court No. 36744

: SOBEL & COLLINS
Attorneys at Law
218 South Second Street
Clearfield, PA 16830

: (814)765-5552
FAX (814)765-6210

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

UTICA MUTUAL INSURANCE COMPANY, :
Plaintiff

v. : No. 03-798-CD

HAMILTON BROTHERS COAL, INC., a
Pennsylvania Corporation, ROBERT E. HAMILTON,
an individual, ANNA MARIE HAMILTON, an
individual, JAMES E. HAMILTON, JR., an
individual, and ETHEL M. HAMILTON,
an individual, :
Defendants

To the Prothonotary, William Shaw:

The Plaintiff having filed a Praecipe to Withdraw the Notice of Intention to Take Default Judgement previously filed by it, the Motion to Strike Notice of Praecipe to Enter Judgement by Default filed by us is therefore moot. Please mark the same as WITHDRAWN.

In addition please also mark the Motion for Counsel Fees that we filed in connection with the Motion to Strike as also WITHDRAWN.

Respectfully submitted,

Ronald L. Collins, Esquire

Date: 8/31/2009

FILED
AUG 04 2009
William A. Shaw
Prothonotary/Clerk of Courts

FILED
OCT 05 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,	CIVIL ACTION
Plaintiff,	No. 03-798-CD
vs.	
HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,	**JOINT STIPULATION FOR VOLUNTARY DISMISSAL OF CLAIMS OF BOTH PLAINTIFF AND DEFENDANTS**
Defendants.	Filed on behalf of plaintiff: UTICA MUTUAL INSURANCE COMPANY

Counsel of record for this party:

Paul K. Vey, Esquire
Pa. I. D. #30824

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP
Firm I.D. #834
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,
vs.

CIVIL ACTION

No. 03 – 798 – CD

HAMILTON BROTHERS COAL, INC, a Pennsylvania Corporation, ROBERT E. HAMILTON, an individual, ANNA MARIE HAMILTON, an individual, JAMES E. HAMILTON, JR., an individual and ETHEL M. HAMILTON, an individual,
Defendants.

JOINT STIPULATION FOR VOLUNTARY DISMISSAL OF CLAIMS OF BOTH PLAINTIFF AND DEFENDANTS

AND NOW come the undersigned, by their respective attorneys, and stipulate to the voluntary discontinuance of the claims made by each in the above referenced matter filed in the Court of Common Pleas of Clearfield County, Pennsylvania, Case No. 03-798-CD, and agree that the execution of the instant Stipulation by the undersigned counsel shall dismiss, with prejudice, any and all claims that have been filed by the respective parties or that might be filed by the respective parties upon any claim or cause of action whatsoever associated with, or related in any way to, the above referenced matter.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP

By:_____
Paul K. Vey, Esquire
Counsel for Plaintiff, Utica Mutual Insurance Company

38th Floor, One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

By:_____
Ronald L. Collins, Esquire
Counsel for Defendants, Robert E. Hamilton; Anna Marie Hamilton; James E. Hamilton, Jr. and Ethel M. Hamilton

FILED
OCT 05 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY	*	NO. 2003-798-CD
Plaintiff	*	
vs.	*	
HAMILTON BROTHERS COAL, INC., ROBERT E.	*	
HAMILTON, ANNA MARIE HAMILTON, JAMES E.	*	
HAMILTON, JR., ETHEL M. HAMILTON,	*	
EVERGREEN INSURANCE ASSOCIATION, INC., and	*	
FRED KUZEMCHAK,	*	
Defendants	*	

ORDER

NOW, this 28th day of February, 2013, upon the Court's review of the record, with the Court noting that on October 5, 2009 a Joint Stipulation for Voluntary Dismissal of Claims of Both Plaintiff and Defendants was filed by Attorney Paul K. Vey, the Court considers this case concluded. The Prothonotary shall code the case in Full Court as Z-TFWDA.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED 1cc Atty Vey
01/8:30 cm
MAR 1 2013
William A. Shaw
Prothonotary/Clerk of Courts