03-869-CD
CHESTER A. OGDEN vs LEONARD O. SWISHER, SR., etal

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

CHESTER A. OGDEN, Plaintiff	*	NO. 03 869 -CD
	*	Type of Case; Civil
vs.	*	
	*	Type of Pleading; Complaint
LEONARD O. SWISHER, SR. , PRES. SWISHER CONTRACTING INC., Defendant	*	
	*	Filed by Plaintiff
	*	Chester A. Ogden 512 Hartshorn Road Clearfield, Pa. 15830 Phone: (814) 765-4682

FILED

JUN 13 2003

William A. Shaw
Prothonotary

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	NO.
LEONARD O. SWISHER SR., PRESIDENT, SWISHER CONT- RACTING INC., Defendant	*	

NOTICE

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

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

William A. Shaw, Prothonotary/Clerk of Courts

First Floor, Court House
Market and Second Streets

Clearfield, Pa. 16830

Phone: (814) 765-2641 Ext. 19

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

CHESTER A. OGDEN,	*	
Plaintiff	*	
	*	
vs.	*	No.
LEONARD O. SWISHER, SR., PRES.	*	
SWISHER CONTRACTING INC.,	*	(Jury Trial demanded)
Defendant	*	

COMPLAINT

AND NOW, comes Chester A. Ogden, Plaintiff, and files the following Complaint in a Civil Action against the above named Defendant upon causes of action, whereof the following are statements..

1. The Plaintiff, Chester A. Ogden, is an adult individual who resides at 512 Hartshorn Road, Clearfield, Pennsylvania 16830.

2. The Defendant, Leonard O. Swisher, President, Swisher Contracting Inc., is an individual who resides at R.D.3, Clearfield, Pennsylvania 16830.

3. On June 26, 1998, Plaintiff and Defendant entered into Agreement Of Lease, whereby Chester Ogden conveyed specific rights to Leonard Swisher to conduct an open pit coal mining operation on 85 acre tract of land in Lawrence Township, Clearfield County, Pennsylvania.

4. Pursuant to said agreement, Defendant has established a precedent of paying the landowner monthly minimum of $150.00 in advance, and agreed to pay $2.50 per ton for all coal mined and removed , thus representing compensation for use of Plaintiff's land.

5. Paragraph 3 states "Lessee shall work and mine the Leased Premises in a workmanlike manner and shall comply with the laws of the Commonwealth of Pennsylvania and of the United States of America".

6. Paragraph 7 states "Lessee does hereby convenant and agree that it will protect and save harmless Lessor from any claims or demands for damages to person or property that may arise as a direct result of Lessee's mining operations upon the Leased Premises hereunder".

7. Defendant has failed to work and mine the Leased Premises in a workmanlike manner;

A. Numerous tons of public waste was buried at the mine site without authorization to do so;

B. Water was permitted to accumulate in the open pit from December, 2002 throughout May 24, 2003 and become stagnant, thus causing harm to source water on the property;

C. Overburden was moved from the active pit area onto the area of adjacent coal, thus adding cost to further mining, and making it economically impractical for others to mine remaining coal;

D. By conducting improper open pit mining procedures, while mining Lower Kittanning, "B", coal, Defendant failed to mine remaining coal consisting of (estimated) 63,000 ton, whereby depriving the landowner of coal royalty of approximately $157,500.00.

8. Defendant has undertaken to use the leased property for purposes other than coal mining in that the land has been used as a storage site for parts salvaged from earth moving equipment and a large pile of used automotive wheels and tires.

9. By letter dated January 27, 2003, Swisher Contracting Inc. terminated the lease dated 6-28-98 between Chester A. Ogden and Swisher Contracting Inc. and paid $300.00, representing monthly minimum of $150.00 per month for December, 2002, and January, 2003, thus terminating all compensation to the landowner as of February 1, 2003, and while knowing the work area of the leased property was not reclaimed, as required by law.

COUNT 2

10. Paragraphs 1 and 2 set forth above are incorporated herein by reference.

11. From February 1, 2003 through date of filing this Complaint, Swisher Contracting Inc., Defendant, has undertaken to use the 85 acre tract of land of Chester A. Ogden in Lawrence Township, Clearfield County, Pennsylvania, without authorization, and without payment of compensation.

12. Defendant has knowingly and intentionally violated rights of landowner, Chester Ogden, by using the property as he elects to do, and throughout time period, above indicated

E. Heavy earth moving equipment enters onto and across the land;

F. Salvaged parts of earth moving equipment and a large pile of used automotive wheels and tires have been placed on the property;

G. Numerous cubic yards of earth have been removed from Plaintiff's land, and placed on adjacent land of Defendant.

13. On May 16, 2003, Defendant, Leonard O. Swisher Sr., President, Swisher Contracting Inc. was served Certified Mail No.7099 3400 0016 7882 4981 Notice of Default Agreement of Lease and Taking by Adverse Possession (see attached copy "Exhibit A").

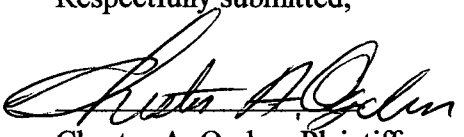
14. Pursuant to said Notice, incorporated herein by reference as fully stated, Plaintiff claimed damages for failure to mine coal and pay royalty of approximately $157,500.00, and further claimed payment of $5,000.00 for monthly rental of Plaintiff's land , @ $1,000.00 per month, February through June, 2003, and with the total claimed at said time being $162,500.00.

15. Defendant was also notified at said time that failure to settle the matter within thirty (30) days, by June 14, 2003, will represent just cause for seeking relief through the Court and additional cost of attorney fees, Court cost, and such other relief as the Court deems just, proper and equitable

16. The Defendant's conduct as aforesaid was a willful and intentional violation of the laws of this Commonwealth to the extent that it constitutes outrageous conduct, that is: that the circumstances are such that the bad motive or reckless indifference of the Defendant to the interests and rights of others may be readily inferred and for which punitive damages should be awarded in order to deter the Defendant and others from engaging in similar conduct in the future.

WHEREFORE, Plaintiff seeks judgment in his favor and against the Defendant for damages in the amount of $162,500.00 and additional cost of legal assistance, Court cost, and such other relief as the Court deems just, proper and equitable.

Respectfully submitted,



Chester A. Ogden, Plaintiff

Certified Mail No.7099 3400 0016 7882 4981

Leonard O. Swisher, Sr., Presiden
Swisher Contracting Inc.
P.O.Box 1223
Clearfield, Pa. 16830

May 14, 2003

Re: Agreement of Lease dated June 26, 1998
By and between Chester A. Ogden and Leonard O. Swisher, Sr.
85 acre tract in Lawrence Township, Clearfield County, Pa.

Dear Mr. Swisher:

This will serve Notice of Default Agreement of Lease and Taking By Adverse Posession involving above refrenced.

1. Lessee, Swisher Contracting Inc., is in Default of Agreement of Lease, Paragraph 1 Grant of Mining Rights, for failure to mine merchantable and profitably minable coal. Lessee has mined merchantable coal from the area of highest overburden and failed to mine remaining coal from area of lesser overburden.

2. Lessee is in default of Paragraph 3, Conduct Of Lessee's Mining Operations , for failure to work and mine the leased premises in a workmanlike manner. Lessee has failed to use customary procedures of open pit mining in recovery of Lower Kittaning "B"coal, whereby overburden from active work area was placed on top of adjacent coal deposit, and failure to mine remaining merchantable coal, and

3. By placing overburden on top of remaining coal deposit and failing to mine the coal, Lessee has deprived the landowner of coal royalty, and made it economicly impractical for others to mine remaining coal.

4. Lessee has cancelled Agreement of Lease by letter dated January 27, 2003 and terminated all compensation to landowner as of February, 2003 , while knowing the land has not been reclaimed persuant to law.

5. Swisher Contracting Inc. has terminated all compensation to owner of the land as of February, 2003, and still uses the property without authorization.

Adverse Posession

5. Swisher Contracting Inc. has taken adverse posession of the 85 acre property of Chester A. Ogden in Lawrence Township, Clearfield County, Pennsylvania in that numerous tons of salvaged earth moving equipment parts and a large pile of used automotive wheels and tires have been placed on the land wihout authorization.

6. Swisher Contracting Inc. has crated a "junk yard" atmosphere on the property of Chester Ogden and, by so doing, decreased value of the land.

7. Swisher's activity has been detremental to land value that, otherwise, would exist.

"Exhibit A"

THEREFORE: Under conditions of Agreement of Lease; It is demanded that Swisher pay two dollars and fifty cents ($2.50) per ton for remaining mineable and marketable Lower Kittanning "B" coal, and under Taking By Adverse Posession, pay monthly rental of one thousand dollars ($1,000,00) per month, hereafter paid in advance, as following indicated

Remaining coal (estimated) 63,000 ton @ $2.50 per ton..	$157,500.00
Mnthly rental @ $1,000.00 per month, February through June, 2003	5,000.00
Total due	$162,500.00

Failure to settle the matter within thirty (30) days, by June 14, 2003, will represent just cause for seeking relief through the Court and additional cost of attorney fees, Court cost, and such other relief as the Court deems just, proper and equitable.

Sincerely.

Chester A. Ogden
512 Hartshorn Road
Clearfield, Pa. 16830

COMMONWEALTH OF PENNSYLVANIA :

SS.

COUNTY OF CLEARFIELD :

Before me, the undersigned authority, personally appeared CHESTER A.OGDEN, who, being duly sworn according to law, deposes and says that the facts and averments set forth in the foregoing Complaint are true and correct to the best of his knowledge, information, and belief.

Chester A. Ogden

Sworn and Subscribed
before me this 13th day
of June, 2003

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

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

CHESTER A. OGDEN,	*		
Plaintiff	*		
	*		
vs.	*	NO.	-CD
	*		
LEONARD O. SWISHER, SR., PRES.,	*		
SWISHER CONTRACTING INC.,	*		
Defendant	*		

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Complaint filed in the above case was served upon the following individual on the _____day of June, 2003, by Certified Mail No. 7099 3400 0016 7882 4974 at the United States Post Office, Clearfield, Pennsylvania:

Leonard O. Swisher, Sr.,Pres..
Swisher Contracting Inc.
R.D.3
Clearfield, Pa. 16830

Date _____

Chester A. Ogden, Plaintiff

FILED

0 11.27 BA pd 85.00 cash

JUN 13 2003 see to plff

William A. Shaw
Prothonotary

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	
	*	Type of Pleading:
	*	**ACCEPTANCE OF SERVICE**
	*	Filed on behalf of: Defendants
	*	Counsel of Record for this party:
	*	James A. Naddeo, Esq. Pa I.D. 06820
	*	211 1/2 E. Locust Street P.O. Box 552 Clearfield, PA 16830 (814) 765-1601

FILED

JUL 02 2003

William A. Shaw
Prothonotary

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	

ACCEPTANCE OF SERVICE

I, JAMES A. NADDEO, Esquire, do hereby accept service of the Complaint filed by Chester O. Ogden on behalf of the Defendant in the above-captioned action.

James A. Naddeo
James A. Naddeo, Esquire

Date: 7/1/03

FILED 1cc
01:11:01 Atty Naddeo
JUL 02 2003

William A. Shaw
Prothonotary

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	
	*	Type of Pleading:
	*	**PRELIMINARY OBJECTIONS**
	*	Filed on behalf of: Defendants
	*	Counsel of Record for this party:
	*	James A. Naddeo, Esq. Pa I.D. 06820 211 1/2 E. Locust Street P.O. Box 552 Clearfield, PA 16830 (814) 765-1601

FILED

JUL 02 2003

William A. Shaw
Prothonotary

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	

PRELIMINARY OBJECTIONS

NOW COMES the Defendant, Leonard O. Swisher, Sr., by and through his attorney, James A. Naddeo, Esquire, and sets forth the following:

A. Failure of Pleading to Conform to Law

1. Plaintiff's Complaint purports to allege a cause of action against Defendant upon a written contract.

2. Plaintiff has failed to plead the written contract as required by law.

B. Specificity

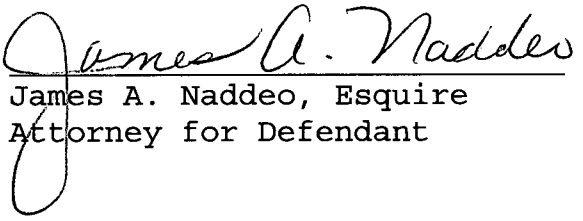
1. Plaintiff's Complaint fails to set forth in paragraph form the ultimate facts upon which his cause of action is based. Said pleading as a whole lacks sufficient specificity to enable Defendant to formulate an answer.

C. Demurrer

1. Plaintiff's Complaint fails to allege facts sufficient upon which relief can be granted.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed.

Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Defendant

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Preliminary Objections filed in the above-captioned action was served on the following person and in the following manner on the 2nd day of July, 2003:

First-Class Mail, Postage Prepaid

Mr. Chester O. Ogden
512 Hartshorn Road
Clearfield, PA 16830

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendants

FILED 1cc
01:11:01 pm Atty Naddeo
JUL 02 2003

William A. Shaw
Prothonotary

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	
	*	Type of Pleading:
	*	Answer to Preliminary Objections
	*	Filed by Plaintiff
	*	Chester A. Ogden 512 Hartshorn Road Clearfield, Pa. 16830 (814) 765 - 4682

FILED

DEC 09 2003
0/2:50/ms
William A. Shaw
Prothonotary/Clerk of Courts

2 cert to Plaintiff

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03-869-CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	
	*	Type of Pleading:
	*	**ANSWER PRELIMINARY OBJECTIONS**
	*	Filed by Plaintiff
	*	Chester A. Ogden, Pro se 512 Hartshorn Road Clearfield, Pa. 16830 (814) 765-4682

ANSWER TO PRELIMINARY OBJECTIONS

NOW COMES the Plaintiff, Chester A. Ogden, and files this Answer to Preliminary Objections.

A. Failure of Pleading to Confirm to law

1. Admitted. In answer thereto the Plaintiff alleges that the cause of action against Defendant is based upon a written contract.

2. Denied. In answer thereto the Plaintiff alleges that the complaint is in compliance with the citizen's lawful right to petition Government for redress of grievance under The Constitution Of The United States, Amendment I, and Constitution Of The Commonwealth Of Pennsylvania, Article I, Section 20

B. Specificity

1. Denied. In answer thereto the Plaintiff alleges that the complaint does set forth information upon which his cause of action is based, and said pleading as a whole does enable Defendant to formulate an answer.

C. Demurrer

1. Denied. In answer thereto the Plaintiff alleges that the Complaint does allege facts sufficient upon which relief can be granted.

WHEREFORE, the Plaintiff respectfully requests that this Court enter an Order denying Defendant's request to dismiss.

Respectfully submitted,

Chester A. Ogden, Plaintiff

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CHESTER A. OGDEN	:	
-vs-	:	No. 03-869-CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC.	:	

O R D E R

NOW, this 12th day of December, 2003, it is ORDERED as follows:

1. Plaintiff shall within twenty (20) days of this date file with the Court and serve on Defense counsel a copy of the agreement of lease upon which his claim is based;

2. In all other respects, the preliminary objections of the Defendant are dismissed and Defendant is directed to file a responsive pleading within forty (40) days of this date.

BY THE COURT,

The Honorable J. Michael Williamson,
Specially Presiding

FILED

DEC 12 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN,	:	
	:	
vs.	:	No. 03-869-CD
	:	
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC.	:	

ORDER

NOW, this 12th day of December, 2003, upon consideration of recusal of both Judges sitting in the 46th Judicial District, it is the ORDER of this Court that the Court Administrator of Clearfield County refer the above-captioned civil matter to Administrative Regional Unit II for assignment of a specially presiding judicial authority.

BY THE COURT:

John K Reilly, Jr.

JOHN K. REILLY, JR.
President Judge

FILED

DEC 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, PRESIDENT SWISHER CONTRACTING, INC., Defendant	*	Type of Case; Civil
	*	Type of Pleading;
	*	Agreement of Lease
	*	Filed by Plaintiff
	*	Chester A. Ogden 512 Hartshorn Road Clearfield, Pa. 16830 (814) 765-4682

Chester A. Ogden, Pro se

FILED

JAN 06 2004
0/2:30/ny
William A. Shaw
Prothonotary/Clerk of Courts

2 cert to Pltf

AGREEMENT

This AGREEMENT OF LEASE is made and entered into the 26 day of June, 1998, between Chester A. Ogden, whose address is RD 4 Box 63A Clearfield Pa. 16830, parties of the first part, hereinafter referred to as "LESSORS", and Swisher Contracting, Inc., whose address is PO Box 1223, Clearfield, Pennsylvania, 16830, party of the second part, hereinafter referred to as "LESSEE".

WITNESSETH THAT:

1. GRANT OF MINING RIGHTS: For and in consideration of the sum of ONE HUNDRED DOLLARS ($100.00), cash in hand paid, the receipt of which is hereby acknowledged, and for in consideration of the rents, royalties, agreements, convenants and stipulations hereinafter contained to be paid, kept and performed by Lessee, Lessors do hereby lease, demise and let unto the Lessee for the purpose of mining and removing the merchantable and profitably minable coal there from upon the terms, convenants, conditions, and provisions hereinafter stated, all of the surface and all mining rights appurtenant thereto that Lessors own and possess in, under and upon that certain parcel of land, situated and located in Clearfield County, Pennsylvania, (the"leased premises"), which parcel of land is more fully described in Exhibit A, which is attached hereto and made a part hereof. Lessors hereby grant Lessee the exclusive right to mine said coal by the surface mining method and further grant the right of ingress, egress, and regress into, through and upon the Leased Premises for the purpose of examine, searching, prospecting, drilling, and mining said coal; the preparing, storing and removing the same, together with the right to use and occupy so much of the Leased Premises for roads, ditches, pipes, soil banks or stock piles, or other improvements that may be necessary or convenient for the removal of said coal and overburden. The Lessee shall, during the term of this agreement, have a free right of way at anytime to transport coal, supplies, machinery, equipment, and other improvements to and from a public highway necessary or convenient for removal of said coal. Additionally, Lease may exercise the aforesaid rights without any liability thereon, including streams, springs, and wells; timber, or intervening strata, roads, or otherwise on Leased Premises.

2. LESSORS' WARRANTY OF TITLE: Lessors hereby

represent and warrant that they are seized of good and marketable title to the Leased Premises, free of any liens or encumbrances which would interfere with the mining operations herein contemplated, and, that so long as the Lessee shall preform his convenants and agreements hereunto set forth, Lessee shall enjoy quiet and peaceful possession of the Leased Premises. Lessors further represent and warrant that they have the full power and legal authority to enter into this agreement.

3. CONDUCT OF LESSEE'S MINING OPERATIONS: Lessee shall work and mine the Leased Premises in a workmanlike manner and shall comply with the laws of the Commonwealth of Pennsylvania and of the United States of America, now existing or hereafter passed, regulating the management and operation of coal mines.

4. TONNAGE ROYALTY: Lessee does hereby convenant and agree that it will pay as tonnage royalty to Lessors, a sum equal to $ 2.50 , per net ton of two thousand (2,000) pounds for all coal mined and removed from the Leased Premises during the term hereof or during any extension thereof. Such payments shall be made on the 30th day of each month for all coal mined and removed from the Leased Premises during the previous calendar month and such payments shall be accompanied by a correct statement showing the weight of all coal shipped from the Leased Premises during such monthly period. It is expressly understood and agreed by and between the parties hereto that Lessee shall not be required to mine, remove, ship, or pay for coal which, in his sole judgement, is not merchantable, and profitably minable.

5. LESSORS' RIGHT OF INSPECTION: Lessor shall have the right at all reasonable times at their own risk to enter Lessee's mining operations for themselves, their agents, or employees for the purpose of examining, inspecting and surveying such operations upon the Leased Premises in order to see that the terms of this agreement are being complied with.

6. TAXES: Lessors shall pay all taxes levied and assessed against the Leased Premises, it being provided that if Lessors shall fail to pay taxes, Lessee may at its option make payments to Lessors under the terms hereof. Lessee shall pay during the term of this agreement all taxes levied or assessed upon all improvements placed upon the Leased Premises by Lessee or upon the coal mined and removed from the Leased Premises by Lessee.

7. LESSEE'S INDEMNIFICATION OF LESSORS: Lessee does hereby convenant and agree that it will protect and save harmless Lessor from any claims or demands for damages to persons or property that may arise as a direct result of Lessee's mining operations upon the Leased Premises hereunder.

8. DEFAULT: Failure by Lessee to perform or comply with any of the terms, provisions or conditions of this Agreement, express or implied, shall not automatically terminate this agreement nor render it null and void. In case of default by Lessee shall notify Lessee in writing of such default and Lessee shall have a period of ninety (90) days after Lessee's receipt of such notice within which to commence action to cure such default and, except as otherwise provided herein, if action to cure such default shall not have been commenced by Lessee within such ninety (90) day period, Lessors may terminate this agreement. However Lessee shall have only ten (10) days after Lessee's receipt of written notice from Lessors of Lessee's failure to pay royalties when due within which to cure such default, except if the amount of any royalty payment is in dispute, ther such failure of Lessee to pay the disputed royalty shall be dealt within the manner provided in section 9 of this agreement.

9. DISPUTE AS TO ROYALTY PAYMENTS: In case of suit, adverse claims, dispute, or question as to ownership of any payments, or some part thereof, to be made by Lessee under this agreement, Lessee may delay or suspend payment thereof, or the part thereof in doubt, without interest, and shall not be held in default of payment thereof until such suit, claim, dispute or question has been finally disposed of, and Lessee shall have sixty (60) days after being furnished at Lessee's principal place of business with written notice thereof and the original instrument or a certified copy or copies thereof, or after being furnished with proofs sufficient, in the Lessee's opinion to settle such question, within which to make payment. In the event of a dispute as listed above, the Lessee shall put all payments due Lessors into an escrow account until such dispute is settled to the satisfaction of th parties involved.

10. TERM: This Agreement of Lease shall become effective as of the date hereof and shall continue in full force and effect for a period of 5 () years thereafter or until all of the merchantable and profitably minable coal that can be mined and removed therefrom

whichever shall occur last. It being provided, however, that Lessee may, at anytime during the term thereof, terminate this Agreement of Lease by giving the Lessors thirty (30) days written notice thereof prior to the date of such termination.

11. LESSEE'S RIGHT OF RE-ENTRY: Upon the completion of surface mining operations hereunder and the termination of this Agreement, Lessee shall have the right to re-enter the Leased Premises without Liability and to continue in possession thereof for such period of time as may be necessary or required in order to comply with the laws and regulations of the Commonwealth of Pennsylvania and the United States of America concerning the reclamation and revegetation of the Leased Premises.

12. FORCE MAJEURE: Any obligations of Lessee hereunder shall be suspended during such period as Lessee is rendered unable, in whole or in part, from complying therewith by strikes, lockouts, riots, insurrections, severe weather, storms, floods, fires, plant shutdowns, unusual mining conditions, faults in coal seams, damage to or destruction of plant, machinery, equipment, or facilities, accidents, governmental laws, rules, or regulations, orders or action of any governmental agency, acts of God, or any other cause, condition, or matter, whether of the kind herein enumerated or otherwise, beyond the control of Lease and the period of any delay or interruptions of Lessee occasioned thereby shall be disregarded in computing timely performance by Lessee hereunder. The term of this Agreement or any extension thereof shall be extended for a period of time equal to the time Lessee is prohibited or precluded from, or is delayed or interrupted in, mining, treating, cleaning, processing, selling, or using the coal covered the this Agreement by any law, order, regulations, judgement, decree, or other action of any agency or branch of government, provided, however, that this provision shall not be construed as permitting extension of this Agreement beyond the permissible term for Leases of this nature as provided by applicable state law.

13. LESSER INTEREST: If Lessors owns a Lessor interest in the surface of Leased Premises than as represented herein, all royalties herein provided for shall be paid to the Lessors only in the proportion which Lessors' ownership interest bears to the whole and undivided fee simple estate in the surface of Leased Premises.

14. REQUIRED FORMS: Lessors hereby agree to execute and deliver to Lessee the "Consent of Landowner" form and any and all other forms as may be from time to time required by the Commonwealth of Pennsylvania, Department of Environmental Resources Bureau of Surface Mine Reclamation or by any other governmental or other regulatory agency in connection with the mining operations hereunder.

15. PAYMENTS: All payments required to be made by Lessee to Lessors hereunder shall be made to: Chester A. Ogden

16. NOTICES: All notices herein provided for shall be given by delivering the name in person or by United States certified mail, return receipt requested, postage prepaid, addressed to Lessors or Lessee at the addresses shown above. Either party may change his or her address to receive notices by giving written notice of such change of address to the other party.

17. SEVERABILITY: The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof unless it substantially and adversely affects the value of this Agreement to one of the parties; and in the absence of any such substantial and adverse effect, this Agreement shall be constructed in all respects as if such invalid or unenforceable provision were omitted.

18. INTERPRETATION: This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania. The topical headings used herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms and provisions of this Agreement. As used herein, any gender shall include any other gender, the singular shall include the singular, wherever appropriate.

19. WAIVER OF REMEDIES: The failure of either Lessors or Lessee to insist, in any one or more instances, upon strict performance of any other provisions of this Agreement, or to take advantage of any of their or its rights to hereunder, shall not be construed as a waiver of any such provision or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

20. COUNTERPARTS: This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall collectively constitute one and the same instrument.

21. AMENDMENTS: Any modification or amendment of the terms and provisions of this agreement shall be valid and effective only if and when made in writing and duly executed on behalf of the parties hereto.

22. ENTIRE AGREEMENT: The Agreement constitutes the entire agreement between Lessors and Lessee and supersedes all other prior negotiations, undertakings, notices, memoranda, and agreements between Lessors and Lessee, whether oral or written, with respect to the subject matter hereof.

23. LEGALLY BINDING EFFECT OF AGREEMENT: It is the intention of the parties hereto to be legally bound hereby and that this Agreement shall be binding upon and insure to the benefits of heirs, executors, administrators, nominees, successors and assigns of the parties hereto.

24. ASSIGNABILITY: It is hereby understood and agreed by and between the parties hereto that this Agreement of Lease may be assigned, transferred, or sublet by Lessee's authority.

IN WITNESS WHEREOF, the parties hereto, with intent to be legally bound hereby, have executed this Agreement of Lease as of the date and year first above written.

WITNESS:

LESSORS:

WITNESS:

LESSEE:

SWISHER CONTRACTING, INC.

By: Leonard Swisher

ACKNOWLEDGEMENT OF INDIVIDUALS OR PARTNERS

LAND OWNER

STATE OF :
: SS
COUNTY OF :

On 6/24/98, before me, the undersigned Notary, personally ap
Chester A. Ogden
(Name(s))

known to me (or satisfactorily proven) to be the person whose name is subscribed to this
ment, and who acknowledged that he
(he, she or they)

executed the same and desires it to be recorded.

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

(SEAL) Kimberly A Kovall My Commission Expires: April 8, 2002
(date)

NOTARIAL SEAL
KIMBERLY A. KOVALL, NOTARY PUBLIC
LAWRENCE TWP., CLEARFIELD COUNTY
MY COMMISSION EXPIRES APRIL 8, 2002

ACKNOWLEDGEMENT OF CORPORATIONS

LAND OWNER

STATE OF :
: SS
COUNTY OF :

On _____, before me, the undersigned Notary, personally app

_____

who acknowledged (herself) (himself) to be the _____
(Title of Person)

_____
(Name of Corporation)

corporation, and the (s)he, as such officer, being authorized to do so, executed the foregoi
strument on behalf of the said corporation and desires that this instrument be recorded.

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

(SEAL) _____ My Commission Expires: _____
Notary Public (date)

This instrument has been recorded in _____
County, Pennsylvania, this _____ day of _____,
19 ____, at Book _____, Page (s) _____.

_____
(Signed) • (Print Name)

_____
(Sealed)

ER–MR–10: Rev. 2/84
"Supplemental C"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

APPL. NO. (Department Use Only) _____

CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of _____ acres of land located in _____, _____ County, as
(Township, Borough, City)
described in the deed(s) recorded in the Recorder of Deeds Office Book(s) and page(s) _____ and shown by crosshatched lines on the map attached hereto which is signed in the original by the landowner upon which _____ proposes to engage in surface
(Name of Mining Operator)
mining activities for which application for permit will be made to the Department of Environmental Resources and of which application this consent will be made a part, *DO HEREBY ACKNOWLEDGE THAT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE PURPOSES OF CONDUCTING SURFACE MINING ACTIVITIES.* Furthermore, (I) (We), the undersigned, do hereby irrevocably grant to the Mining Operator and the Commonwealth of Pennsylvania, the right to enter upon the aforesaid land before beginning the mining activity(ies), during the mining activity(ies) and for a period of five (5) years after the completion or abandonment of the mining activity(ies) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating pollution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, The Clean Streams Law, and The Coal Refuse Disposal Act, as amended, rules and regulations promulgated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby grant in addition to the Commonwealth, for the aforesaid period of time, a right of entry across any adjoining or contiguous lands owned by (us) (me) in order to have access to the land described herein. It is specifically agreed and understood that this contractual consent gives the Commonwealth the right to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as a matter within the police power but does not obligate the Commonwealth to do so, and does not constitute any ownership interest by the Commonwealth in the aforesaid land.

This Consent shall not be construed to impair any contractual agreement between the Mine Operator and the landowner.

(INSERT ADDITIONAL PROVISIONS OR CROSS OUT)

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors and assigns, (I) (we) have hereunto set (my) (our) hand(s) and seal this 26 day of June, 19 98.

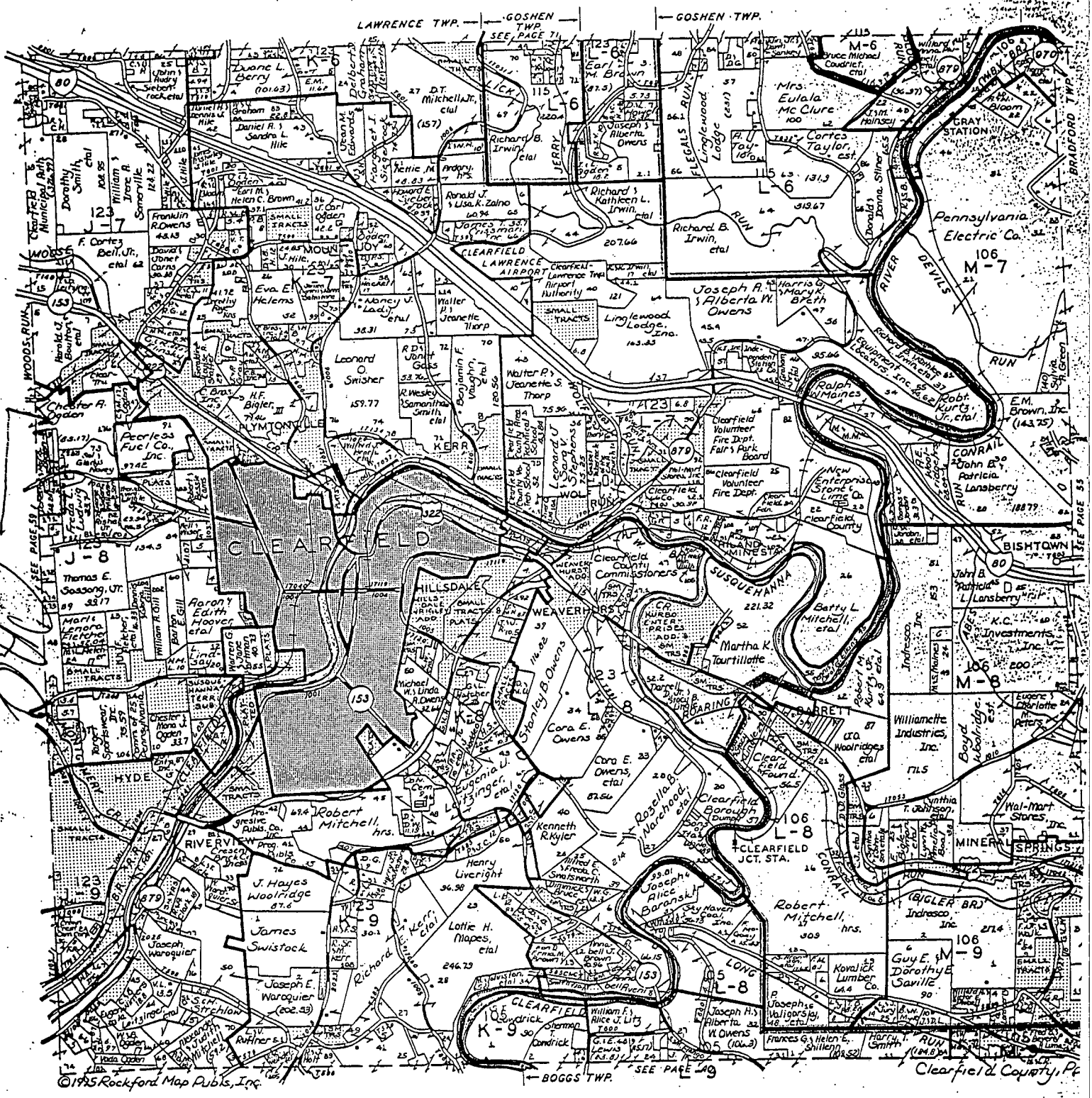
Preston A. Ogden
LANDOWNER (Print Name)

By: Preston A. Ogden (Seal)
(Signature)

Preston A. Ogden
(Print Name)

By: _____
(Signature)

_____
(Print Name)



CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2004, copy of the foregoing Agreement of Lease was served by regular mail, postage prepaid, on the following at address indicated.

James A. Naddeo, Esquire
211 East Locust Street
Clearfield, Pa. 16830

Chester A. Ogden
512 Hartshorn Road
Clearfield, Pa. 16830

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	
	*	Type of Pleading:
	*	**ANSWER TO COMPLAINT**
	*	Filed on behalf of: Defendants
	*	Counsel of Record for this party:
	*	James A. Naddeo, Esq. Pa I.D. 06820
	*	211 1/2 E. Locust Street P.O. Box 552 Clearfield, PA 16830 (814) 765-1601

FILED

JAN 09 2008

William A. Shaw
Prothonotary

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	

ANSWER TO COMPLAINT

NOW COMES the Defendant, Leonard O. Swisher, Sr., by and through his attorney, James A. Naddeo, Esquire, and sets forth the following:

1. Admitted.

2. Admitted.

3. Denied. On the contrary it is alleged that Plaintiff did not enter into a Lease Agreement with the Defendant, Leonard O. Swisher, Sr., but to the contrary entered into a Lease Agreement with Swisher Contracting, Inc., as appears from the Lease Agreement filed of record by Plaintiff on January 6, 2004.

4. Denied in so far as it implies that the Lease Agreement between Plaintiff and Swisher Contracting, Inc., provides for a monthly minimum of $150.00 in advance. In

further answer thereto, it is alleged that said Lease Agreement speaks for itself.

5. Admitted but in further answer thereto, it is alleged that the Lease Agreement between Plaintiff and Swisher Contracting, Inc., speaks for itself.

6. Admitted but in further answer thereto, it is alleged that the Lease Agreement between Plaintiff and Swisher Contracting, Inc., speaks for itself.

7. States a conclusion to which no answer is required. To the extent that an answer may be required, said allegation is generally denied.

A. Denied. On the contrary it is alleged that no public waste was buried at the mining site.

B. Denied. On the contrary it is alleged that Swisher Contracting, Inc., at all times complied with all federal and state mining rules and regulations including management of water in the pit. In further answer thereto, it is denied that Swisher Contracting, Inc., in any manner caused harm to a water source on Plaintiff's property or that Swisher Contracting, Inc., would be liable for such damage in accordance with the terms of the Lease Agreement filed of record by Plaintiff on January 6, 2004.

C. Denied. On the contrary it is alleged that Plaintiff's property was mined by Swisher Contracting, Inc., in the manner consistent with good mining practices.

D. States a conclusion to which no answer is required. To the extent that an answer may be required, it is denied that Swisher Contracting, Inc., conducted improper open pit mining procedures. In further answer thereto, it is alleged that the obligations of Swisher Contracting, Inc., are set forth in the Lease Agreement filed of record by Plaintiff on January 6, 2004.

8. Denied. On the contrary it is alleged that Swisher Contracting, Inc., at all times utilized Plaintiff's property consistent with good mining practices and in a manner permitted by the terms of the Lease Agreement filed of record by Plaintiff on January 6, 2004, which Lease Agreement speaks for itself.

9. Admitted in so far as it states that Swisher Contracting, Inc., terminated its Lease Agreement with Plaintiff by letter dated January 27, 2003. It is also admitted that Swisher Contracting, Inc., paid to Plaintiff, Chester A. Ogden, the sum of $300.00. It is denied, however, that said payment represented a monthly minimum due under the terms of the Lease Agreement filed of record by Plaintiff on January 6, 2004, which Lease Agreement speaks for itself. In further answer thereto,

it is alleged that Plaintiff signed a Supplemental C, a copy of which is attached to the Lease Agreement filed of record by Plaintiff on January 6, 2004.

COUNT II

10. Defendant incorporates his answers to Paragraphs 1 and 2 of Plaintiff's Complaint by reference and makes them a part hereof.

11. Admitted in so far as it states that Defendant has paid no compensation to Plaintiff since February 2003. It is denied, however, that Swisher Contracting, Inc., was not authorized to enter upon Plaintiff's property by virtue of the Supplemental C signed by Plaintiff, a copy of which is attached to the Lease Agreement filed of record by Plaintiff on January 6, 2004.

12. States a conclusion to which no answer is required. To the extent that an answer may be required, it is denied that Defendant has violated the rights of the Plaintiff and to the contrary, it is alleged that Plaintiff signed a Supplemental C for Swisher Contracting, Inc., a copy of which is attached to the Lease Agreement Lease Agreement filed of record by Plaintiff on January 6, 2004.

E. Admitted but in further answer thereto, it is alleged that Swisher Contracting, Inc., retains the right to

reclaim Plaintiff's property in accordance with the Supplemental C signed by Plaintiff, a copy of which is attached to the Lease Agreement filed of record by Plaintiff on January 6, 2004.

F. Denied. On the contrary it is alleged that Swisher Contracting, Inc., retains no earth moving equipment or other objects other than equipment necessary to reclaim Plaintiff's property.

G. Denied. On the contrary it is alleged that earth from Plaintiff's property was moved during the normal course of mining as required and permitted by the Lease Agreement filed of record by Plaintiff on January 6, 2004.

13. Admitted.

14. Denied in so far as it implies that Defendant is obligated to mine coal from Plaintiff's property. In further answer thereto, Defendant incorporates the Lease Agreement filed of record by Plaintiff on January 6, 2004.

15. Admitted in so far as it states that Plaintiff made a demand for attorney's fees and Court costs or other relief as the Court deems proper. It is denied, however, that Plaintiff is entitled to recover attorney's fees or costs from the Defendant.

16. Denied. On the contrary it is alleged that Swisher Contracting, Inc., at all times complied with federal and state regulations in conducting its mining operations upon

Plaintiff's property. In further answer thereto, it is alleged that Swisher Contracting, Inc., has not violated any of the terms and conditions of the Lease Agreement filed of record by Plaintiff on January 6, 2004, nor has Swisher Contracting, Inc., committed any conduct upon Plaintiff's property inconsistent with its rights under the Lease Agreement and/or Supplemental C.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed.

Respectfully submitted,

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendant

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Answer to Complaint filed in the above-captioned action was served on the following person and in the following manner on the 9th day of January, 2004:

First-Class Mail, Postage Prepaid

Mr. Chester A. Ogden
512 Hartshorn Road
Clearfield, PA 16830

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendants

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared LEONARD O. SWISHER, SR., who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

Leonard O. Swisher Sr.
Leonard O. Swisher, Sr.

SWORN and SUBSCRIBED before me this 8th day of January, 2004.

Jennifer L. Royer

Notarial Seal
Jennifer L. Royer, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires May 17, 2007

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FILED

JAN 09 2003

0/9:47 a.m.

William A. Shaw
Prothonotary

1 cc to Atty

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

CHESTER A. OGDEN	:	
	:	
vs.	:	No. 03-869-CD
	:	
LEONARD A. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC.	:	

ORDER

AND NOW, this 30 day of April , 2004, it is the ORDER of the Court that Civil Non-Jury Trial in the above matter has been scheduled for **Tuesday, May 18, 2004 at 11:00 A.M**, before the Honorable J. Michael Williamson, Specially Presiding, Clearfield County Courthouse, Clearfield, PA. Please report to the Court Administrator's Office. You will be directed from there where this trial will be held.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED

MAY 03 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED 1cc Atty Naddeo
019:15 BH 1cc C. Ogden
MAY 03 2004 512 Hartshorn Road
Clearfield, PA 16830
William A. Shaw
Prothonotary/Clerk of Courts

1cc Judge J. Michael Williamson

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	
	*	Type of Pleading:
	*	**MOTION FOR CONTINUANCE**
	*	Filed on behalf of: Defendants
	*	Counsel of Record for this party:
	*	James A. Naddeo, Esq. Pa I.D. 06820 211 1/2 E. Locust Street P.O. Box 552 Clearfield, PA 16830 (814) 765-1601

FILED

MAY 07 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	

O R D E R

NOW this _____ day of May, 2004, upon consideration of the Motion of James A. Naddeo, Esquire, Attorney for Defendant in the above-captioned case, it is the ORDER of this Court that the non-jury trial scheduled for May 18, 2004, at 11:00 a.m. is hereby continued. It is further ORDERED that the Clearfield County Court Administrator be directed to place said case on the list for trial for the next session of Civil Court to be tried in said term provided discovery has been completed.

BY THE COURT,

_____

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	

MOTION FOR CONTINUANCE

NOW COMES the Defendant, Leonard O. Swisher, Sr., by and through his attorney, James A. Naddeo, Esquire, and sets forth the following:

1. That Plaintiff filed suit in the above-captioned action on or about June 13, 2003.

2. That Defendant filed Preliminary Objections on July 2, 2003.

3. That said Preliminary Objections were generally denied by Order of Judge J. Michael Williamson dated December 12, 2003.

4. That Defendant filed a timely Answer to Plaintiff's Complaint on January 9, 2004.

5. That by letter dated April 15, 2004, Plaintiff directed a letter to the Clearfield County Court Administrator requesting a "scheduled date of jury trial".

6. That Defendant subsequently received an Order dated April 30, 2004, directing that a non-jury trial be held on Tuesday, May 18, 2004, at 11:00 a.m.

7. That prcedurally this case was listed for trial in conflict with the Local Rules of Court known as "Court of Common Pleas of Clearfield County, 46th Judicial District".

8. That said case was never praeciped to the trial list.

9. That defense counsel had no opportunity to object to the case being placed on the trial list.

10. That the case has been scheduled without pre-trial conference or pre-trial memorandum.

11. That discovery in this case is not complete.

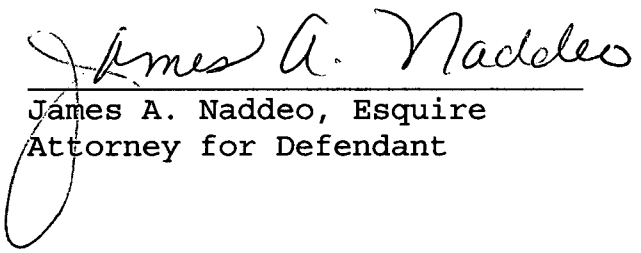
12. That your Petitioner believes and therefore avers that after discovery is completed, Defendant will have a credible basis for summary judgment.

13. That in addition to the serious procedural improprieties set forth herein, your Petitioner has a serious conflict concerning discovery/trial preparation which is to take place on Tuesday, May 18, 2004, for preparation of a case which is scheduled to be tried on June 14, 2004.

WHEREFORE, Petitioner respectfully requests that the Court direct the trial of this case to be continued and that the Court Administrator be instructed to place this case on the list

for trial for the next session of Civil Court for Clearfield County subject to completion of discovery.

Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Defendant

FILED 1cc
at 3:51 BH Atty Naddeo
MAY 07 2004 KB

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN	:	
vs.	:	No. 03-869-CD
LEONARD A. SWISHER, SR.,	:	
PRESIDENT, SWISHER	:	
CONTRACTING, INC.	:	

ORDER

NOW, this 11th day of May, 2004, it is the ORDER of this Court that Order entered on April 30, 2004, in the above-captioned civil matter, scheduling said case for a Civil Non-Jury Trial to be held on Tuesday, May 18, 2004, at 11:00 A.M. before the Honorable J. Michael Williamson, Specially Presiding, at the Clearfield County Courthouse, be and is hereby VACATED.

IT IS THE FURTHER ORDER OF THIS COURT that any and all further future scheduling Orders in this matter shall only be signed by the Honorable J. Michael Williamson.

BY THE COURT,

President Judge

FILED

MAY 11 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	)	
v.	)	NO. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	)	

ORDER

NOW, this 10th day of May, 2004, IT IS HEREBY ORDERED as follows:

1. The non-jury trial scheduled for May 18, 2004, at 11:00 a.m. is continued, to be rescheduled at the Court's convenience.

2. A status conference will be held on May 18, 2004, at 11:00 a.m. in the Clearfield County Courthouse, at which time the Court will consider all outstanding motions and establish a trial date.

3. All parties and counsel must be present.

BY THE COURT:

J. Michael Williamson, Judge
Specially Presiding
25th Judicial District of Pennsylvania

xc: Chester A. Ogden, Plaintiff
James A. Naddeo, Esquire
Court Administrator

FILED
MAY 12 2004
William A. Shaw
Prothonotary/Clerk of Courts

J. MICHAEL WILLIAMSON
JUDGE
COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745

JUDGES CHAMBERS
TWENTY-FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA
LOCK HAVEN, PENNSYLVANIA 17745

J. MICHAEL WILLIAMSON
JUDGE

570-893-4014
FAX 570-893-4126

May 11, 2004

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

Re: Ogden v. Swisher
No. 03-869-CD

Dear Mr. Shaw:

Please file the enclosed Order in the above referenced matter. All copies have been distributed.

Thank you.

Very truly yours,

Carol E. Miller

Carol E. Miller
Secretary to Judge Williamson

Enclosure

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	
	*	Type of Pleading:
	*	**CERTIFICATE OF SERVICE**
	*	Filed on behalf of: Defendants
	*	Counsel of Record for this party:
	*	James A. Naddeo, Esq. Pa I.D. 06820
	*	207 East Market Street P.O. Box 552 Clearfield, PA 16830 (814) 765-1601

FILED

MAY 14 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Taking Deposition of Chester A. Ogden in the above-captioned action was served on the following person and in the following manner on the 14th day of May 2004:

First-Class Mail, Postage Prepaid

Mr. Chester A. Ogden
512 Hartshorn Road
Clearfield, PA 16830

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendant

FILED cc
pd 3:47 pm @ Atty Naddeo
MAY 14 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, PLAINTIFF	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., DEFENDANT	*	
	*	Type of Pleading:
	*	**Answer Notice of Taking Deposition**
	*	Filed by Plaintiff
	*	Chester A. Ogden 512 Hartshorn Road Clearfield, Pa. 16830 (814) 765-4682

FILED

MAY 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

3 cert to Plaintiff

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	

ANSWER NOTICE OF TAKING DEPOSITION

To: Leonard O. Swisher, Sr.
and
James A. Naddeo, Esquire

THIS WILL SERVE NOTICE that Chester A. Ogden will not participate in taking of deposition by Leonard O. Swisher, Sr. on June 16, 2004, at the office of James A. Naddeo, Esquire, located at 207 East Market Street, Clearfield, Pa. 16830, for reason as follows;

1. Leonard O. Swisher, Sr., Defendant, will have the opportunity to extract information from Chester A. Ogden, Plaintiff, at trial of the matter.

2. Defendant's counsel, James A. Naddeo, has undertaken to take deposition of Plaintiff absent warranted cause.

3. Counsel for Defendant has delayed trial of the matter when he knew such action would cause further harm to Plaintiff and the environment.

Chester A. Ogden, Plaintiff

CERTIFICATE OF SERVICE

I, Chester A. Ogden, undersigned, hereby certify that a true and correct copy of Answer Notice of Taking Deposition was served on the following listed Attorney for Defendant by First -Class Mail, Postage Prepaid, at address indicated on May 17, 2004.

James A. Naddeo, Esquire
211 East Locust Street
Clearfield, Pa. 16830

Chester A. Ogden, Plaintiff

FILED

MAY 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CHESTER A. OGDEN	:	
-vs-	:	No. 03-869-CD
LEONARD A. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC.	:	

O R D E R

NOW, this 18th day of May, 2004, it is hereby ORDERED as follows:

1. Plaintiff will attend the deposition scheduled for June 16, 2004, at the office of Attorney Naddeo beginning at 9:00 a.m. and will remain there and answer fully all questions posed to him until the deposition is complete;

2. Upon completion of the deposition, Attorney Naddeo shall advise the Court of the status of this matter, and if Discovery has been successfully completed, a jury trial will be scheduled through the Court Administrator of Clearfield County.

BY THE COURT,

THE HONORABLE J. MICHAEL WILLIAMSON,
Specially Presiding

FILED

MAY 18 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, PLAINTIFF	*	
vs.	*	No. 03- 869-CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., DEFENDANT	*	
	*	Type of Pleading
	*	Challenge Court Disposition
	*	Filed by Plaintiff
	*	Chester A. Ogden 512 Hartshorn Road Clearfield, Pa. 16830 (814) 765-4682

FILED

JUN 14 2004

William A. Shaw
Prothonotary

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

CHESTER A. OGDEN, PLAINTIFF	* * *	
vs.	* * *	No. 03-869-CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., DEFENDANT	* * * *	

CHALLENGE COURT DISPOSITION

Now comes the Plaintiff, Chester A. Ogden, by self representation pursuant to citizen's lawful rights under the Constitution of The United States and Pennsylvania Rules of Court and challenges Court disposition of above captioned matter, whereof the following is stated;

1. Plaintiff petitioned the Court for redress of grievance on June 13, 21003, by filing a Complaint with Clerk of Court and demanding Trial by Jury. and **the Court Administrator has failed prompt and proper disposition of the matter throughout the past year.**

2. At Status Conference conducted May 18, 2004, **J. Michael Williamson, Judge Specially Presiding, violated Code of judicial Conduct by denying Plaintiff full right to be heard according to law.**

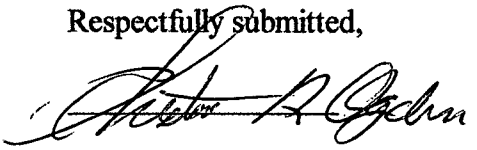
3. By Order of Court 18th day of May, 2004, **Judge Williamson violated lawful rights of the citizen under Constitution of The United States and Constitution of The Commonwealth of Pennsylvania by directing Plaintiff to attend deposition scheduled for June 16, 2004 at the office of attorney Naddeo,** and

4. **Judge Williamson violated Code of Judicial Conduct by failing to dispose promptly of the business of the Court in that he further delayed disposition of the matter by permitting Defendant's counsel to take Plaintiff's deposition while knowing the information could be extracted at Trial.**

5. **Judge Williamson violated Code of Judicial Conduct in that he failed to be patient, dignified, and courteous to Plaintiff at Status Conference conducted May 18, 2004.**

Wherefore. It is requested of the Honorable Court that a jury trial be scheduled through the Court Administrator of Clearfield County.

Respectfully submitted,



Chester A. Ogden, Plaintiff

CERTIFICATE OF SERVICE

I, Chester A. Ogden, hereby certify that on June 14, 2004 a copy of foregoing Challenge Court Disposition was served by regular mail, postage prepaid, on the following at address indicated.

James A. Naddeo, Esquire
211 East Locust Street
Clearfield, Pa. 16830

Chester A. Ogden, Plaintiff

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

CHESTER A. OGDEN, Plaintiff	)	
v.	)	NO. 03-869-CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	)	

ORDER

NOW, this 17th day of June, 2004, upon consideration of the "Challenge Court Disposition" filed by Plaintiff on June 14, 2004, which we consider to be a request for reconsideration, IT IS HEREBY ORDERED as follows:

1. The requested relief is DENIED.

2. The Court Administrator of Clearfield County shall promptly and thoroughly review the original Court file and certify to the undersigned if a demand for jury trial was ever made in a timely manner by either party.

BY THE COURT:

J. Michael Williamson, Judge
Specially Presiding
25th Judicial District of Pennsylvania

J. MICHAEL WILLIAMSON
JUDGE
COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745

xc: Chester A. Ogden, Plaintiff
James A. Naddeo, Esquire
Court Administrator

FILED

JUN 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

JUDGES CHAMBERS
TWENTY-FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA
LOCK HAVEN, PENNSYLVANIA 17745

J. MICHAEL WILLIAMSON
JUDGE

570-893-4014
FAX 570-893-4126

June 18, 2004

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

Re: Ogden v. Swisher
No. 03-869-CD

Dear Mr. Shaw:

Please file the enclosed Order in the above referenced matter. All copies have been distributed.

Thank you.

Very truly yours,

Carol E. Miller

Carol E. Miller
Secretary to Judge Williamson

Enclosure

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendants	*	
	*	Type of Pleading:
	*	**CERTIFICATE OF SERVICE**
	*	Filed on behalf of: Defendants
	*	Counsel of Record for this party:
	*	James A. Naddeo, Esq. Pa I.D. 06820
	*	207 East Market Street P.O. Box 552 Clearfield, PA 16830 (814) 765-1601

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AUG 31 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Taking Deposition of James D. Green and James Hile in the above-captioned action was served on the following person and in the following manner on the 31st day of August 2004:

First-Class Mail, Postage Prepaid

Mr. Chester A. Ogden
512 Hartshorn Road
Clearfield, PA 16830

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendant

FILED

AUG 3 1 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	
	*	Type of Pleading:
	*	**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
	*	Filed on behalf of: Defendants
	*	Counsel of Record for this party:
	*	James A. Naddeo, Esq. Pa I.D. 06820
	*	207 East Market Street P.O. Box 552 Clearfield, PA 16830 (814) 765-1601

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William A. Shaw
Prothonotary/Clerk of Courts

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1cc Atty Naddeo

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

CHESTER A. OGDEN, Plaintiff	:	
vs.	:	No. 03 – 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	:	

MOTION FOR SUMMARY JUDGMENT

Defendant, Leonard Swisher, Sr., President, on behalf of Swisher Contracting, Inc., by his attorney, James A. Naddeo, Esquire, respectfully moves this Court to enter Summary Judgment pursuant to Pa.R.C.P. 1035.2, in favor of Defendant, on all counts of Plaintiff's Complaint and in support thereof aver as follows:

A. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE LEONARD SWISHER, SR., PRESIDENT, IS AN INAPPROPRIATE PARTY TO THIS ACTION

1. Plaintiff instituted this action against Leonard Swisher, Sr., in his capacity as President of Swisher Contracting, Inc., by Complaint filed on June 13, 2003, in The Court of Common Pleas of Clearfield County, Clearfield, PA, No. 03 – 869 – CD.

2. This suit arises from injuries Plaintiff allegedly suffered from a lease agreement with Swisher Contracting, Inc. to mine coal from Plaintiff's property.

3. Defendant moves for Summary Judgment as Plaintiff's Complaint is against an inappropriate party, and bases this assertion on the following:

a. Plaintiff's lease was with Swisher Contracting, Inc. It was not a personal lease with the President of the Company.

b. The permit to mine was issued to Swisher Contracting, Inc., not to Leonard Swisher.

c. Swisher Contracting, Inc. conducted the mining operations.

d. Throughout Plaintiff's pleadings, Plaintiff uses Leonard Swisher and Swisher Contracting, Inc. interchangeably.

e. Plaintiff has neither pleaded nor proven facts that would entitle him to pierce the corporate veil and sue the Defendant, President Swisher, personally.

4. There is a strong presumption in Pennsylvania against piercing the corporate veil. The factors to be considered are: undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs and use of the corporate form to perpetrate a fraud. A corporate entity must be recognized and upheld unless the circumstances call for one of these exceptions. Lumax Industries, Inc. v. Aultman, 543 Pa. 38, 669 A.2d 893 (1995).

5. Since Plaintiff has not proven circumstances that would warrant the court to apply one of the exceptions to piercing the corporate veil, and there is no genuine issue of material fact, Defendant is entitled to judgment as a matter of law.

WHEREFORE, Defendant, respectfully requests that this Court enter Summary Judgment in its favor and against Plaintiff on all counts of the Complaint.

B. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE PLAINTIFF HAS NOT PRODUCED EVIDENCE OF HIS CONTENTIONS OF 1). DAMAGE TO HIS PROPERTY OR 2). THAT SWISHER CONTRACTING, INC. BREACHED THE TERMS OF THE LEASE

6 Count I of Plaintiff's Complaint alleges that Leonard Swisher, personally, failed to work and mine the leased premises in a workmanlike manner, claiming that public waste was

buried at the mine site, water accumulated in the open pit and caused damage to the property's water source, overburden was moved to the active pit area onto the area of adjacent coal, and that Swisher breached the terms of the lease by failing to mine remaining coal.

1. PROPERTY CONDITIONS

a. WASTE

7. Plaintiff has not produced evidence that Defendant buried waste on his property.

8. According to the deposition testimony of a solid waste specialist for the DEP Bureau of Waste Management, James Green, and The Surface Mine Conservation Inspector for the DEP, John Rutherford, there had been an open cut on the property with debris.

9. The debris was reported to the responsible party, Jim Hale, who removed it.

10. Such debris was not the responsibility of Swisher Contracting, Inc.

11. Plaintiff has not produced any evidence that there was any debris on his property that was the responsibility of Swisher Contracting, Inc.

b. RECLAMATION

12. Plaintiff has not produced evidence that his property was not reclaimed properly.

13. Conversely, the Surface Mine Conservation Inspector for the DEP, John Rutherford, testified in deposition that the property was reclaimed in excellent condition.

14. Plaintiff has not produced any evidence that the reclamation was improper.

c. WATER

15. Plaintiff has not produced evidence that the water has been degraded from actions of Swisher Contracting, Inc.

16. Another party stripped Plaintiff's property in the 1970's.

17. From the beginning and throughout the operations of Swisher Contracting, Inc., the water was monitored in various locations by the operator and the Department of Environmental Protection.

18. It was determined that there was no degradation to the quality of the water. The water quality was as good or better as before Swisher Contracting, Inc. began mining.

19. Plaintiff has not produced evidence throughout the discovery period to support any of his allegations that Swisher Contracting, Inc. damaged the water on the property.

20. A motion for summary judgment is properly granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Godlewski v. Pars, 408 Pa.Super. 425, 597 A.2d 106 (1991).

21. Where Plaintiff has not produced any evidence to support his allegations of damage, there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law.

2. LEASE TERMS

22. Plaintiff claims that Swisher Contracting, Inc. breached the terms of the lease by not mining a larger amount of coal.

23. There is no provision in the lease in relation to the amount of coal that was to be extracted from the land.

24. Plaintiff did not prove that Swisher Contracting Inc. breached the lease with respect to the amount of coal that had been or was to be mined.

25. The lease provided that Swisher Contracting, Inc. had the unbridled right to terminate the lease when Swisher Contracting, Inc. determined that it was no longer economical to continue to mine. Paragraph 10 of Lease Agreement filed January 6, 2004.

26. Swisher Contracting, Inc. determined that it was no longer cost effective to extract the coal. Swisher Contracting, Inc. terminated the lease and reclaimed the land.

27. A lessee is not in breach when problems arise in mining coal that are not the fault of the lessee. Owens v. Thompson, 385 Pa. 506, 123 A.2d 408 (1956).

28. Where Defendant has complied with the terms of the contract and Plaintiff has not produced evidence of breach, there exits no genuine issue of material fact and Defendant is entitled to judgment as a matter of law.

WHEREFORE, Defendant, respectfully requests that this Court enter Summary Judgment in its favor and against Plaintiff on Count I of the Complaint.

C. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE PLAINTIFF HAS NOT PRODUCED EVIDENCE IN SUPPORT OF HIS CLAIM FOR COMPENSATION FOR SWISHER CONTRACTING INC.'S OCCUPATION DURING RECLAMATION

29. Count II of Plaintiff's Complaint alleges that commencing on February 1, 2003, during the reclamation period, Swisher Contracting, Inc. used Plaintiff's property without authorization or compensation, and claimed that Swisher Contracting, Inc.'s occupation of Plaintiff's land with earth moving equipment and parts, violated Plaintiff's rights.

30. The lease entitles Swisher Contracting, Inc. to cancel the lease upon a determination that it is no longer economically beneficial to extract the coal, and then reclaim the property.

31. Swisher Contracting Inc. cancelled the lease after such determination and reclaimed the property.

32. The lease explicitly provided for Lessee's Right of Re-Entry upon the completion of surface mining operations for purposes of reclamation "for such period of time as may be necessary or required in order to comply with the laws and regulations the Commonwealth of Pennsylvania and the United States of America concerning the reclamation and revegetation of the Leases Premises." Paragraph 11 of Lease Agreement filed January 6, 2004.

33. During the period of reclamation, it was necessary for Swisher Contracting, Inc. to have equipment on Plaintiff's property in order to complete the reclamation under the terms of the lease.

34. As required by the Department of Environmental Protection, Plaintiff signed a Supplemental C, a consent permitting entry upon the land after a mining operation is completed or abandoned. 52 P.S. § 1396.1.

35. The Department of Environmental Protection authorized the mining on Plaintiff's property based on Plaintiff signature of the Supplemental C.

36. Swisher Contracting, Inc. reclaimed the property as required by the Lease and the Supplemental C.

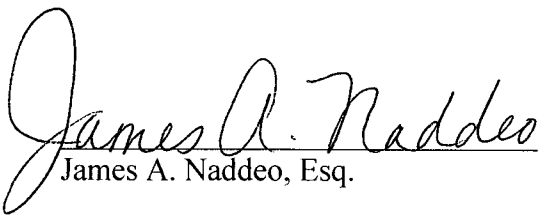
37. Plaintiff was under a contractual and statutory duty to permit occupation for the land to be reclaimed.

38. "The removal of coal by surface mining methods must always be subject to the general public's interest in having the land reclaimed after the coal is removed. A landowner cannot take the position that he wants his coal removed by surface mining methods but he will not agree to re-entry for reclamation purposes without receiving extra compensation." Maul v. Guthrie, 9 Pa. D.&C.3d 482 (1977).

39. Where Plaintiff is under a contractual, statutory and common law duty to permit occupation for reclamation, there is no genuine issue of material fact and the Defendant is entitled to judgment as a matter of law.

WHEREFORE, Defendant, respectfully requests that this Court enter Summary Judgment in its favor and against Plaintiff on Count II of the Complaint.

Respectfully Submitted,



James A. Naddeo, Esq.

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Defendant's Motion for Summary Judgment filed in the above-captioned action was served on the following person and in the following manner on the 27th day of September 2004:

First-Class Mail, Postage Prepaid

Mr. Chester A. Ogden
512 Hartshorn Road
Clearfield, PA 16830

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendant

FILED

SEP 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	
vs.	No. 03 – 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	
	Type of Pleading: **CERTIFICATE OF SERVICE**
	Filed on behalf of: Defendant
	Counsel of Record for this party:
	James A. Naddeo, Esq. Pa I.D. 06820
	207 East Market Street P.O. Box 552 Clearfield, PA 16830 (814) 765-1601

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William A. Shaw
Prothonotary

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

CHESTER A. OGDEN, Plaintiff	* * *	
vs.	* *	No. 05 – 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	* * * *	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Defendant's Brief in Support of its Motion for Summary Judgment, filed in the above-captioned action was served on the following person and in the following manner on the 6th day of October, 2004:

First-Class Mail, Postage Prepaid

Mr. Chester A. Ogden
512 Hartshorn Road
Clearfield, PA 16830

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CHESTER A. OGDEN :

VS. : NO. 03-869-CD

LEONARD O. SWISHER, SR., :

President, SWISH CONTRACTING INC:

O P I N I O N

Plaintiff filed a complaint against Leonard O. Swisher, President of Swisher Contracting, Inc., alleging damages as a result of a breach of an agreement of lease dated June 26, 1989. That lease was between Plaintiff and Swisher Contracting, Inc., a Pennsylvania corporation, which is not a party to these proceedings.

O R D E R

NOW, this 15th day of October, 2004, the Motion of Leonard O. Swisher, Sr., for Summary Judgment is granted and Plaintiff's complaint is dismissed.

BY THE COURT:

J. MICHAEL WILLIAMSON
Specially Presiding

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2cc atty Maddeo
OCT 18 2004

William A. Shaw
Prothonotary

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03-869-CD
LEONARD O. SWISHER, SR. PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	
	*	Type of Pleading:
	*	**ANSWER TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
	*	Filed by Plaintiff, Pro se
	*	Chester A. Ogden 512 Hartshorn Road Clearfield, Pa. 16830 (814) 765-4682

FILED 2cc
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OCT 22 2004
William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03-869-CD
LEONARD O. SWISHER, SR, PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	

ANSWER TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff moves this Court to deny Defendant's motion for Summary Judgment for reason as follows:

A. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE LEONARD O. SWISHER, SR. IS THE APPROPRIATE PARTY TO THIS ACTION

1. Plaintiff initiated this action against Leonard O.Swisher,Sr.as individual and President of Swisher Contracting, Inc., by Complaint filed on June 13, 2003 in The Court of Common Pleas of Clearfield County, Pennsylvania, No. 03-869-CD.

2. This suit arises from injuries Plaintiff suffered from Agreement of Lease with Leonard O. Swisher, Sr. to mine coal from Plaintiff's property.

3. Defendant's Motion For Summary Judgment based on Complaint being against inappropriate party is contrary to fact, based on the following:

a. Plaintiff's lease was with Leonard O. Swisher,Sr., personally.

b. The permit to mine could have been issued under any name.

c. Swisher Contracting, Inc. conducted mining operations under authority of Leonard O. Swisher, Sr.

d. Throughout Plaintiff's pleadings, Plaintiff's use of Leonard Swisher and Swisher Contracting, Inc., is meant to mean the individual Leonard O. Swisher, Sr., President, Swisher Contracting, Inc., Defendant.

e. Plaintiff has neither knowledge or education to comment on matters to pierce corporate veil and trusts to the Court to defend citizen's lawful rights.

4. Plaintiff has no knowledge of matter pertaining to corporate veil and trusts to the Court to defend citizen's lawful rights under Constitution of The United States and the Constitution of The Commonwealth of Pennsylvania.

5. Plaintiff has exercised his lawful right to petition government for redress of grievance and trial by jury, and Justice By Rule of Law does not provide Defendant with excape from accountability and, therefore, Defendant's Motion For Summary Judgment should be denied

WHEREFORE, Plaintiff respectfully requests that this Court enter Order Denying Motion For Summary Judgment

B. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE PLAINTIFF'S PROPERTY CONTAINS EVIDENCE OF 1). DAMAGE TO THE PROPERTY AND 2). THAT LEONARD O. SWISHER, SR VIOLATED AGREEMENT OF LEASE

6. Plaintiff's Complaint does allege that Leonard O. Swisher Sr., personally, (1) failed to work and mine the leased premises in a workmanlike manner, (2) buried public waste at the mine site, (3) permitted water to accumulate in the open pit, (4) knowingly caused conditions detrimental to underlying source water, (5) failed to mine mineable and marketable coal, (6) terminated Agreement of Lease January 27, 2003 and continues use of the land without authorization and without payment of compensation

1. PROPERTY CONDITIONS

a. WASTE

7. Plaintiff's claim of public waste being buried on his land is based on waste disposal area being regraded and no evidence of the waste material being removed..

8. Plaintiff's claim of public waste on the property is supported by deposition testimony of solid waste specialist for the DEP Bureau of Waste Management, James Green, and The Surface Mine Conservation Inspector

for the DEP, John Rutherford, who testified that there had been an open cut on the property with debris.

9. While Defendant claims the debris was reported to the responsible party, James Hile, who removed it, Plaintiff alleges that Defendant, coal operator, buried the public waste at the mine site on Plaintiff's land.

10. Responsibility of the debris being buried at the mine site and violation of law under Pennsylvania Solid Waste Management Act rests with Defendant.

11. Plaintiff's claim does not imply that the debris on Plaintiff's land was the responsibility of Defendant., instead, Plaintiff's claim alleges that Defendant buried public waste at the mine site.

b. RECLAMATION

12. Plaintiff's claim that his property was not reclaimed properly rests on personal inspections of Defendant's mining operation throughout past six (6) years, notes, and photographs.

13. Defendant has not produced evidence in support of testimony of Surface Mine Conservation Inspector for DEP, John Rutherford, that the property was reclaimed in excellent condition, and strict proof is demanded.

14. Plaintiff's evidence of Defendant's reclamation being improper rests with property owner, adjacent land owners, and others with knowledge of open pit mining and reclamation requirements.

c. WATER

15. Plaintiff's claim of water being degraded consists of evidence that Defendant permitted water to accumulate in open pits, become stagnant and yellow in color, and buried public waste at the mine site.

16. Acknowledging that another party stripped Plaintiff's property in the 1970's, Plaintiff's action is derived from Defendant's violation of Agreement of Lease, violation of Pennsylvania Solid Waste Management Act, and violation of Surface Mining Conservation and Reclamation Act.

17. Defendant never produced evidence of water being monitored and analysis thereof prior to and throughout mining operations.on Plaintiff's land.

18. Defendant's claim that it was determined that there was no degradation to the quality of the water, and that the water quality was as good or better as before Swisher Contracting, Inc. began mining, is not supported by evidence and strict proof is demanded.

19. Plaintiff's claim that Defendant caused damage to water quality at the mine site is supported by photographs of stagnant water in the open pit, and photographs of public waste claimed to be buried on the property.

20. A motion for summary judgment is improperly submitted when absent of support by material fact.

21. Where Plaintiff has photographic evidence in support of alleged damage, there is a genuine issue of material fact and Defendant is not entitled to judgment.

2. LEASE TERMS

22. Defendant breached terms of the lease by failing to remove mineable and marketable coal

23. There is a provision in the lease requiring mining and marketing of all marketable coal.

24. Agreement of Lease requires mining of all marketable coal, not a specific amount

25. While Lessor had the unbridled right and did terminate the lease January 27, 2003. Defendant has continued use of the land without authorization and refuses payment of monthly rental charges.

26. Defendant terminated Agreement of Lease without reclaiming the land and after passing of twenty-one month still hasn't reclaimed the land as required by law..

27. Lessee is in breach for failure to conduct mining in a prudent and workmanlike manner. not because of the fault of others.

28. Where Defendant has violated terms of the contract and Plaintiff posesses notes and photographs as evidence of breach, there exists a genuine issue of fact and Defendant is not entitled to judgment as a matter of law.

WHEREFORE, Plaintiff respectfully requests that this Court enter Order Denying Motion For Summary Judgment

C. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE PLAINTIFF HAS PRODUCED EVIDENCE IN SUPPORT OF HIS CLAIM FOR COMPENSATION FOR DEFENDANT 'S OCCUPATION DURING RECLAMATION

29. Plaintiff's Complaint alleges that Defendant terminated Agreement of Lease and all compensation to land owner January 27, 2003 without first reclaiming the land as required by law.

30. While the lease entitles Defendant to cancel the agreement, it is an agreement whereby use of land is conveyed to another in exchange for just compensation, and it does not convey cost free use of the land after termination of the Lease.

31. Defendant terminated the lease and all compensation to landowner without first restoring the land, then continued use of the land under alleged right of "Doing Reclamation". ..

32. The lease **does not** provide for Lessee having right to enter the land after terminating the lease, Right of Re-Entry exists when DEP requires corrections to reclamation under authority of Supplemental C

33. Defendant's claim that it was necessary for Swisher Contracting, Inc. to have equipment on Plaintiff's property after terminating the lease in order to complete the reclamation, is in sharp contrast to the claim of conducting the mining operation in a workmanlike manner in that such an operator would have completed all reclamation before terminating the lease.

34. The Supplemental C signed by Plaintiff and required by Department of Environmental Protection does not modify or extend provisions of the lease between Plaintiff and Defendant, and only serves to convey landowners authority to DEP for instructing Swisher Contracting, Inc. to enter the property for purposes of correcting defects in reclamation and vegetation.

35. The Department of Environmental Protection does not authorize mining of land based on landowners signature on Supplemental C

36. Defendant's claim that Swisher Contracting, Inc. reclaimed the property as required by the Lease and the Supplemental C, is challenged in that Defendant failed and continues to fail to reclaim he mine site in compliance with law of the Commonwealth of Pennsylvania and the United States of America

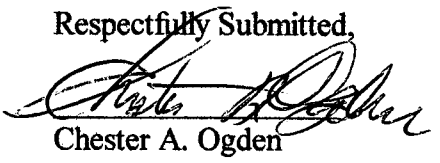
37. Plaintiff's contractual and statutory duty to permit Defendant's occupation of the land after termination of the lease only comes into play when DEP requires corrections to reclamation and vegetation under Supplemental C

38. The Defendant has failed to protect the general public's interest in the environment in that reclamation was not concurrent with mining and revegitation not undertaken in a timely manner.

39. Defendant's coal mining operation is the largest area of mined and unreclaimed land (approximately one square mile) ever known to exist throughout Plaintiff's 40 years involvement in open pit coal mining. and represents nothing less than that of a reckless and irresponsible surface mine operator.

WHEREFORE, Plaintiff respectfully requests that this Court enter Order Denying Motion For Summary Judgment.

Respectfully Submitted,



Chester A. Ogden

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	

CERTIFICATE OF SERVICE

I, Chester A. Ogden, do hereby certify that a true and correct copy of Answer To Defendant's Motion For Summary Judgment was served on the following Counsel for Defendant at address indicated on October 21, 2004 by First Class Mail, Postage Prepaid

James A. Naddeo, Esquire
207 East Market Street
Clearfield, Pa. 16830

Chester A. Ogden, Plaintiff

FILED

OCT 22 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CHESTER A. OGDEN, :
Plaintiff
vs. : No. 03 - 869 - CD

LEONARD O. SWISHER, SR., PRESIDENT :
SWISHER CONTRACTING, INC., :
Defendant

PETITION FOR RECONSIDERATION OF ORDER

NOW comes Plaintiff, Chester A. Ogden, with Petition For Reconsideration of Order of Court entered 15th day of October, 2004, dismissing Plaintiff's Complaint and for reason following stated:

1. Plaintiff, citizen of the United States, has petitioned government for redress of grievance guaranteed under First Amendment, U.S.Constitution, and demanded Trial by Jury in Complaint filed with the Court June 13, 2003

2. Plaintiff is 80 years of age with a 9th grade education, divorced, retired, on Social Security of $653.00 per month, and trusts to Government to protect rights of citizen.

3. Plaintiff is a combat veteran of WW-II and looks to Government to protect citizen's rights under Constitution of The United States and Constitution of Commonwealth of Pennsylvania in exchange for service rendered.

4. Plaintiff's Complaint seeking damages for injury caused him is against Defendant, Leonard O. Swisher Sr., not against counsel for Defendant

5. Citizen's right of fair treatment cannot exist in a matter placed before the Court when the contest involves an inexperienced person and a trained professional, such as now exists between Plaintiff and Counsel for Defendant.

6. Counsel for Defendant has orchestrated procedures whereby delaying Court disposition of the matter

7. Defendant's counsel has caused unnecessary delay of trial, increased Court involvement, and added to injury caused Plaintiff, by matter filed with the Court requiring Plaintiff's involvement.

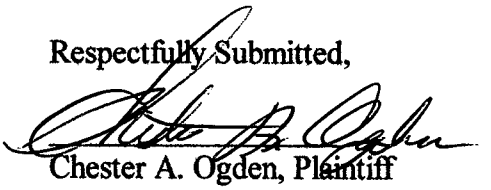
8. Counsel for Defendant's numerous court filed documents have deprived Plaintiff of prompt trial, since filing of Complaint June 13, 2003.

9. Counsel for Defendant filed Motion For Summary Judgment September 27, 2004, and, before Plaintiff could prepare Answer To Motion For Summary Judgment, on October 15, 2004, By The Court, J. Michael Williamson Specially Presiding , it states in pertinent part "the Motion of Leonard O. Swished, Sr., for Summary Judgment is granted and Plaintiff's complaint is dismissed."

9. After devoting all available time to preparing Answer To Motion For Summary Judgment and receiving Order of Court on October 19th whereby granting Defendant's Motion For Summary Judgment and dismissing Plaintiff's Complaint, Plaintiff completed Answer October 21st and prepared Petition For Reconsideration of Order, and, God willing, will file the documents with Clerk of Court October 22nd before leaving for hospital appointment in Pittsburgh.

WHEREFORE, Plaintiff respectfully requests that this Court reconsider Order of Court entered 15th day of October, 2004, and instruct Court Administrator to schedule the matter for Trial.

Respectfully Submitted,



Chester A. Ogden, Plaintiff

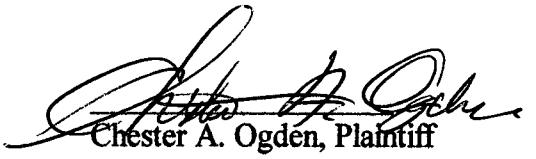
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHESTER A. OGDEN,	*	
Plaintiff	*	
	*	
vs.	*	No. 03 - 869 - CD
	*	
LEONARD O. SWISHER, SR.,	*	
PRESIDENT, SWISHER	*	
CONTRACTING, INC.,	*	
Defendant	*	

CERTIFICATE OF SERVICE

I, Chester A. Ogden, do hereby certify that a true and correct copy of Petition For Reconsideration Of Order was served on the following Counsel for Defendant at address indicated on October 21, 2004 by First Class Mail, Postage Prepaid

James A. Naddeo, Esquire
207 East Market Street
Clearfield, Pa. 16830



Chester A. Ogden, Plaintiff

FILED

OCT 22 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	
vs.	No. 03 – 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	
	Type of Pleading:
	Petition for Counsel Fees and Costs
	Filed on behalf of: Defendant
	Counsel of Record for this party:
	James A. Naddeo, Esq. Pa I.D. 06820
	207 East Market Street P.O. Box 552 Clearfield, PA 16830 (814) 765-1601

FILED 1cc Atty Naddeo
10/3:44/BA
OCT 27 2004
William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	:	
vs.	:	No. 03 – 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	:	

PETITION FOR COUNSEL FEES AND COSTS

Leonard O. Swisher, Sr., by and through his undersigned counsel, requests this Court pursuant to 42 Pa.C.S. §2503 to award counsel fees and costs and in support thereof represents as follows:

1. Leonard O. Swisher, Sr. was sued in his capacity as President of Swisher Contracting, Inc.

2. On October 15, 2004, this Court dismissed Plaintiff's complaint in the above-referenced matter and granted Summary Judgment to Leonard O. Swisher, Sr.

3. Chester A. Ogden has filed a Petition for Reconsideration of the Court's Summary Judgment Order requesting that the matter be scheduled for trial.

4. Pursuant to 42 Pa.C.S. §2503 (9), the Court may award counsel fees "to any participant because the conduct of another party in commencing the matter or otherwise is arbitrary, vexatious or in bad faith."

5. The relentless pursuit of a claim, which plainly lacks legal merit, warrants an award of counsel fees. A suit is vexatious if brought without legal or factual grounds and the sole purpose of the action is causing annoyance. Miller v. Nelson, 768 A.2d 858 (2001).

6. Ogden's claim lacks legal merit. He has not supported his allegations against Swisher with any evidence.

7. The Court made the determination that there is no genuine issue of material fact and that Defendant is entitled to judgment as a matter of law.

8. Ogden's Petition for Reconsideration is vexatious to Swisher.

9. In defending this action, Leonard O. Swisher, Sr. has incurred reasonable counsel fees in the amount of $12,675.00 and costs in the amount of $1,349.48.

Respectfully Submitted,

James A. Naddeo, Esq.
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared LEONARD O. SWISHER, SR., who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge, information and belief.

Leonard O. Swisher

Leonard O. Swisher, Sr.

SWORN and SUBSCRIBED before me this 26th day of October, 2004.

Jennifer L. Royer

Notarial Seal
Jennifer L. Royer, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires May 17, 2007

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	
	*	Type of Pleading:
	*	**ANSWER TO PETITION FOR RECONSIDERATION**
	*	Filed on behalf of: Defendant
	*	Counsel of Record for this party:
	*	James A. Naddeo, Esq. Pa I.D. 06820
	*	207 East Market Street P.O. Box 552 Clearfield, PA 16830 (814) 765-1601

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EBL
1CC
Atty Naddeo

William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	

ANSWER TO PETITION FOR RECONSIDERATION

NOW COMES the Defendant, Leonard O. Swisher, Sr., by and through his attorney, James A. Naddeo, Esquire, and sets forth the following:

1. Admitted.

2. Denied. After reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

3. Denied. After reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

4. Admitted.

5. Denied. After reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

6. Denied. On the contrary it is alleged that defense counsel utilized the usual and reasonable procedures relating to pre-trial discovery with which Plaintiff was ordered to cooperate by Order dated May 18, 2004, a copy of which is attached hereto as Exhibit "A". In further answer thereto, it is alleged that defense counsel made every effort to expedite discovery so that the case could be listed for trial.

7. Denied. In further answer thereto, Defendant incorporates his answer to Paragraph 6 by reference and makes it a part hereof.

8. Denied. On the contrary it is alleged that discovery in this case was completed expeditiously and, in fact, Defendant was ready for trial within 114 days from the date of the Court's Order dated May 18, 2004, when the depositions of James Hile and James Greene were completed on September 9, 2004. In further answer thereto, it is alleged that defense counsel informed Plaintiff that the depositions of James Hile and James Greene concluded Defendant's discovery and that Plaintiff could list the case for trial.

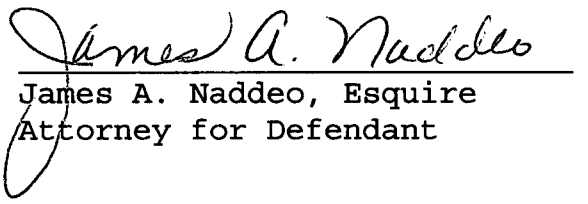
9. Denied. After reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

10. Denied. After reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

11. Denied. After reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

WHEREFORE, Defendant respectfully requests that Plaintiff's Petition for Request for Reconsideration be dismissed.

Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared LEONARD O. SWISHER, SR., who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer to Petition for Reconsideration are true and correct to the best of his knowledge, information and belief.

Leonard O. Swisher

Leonard O. Swisher, Sr.

SWORN and SUBSCRIBED before me this 26th day of October, 2004.

Jennifer L. Royer

Notarial Seal
Jennifer L. Royer, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires May 17, 2007

IN THE COURT OF COMMON PLEAS

MAY 18 2004

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CHESTER A. OGDEN	:	
-vs-	:	No. 03-869-CD
LEONARD A. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC.	:	

O R D E R

NOW, this 18th day of May, 2004, it is hereby ORDERED as follows:

1. Plaintiff will attend the deposition scheduled for June 16, 2004, at the office of Attorney Naddeo beginning at 9:00 a.m. and will remain there and answer fully all questions posed to him until the deposition is complete;

2. Upon completion of the deposition, Attorney Naddeo shall advise the Court of the status of this matter, and if Discovery has been successfully completed, a jury trial will be scheduled through the Court Administrator of Clearfield County.

BY THE COURT,

THE HONORABLE J. MICHAEL WILLIAMSON,
Specially Presiding

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

MAY 18 2004

Attest.

Prothonotary/
Clerk of Courts

EXHIBIT "A"

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Answer to Petition for Reconsideration filed in the above-captioned action was served on the following person and in the following manner on the 27th day of October 2004:

First-Class Mail, Postage Prepaid

Mr. Chester A. Ogden
512 Hartshorn Road
Clearfield, PA 16830

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendant

FILED

OCT 27 2004

William A. Shaw
Prothonotary Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	)	
v.	)	NO. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	)	

ORDER

NOW, this 29th day of October, 2004, Plaintiff's Petition for Reconsideration of our Order of October 15, 2004, is DISMISSED.

BY THE COURT:

J. Michael Williamson, Judge

xc: Chester A. Ogden, Plaintiff
James A. Naddeo, Esquire
Court Administrator

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William A. Shaw
Prothonotary/Clerk of Courts

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J. MICHAEL WILLIAMSON
JUDGE
COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745

JUDGES CHAMBERS
TWENTY-FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA
LOCK HAVEN, PENNSYLVANIA 17745

J. MICHAEL WILLIAMSON
JUDGE

570-893-4014
FAX 570-893-4126

November 1, 2004

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

Re: Ogden v. Swisher
No. 03-869-CD

Dear Mr. Shaw:

Please file the enclosed Orders in the above referenced matter. All copies have been distributed.

Thank you.

Very truly yours,

Carol E. Miller

Carol E. Miller
Secretary to Judge Williamson

Enclosures

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

CHESTER A. OGDEN, Plaintiff	)	
v.	)	NO. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	)	

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William A. Shaw
Prothonotary/Clerk of Courts

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Copies previously distributed

ORDER

Defendant seeks counsel fees following our granting of his Summary Judgment Motion based upon our determination that Plaintiff sued the wrong party. While we understand Defendant's concern that Plaintiff's diligent pursuit of his claim has reached the limits of acceptability, we believe that Plaintiff, while on the line, has not crossed the line. Therefore, although we will deny this Petition, we retain jurisdiction to consider any further requests for counsel fees and costs in the event this matter is pursued further in the trial court or on appeal.

NOW, this 29th day of October, 2004, Defendant's Petition for Counsel Fees and Costs is DISMISSED.

BY THE COURT:

J. Michael Williamson, Judge

J. MICHAEL WILLIAMSON
JUDGE
COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745

xc: Chester A. Ogden, Plaintiff
James A. Naddeo, Esquire
Court Administrator

JUDGES CHAMBERS
TWENTY-FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA
LOCK HAVEN, PENNSYLVANIA 17745

J. MICHAEL WILLIAMSON
JUDGE

570-893-4014
FAX 570-893-4126

November 1, 2004

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

Re: Ogden v. Swisher
No. 03-869-CD

Dear Mr. Shaw:

Please file the enclosed Orders in the above referenced matter. All copies have been distributed.

Thank you.

Very truly yours,

Carol E. Miller

Carol E. Miller
Secretary to Judge Williamson

Enclosures

0

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	
	*	Type of Pleading:
	*	**CERTIFICATE OF SERVICE**
	*	Filed on behalf of: Defendant
	*	Counsel of Record for this party:
	*	James A. Naddeo, Esq. Pa I.D. 06820 207 East Market Street P.O. Box 552 Clearfield, PA 16830 (814) 765-1601

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William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Petition for Counsel Fees and Costs filed in the above-captioned action was served on the following person and in the following manner on the 2nd day of November 2004:

First-Class Mail, Postage Prepaid

Mr. Chester A. Ogden
512 Hartshorn Road
Clearfield, PA 16830

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendant

FILED

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William A Shaw
Prothonotary/Clerk of Courts

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

CHESTER A. OGDEN, Plaintiff	*	
vs.	*	No. 03 - 869 - CD
LEONARD O. SWISHER SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	*	
	*	Type of Pleading:
	*	Challenge Judicial Authority
	*	Filed by Plaintiff, Pro se
	*	Chester A. Ogden, 512 Hartshorn Road Clearfield, Pa. 16830 (814) 765- 4682

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William A. Shaw
Prothonotary/Clerk of Courts

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

CHESTER A OGDEN Plaintiff	* * *	
vs.	* * *	No. 03 - 869 - CD
LEONARD O. SWISHER SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	* * * *	

CHALLENGE JUDICIAL AUTHORITY

Plaiuntiff challenges judicial authority of J. Michael Williamson, Judge Specially Presiding, in above captioned case by following stated

1. On 15th day of October 2004, Judge Williamson issued Opinion and Order contrary to information contained in the case and violated personal honesty and ethics, Code of Judicial Conduct, and citizen's lawful right to petition government for redress of grievance.

2. The Opinion states "Plaintiff filed a complaint against Leonard O. Swisher, President of Swisher Contracting, Inc., alleging damages as a result of a breach of an agreement of lease dated June 26, 1989. That lease was between Plaintiff and Swisher Contracting, Inc., a Pennsylvania corporation, which is not a party to these proceedings"; Which is challenged in that all transactions throughout numerous past years, involving equipment rental, sale

of real estate, and leasing of land, were between Chester A. Ogden and Leonard O. Swisher Sr. and involved express consent of each.

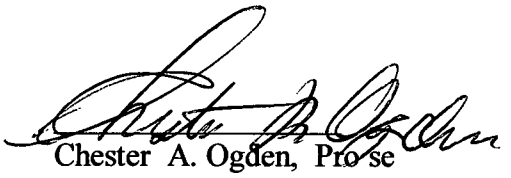
3. The Order states " Now, this 15th day of October, 2004, the Motion of Leonard O. Swisher, Sr., for Summary Judgment is granted and Plaintiff's complaint is dismissed "; Which is challenged in that record of the case does contain material fact of injury caused Plaintiff and, therefore, the Motion of Leonard O. Swisher Sr. for Summary Judgment should be denied. and

4. The Order states "Plaintiff's complaint is dismissed "; Which is challenged for reason of the Order violating lawful rights of citizen to petition government for redress of grievance and right of trial by jury, and

5. Judge Williamson displayed conduct of prosecutor in that he questiuoned Defendant on matter of financial status, but did not ask questions relevant to matter placed before the Court, and

6. When Defendant attempted to explain his position, under lawful right to be fully heard in a Court of Law, Judge Williamson said " This case is over.....Don't say another word or I'm going to put you in jail right now ".

WHEREFORE, Plaintiff requests that The Court issue Order Vacating Order of 15th day of October, 2004, and that the Court Administrator be instructed to schedule the matter for Jury Trial.



Chester A. Ogden, Pro se
512 Hartshorn Road
Clearfield, Pa. 16830

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

CHESTER A. OGDEN Plaintiff	* * *	
vs.	*	No. 03 - 869 - CD
	*	
LEONARD O. SWISHER SR., PRESIDENT, SWISHER CONTRACTING INC.; Defendant	* * * *	

CERTIFICATE OF SERVICE

I, Chester A. Ogden, hereby certify that a true and correct copy of Challenge Judicial Authority was served on the following listed Defendant at address indicated on November 2, 2005 by First Class Mail, postage prepaid

Leonard O. Swisher Sr.,
P.O. Box 1223
Clearfield, Pa. 16830

DATE: November 2, 2005

Chester A. Ogden
512 Hartshorn Road
Clearfield, Pa. 16830
(814) 765-4682

David S. Meholick, Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield, Pa. 16830

December 30, 2005

Re: Case No. 00-760-CRA, Commonwealth vs Ogden
and
Case No. 03-869-CD, Ogden vs Swisher

Dear Mr. Meholick;

Enclosed herewith please find two (2) copys of leter submited to J. Michael Williamson, Judge, Specially Presiding, dated December 27, 2005, and requesting that a copy of the letter be filed with record of each case, above refrenced.

Sincerely,

Chester A. Ogden
5123 Hartshorn Road
Clearfield,

J. Michael Williamson, Judge
Clinton County Courthouse
Lock Haven, Pa. 17745

December 27, 2005

Judge Williamson:

This is to convey awareness of your improper conduct as Judge, Specially Presiding, involving two cases in Clearfield County concerning Chester Ogden and is to request that you proceed with whatever necessary to correct the injustice.

The conduct complained of is derived from, (1) Commonwealth v. Chester Ogden No. 00-760-CRA, and (2) Ogden v. Swisher No. 03-869-CD, and consist of your failure to shield a citizen from improper conduct of another, and failure to hold those accountable who inflict harm on person or property of another, pursuant to the following

Case No. 00-760-CRA
Commonwealth v. Chester Ogden

On October 14, 2000, Pennsylvania State Police Cpl. **Donald Jury** and Tpr. **Matthew T. Reifer** came to Pike Township , Clearfield County, and charged landowner Chester Ogden with Obstructing Public Highway by parking a grader on Township Route 504, **without supporting evidence**, and arrested and transported the accused 30 miles to Kylertown for Arraignment in office of District Justice Michael Rudella..

At Arraignment Proceedings, Tpr. Reifer filed Affidavit of Probable Cause and Criminal Complaint charging Defendant with Obstructing Public Highway, namely Pike Township Road 504, by parking a grader on the road, **without supporting evidence.**

Defendant testified that he owned the land where the grader was parked and provably so by Deed to the property and that official State Map(s), General Highway Map of Clearfield County and Pike Township Road Map, do not indicate Route 504 extending to the area where the grader was parked. Nevertheless, District Justice **Michael Rudella determined Defendant guilty, set bail at Five Thousand ($5,000.) Dollars cash, payable then or committed to jail** Defendant told the Court that he didn't have the money, but as a life-long resident of Clearfield would pledge everything owned as security for bail. Judge Rudella said "Five Thousand Dollars now or you're going to jail", and Defendant was taken to Clearfield County Jail.

In the meantime, a large wrecker was summoned and the grader was slid from under Defendant's Pavilion and moved to another location, causing damage to the grader and property.

October 18, 2000, Preliminary Hearing conducted at Clearfield County Jail, District Justice **James Hawkins** presiding. Commonwealth Attorney **William A. Shaw Jr.** charged Defendant with Obstructing Township Road 504 by parking a grader on the road

and of those testifying for the Commonwealth, including **Patrick Morgan** Supervisor of Pike Township, Public Record was not used to determine the road location.

Defendant testified that he owned the land where the grader was parked and provably so by Deed to the property and that public record of Pike Township did not indicate route 504 extending to the residence of Defendant where the grader was parked, and used current issue of official State maps, General Highway Map of Clearfield County, Pike Township Road Map, and Pike Township Tax Assessment Map No. I-8 , as evidence.

Justice Hawkins said, " For today's purpose, this hearing's adjourned. And you'll have your day in court".

November 2, 2000, Motion To Dismiss And Counterclaim filed with Prothonotary by Chester Ogden, containing reason to dismiss, and counterclaim for, (1) Defendant's cost of this action, and (2) Damages in the amount of $2500.00.

February 21, 2001. Letter from Court Administrator David S. Meholick informing Defendant that the criminal matter has been assigned to the Honorable **Keith B. Quigley,** specially presiding, and that Counterclaim is currently being taken under consideration by him

April 16, 2001. Pre-Trial Conference conducted between Assistant District Attorney William A. Shaw Jr. and Defendant's counsel, Defendant denied participation , and , Defendant subsequently informed by counsel, that Mr. Shaw stated that he is receiving immense pressure from Paul Cherry, the Clearfield County Police Department, the Pennsylvania State Police, and various citizens insisting that he prosecute your case. However, Mr. Shaw did indicate that he would approve a plea of guilty to Disorderly Conduct. Disorderly conduct is a summary offense, and basically there would be no jail time, no probation, and a $25 fine

May 1, 2001. Conference conducted in Office of District Attorney between Assistant District Attorney Shaw, Counsel for Defendant, and Chester Ogden.

Mr. Shaw informed Defendant if the case went to trial he could almost guarantee that defendant would be found guilty, fined, and sentenced to serve time in jail. Consequently, after reviewing Plea Agreement, to avoid being confined in jail and not able to provide daily care for my elderly mother and my personal affairs, after inserting " signed under duress" Defendant signed Plea Agreement. Then Attorney Shaw phoned the information to Judge Quigley.

Judge Quigley's SENTENCE order states, in pertinent part, "in full consideration of all counts in the information; the plea is accepted. Immediate Sentence being requested, SENTENCE is that the Defendant pay the costs and a fine in the amount of Twenty-five ($25.00) Dollars." However, no action was taken on Defendant's Counterclaim which was filed with the court November 2, 2000.

March 12, 2002, Received PA COST BILL REPORT indicating "Charge /Fee Description " Disorderly conduct (Fighting/threatening)", Total Fines and Fees: $494.37.

April 15, 2002, Defendant notified Assistant District Attorney Shaw of withdrawing guilty plea, Plea Agreement dated 5-1-01, and requesting the matter be scheduled for jury trial..

May 1, 2004 Defendant received notice of Allegations of Contempt of Court (1) Was Ordered to pay a $25.00 Fine plus Costs. (2) Defendant has a balance of $494.37 with none being paid to date.

May 18, 2004, Status Conference and Argument on any Outstanding Issues.; Before Honorable J. Michael Williamson, Specially presiding. William A. Shaw Jr. for Commonwealth, and Chester Ogden, Defendant.

Commonwealth Attorney, William A. Shaw Jr., did not argue for Commonwealth and wasn't questioned by the Judge. And when Defendant attempted to argue his position, under lawful right to be fully heard in a court of law. Judge Williamson interrupted and said "Now, Mr. Ogden, what makes you believe that you can withdraw a plea of guilty for which you had been sentenced almost a year previously?" and when I proceeded to explain, the Judge said "This case is over, and you are going to pay $494.37 by 5 p.m.. this Thursday or you're going to jail. This hearing is over, please sit down now. Don't say another word or I'm going to put you in jail right now".
THAT, Judge Williamson, brings the case up to the point of you denying Defendant's Argument.

Defendant's Argument; The matter before the Court is derived from Defendant being charged with obstructing a public highway October 14, 2000 by parking a grader on Pike Township Road 504 in Clearfield County.

Record of the Case is absent evidence of Defendant obstructing Township Road 504, and you, as assigned Judge, should know that. You should also know the record contains testimony of Defendant that he didn't commit the offense, and that he used public record as evidence of fact that township route 504 did not extend into the area where Defendant's grader was parked. And something else you need to know involves someone tampering with taped record of Preliminary Hearing conducted October 18, 2000; The copy of Taped Record of Preliminary Hearing, supplied Defendant by District Attorney's Office, is absent information contained in sixty-three pages of Transcribed Record by Sargent's Court Reporting Service.

Being a criminal case, all the elements of the crime must be proven by The Commonwealth beyond a reasonable doubt. However, The Commonwealth failed to meet burden of proof and undertook a malicious attach on Defendant. Thus committing Crime. "Crime" is identified to be any act done in violation of those duties which an individual owes to the community, and for the breach of which the law has provided that the

offender shall make satisfaction to the public, and subjects the offender to Fine, Removal from office, Disqualification to hold and enjoy any office of honor, trust, or profit.

Being Judge of Court and administrator of justice, and having displayed conduct such as you have throughout your involvement in the case. It becomes obvious that you are not an an administrator of "**Justice**"- to do justice, to see justice done, to summon one to do justice. Because you, **Judge Williamson** have conspired with others and are guilty of Conspiracy in commission of crime.

Case No. 03-869-CD
Ogden vs Swisher

The case involves a citizen, Chester A. Ogden, petitioning Government for redress of grievance by filing a Complaint with the Court on June 13, 2003 against Leonard O. Swisher Sr. and trial by jury demanded.

As record of the matter indicates. Defendant, Leonard O. Swisher Sr., has declined participation in the dispute and undertook to employ attorney James A. Naddeo as his replacement.

The case wasn't promptly scheduled for Jury Trial and, instead, diverted to Attorney Naddeo, and assigned to a Judge that doesn't follow rules of court.

Attorney Naddeo is not a party to the dispute (contest) between plaintiff and defendant. Yet the Court permits the named contestant (Defendant) to be substituted by a trained professional (Attorney), and, with the referee (Judge) being a member of the same organization (Bar Association) as contestant, it becomes obvious that The Court has changed contestants to be Ogden vs Legal Profession. .

Plaintiff's Complaint charges Defendant with violating Agreement of Lease entered into between the parties June 26 1998 and indicates wrongful acts committed.

Defendant's counsel claims that Plaintiff is suing the wrong party. And, Judge Williamson dismisses Plaintiff's Complaint.

NOW, When an element of our society can deprive a citizen of that which the Constitution of The United States provides, it becomes evident that "We The People" are not the regulator of law by which we live. And, in my opinion, anyone violating our Constitution places themselves with those the American military has looked at through the sights of a gun.

Finally. With you, Judge Williamson, being aware of the prior stated, and having pledged to Obey, Support, and Defend the Constitution of The United States. **What are you going to do ?**

Sincerely and Very Truly

Chester A. Ogden
512 Hartshorn Road
Clearfield, Pa. 16830
(814) 765-4682

cc; Michael s. Meholick, Court Adm'r
William A. Shaw, District Atorney
Tom Corbett, Attorney General
James A. Naddeo, Esquire
Others

VERIFICATION

I, Chester A. Ogden, undersigned, verify that the statements made in the foregoing five pages are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.s/s 4904 relating to unsworn falsification to authorities

Chester A. Ogden

Notice of Proposed Termination of Court Case

November 5, 2007

RE: 2003-00869-CD

Chester A. Ogden

Vs.

Leonard O. Swisher Sr.
Swisher Contracting Inc.

FILED
NOV 05 2007
William A. Shaw
Prothonotary/Clerk of Courts

Dear Chester A. Ogden:

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

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **January 4, 2008**.

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

By the Court,

Daniel J. Nelson
Court Administrator

Notice of Proposed Termination of Court Case

November 5, 2007

RE: 2003-00869-CD

Chester A. Ogden

Vs.

Leonard O. Swisher Sr.
Swisher Contracting Inc.

Dear James A. Naddeo, Esq.:

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

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **January 4, 2008**.

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

By the Court,

Daniel J. Nelson

Daniel J. Nelson
Court Administrator

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

CHESTER A. OGDEN	*	
Plaintiff	*	
v	*	No. 03-869-CD
	*	
LEONARD O. SWISHER, SR,	*	Trial by Jury
President, Swisher Contracting Inc.	*	
Defendant	*	

FILED
NOV 15 2007
pm/ 1:10/w
William A. Shaw
Prothonotary/Clerk of Courts
no c/c.

STATEMENT OF INTENTION TO PROCEED

Petitioner, Chester A. Ogden, alleges the grievance ready for trial

Chester A. Ogden, Pro se
512 Hartshorn Road
Clearfield, Pa. 16830
814-765-4683

Date; November 12, 2007

William A. Shaw, Prothonotary/Clerk of Courts
Clearfield County Courthouse
1 North Second Street
Clearfield, Pa. 16830

November 12, 2007

RE: Case No. 03-869-CD
Ogden vs Swisher

Dear Mr. Shaw;

Enclosed herewith please find Statement of Intention to Proceed for filing with the record of above referenced case.

Sincerely,

Chester A. Ogden
512 Hartshorn Road
Clearfield, Pa. 16830

cc: Leonard O. Swisher Sr.

03-869-CD

Pa. Department of Environmental Protection
Terry Confer
186 Enterprise Drive
Philipsburg, Pa. 16866

November 23, 2005

RE: Swisher Contracting, Inc.
SMP # 17990118, Novey Operation
Lawrence Township, Clearfield County

Dear Mr. Confer:

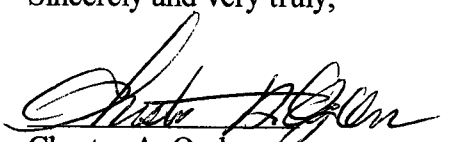
Your letter dated November 22nd, received today, has warranted this immediate reply, regarding above referenced.

As I've stated before. Swisher does not have authority to enter onto and across my property to do corrective work on adjacent property of Jeffrey Carns, and Swisher does not have authority to deposit material on property of Chester Ogden while doing corrective work on adjacent land of Jeffrey Carns

DEP is in a position to know of the problems between Swisher and Chester Ogden at the Novey Operation - Reclamation not concurrent with mining, Water accumulation .in open pits, Burying public waste at the site, and Using land of Chester Ogden after termination of Lease, In addition to that,. Swisher has problems with Jeffrey Carns; Swisher's mining permit did not include property of Carns. Swisher knowingly and intentionally deposited material on property of Carns in violation of rights of property owner, conducted mining activity off area of Permit, and Deposited material on non bonded area..
For you to state "The material that was placed on your property from the Carns property had originally come from your property", I do agree, and the statement establishes that DEP knew Swisher was violating permit conditions when material was being deposited on land of Carns, and that the property being used was off bonded area of mining. Yet Swisher wasn't held accountable.
For you to state "The Department is not prepared to allow this area to go unfinished until your complaint has been ruled on by the court" appears to imply that DEP is the regulator of justice. But I doubt if a Judge of Court shares your opinion. Anyway, What's the hurry now? The area has remained unfinished for the past 65 years, and Swisher's mining activity, contrary to your opinion, hasn't done anything to improve the area.

Mr. Confer. To the best of my ability I have tried to protect myself and society aginst improper conduct of Swisher Contracting, Inc., and when nothing was accomplished, I placed the matter before the Court. When the matter will come to Trial, I don't know. But in the meantime Swisher is not permitted on land of Chester Ogden. .

Sincerely and very truly,



Chester A. Ogden
512 Hartshorn Road
Clearfield, Pa. 16830

cc; Leonard O. Swisher Sr.
J. Michael Williamson, Judge
David S. Meholick, Court Adm'r

David S. Meholick, Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield, Pa. 16830

November 25, 2005

RE: Case No. 03 - 869 -CD
Ogden vs. Swisher

Dear Mr. Meholick:

Enclosed herewith is a copy of letter submitted to Terry Confer, Pa. Department of Environmental Protection, that will convey preseent status of the dispute, and request that it be inserted in the file of the above referenced case.

Sincerely,

Chester A. Ogden
512 Hartshorn Road
Clearfield, Pa. 16830
765-4682

Michael S. Meholick, Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield, Psa. 16830

December 9, 2003

RE: Case No, 03-869-CD
Ogden vs. Swisher

Dear Mr. Meholick:

Please schedule hearing of argument on Preliminary Objections involving above referenced case. Answer to Preliminary Objections were filed with Prothonotary on today's date.

Sincerely,

Chester A. Ogden, Plaintiff
512 Hartshorn Road
Clearfield, Pa. 16830
(814) 765-4682

cc: James A. Naddeo, Esq.

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

CHESTER A. OGDEN, Plaintiff	:	
vs.	:	NO. 03 - 869 - CD
LEONARD O. SWISHER, SR., PRESIDENT, SWISHER CONTRACTING, INC., Defendant	:	

STATUS

Pursuant to Order dated 10th day of May, 2004, scheduling status conference to be held on May 18, 2004 at 11:00 a.m., Plaintiff submits the following:

The dispute rests on the Agreement of Lease entered into between the parties June 26, 1998 and whereby Chester A. Ogden, Plaintiff herein, agreed to lease his 85 acre property in Lawrence Township, Clearfield County, Pennsylvania to Leonard O. Swisher, Sr, President Swisher Contracting Inc. for five years thereafter or until all of the merchantable and profitably mined coal that can be mined and removed therefrom whichever shall occur last.

(1). January 27, 2003, Swisher Contracting Inc. served written notice terminating the lease between the parties dated 6-26-98.

(2). May 14, 2003, Leonard O. Swisher, Sr.. President Swisher Contracting Inc. was served notice of Default Agreement of Lease and taking by adverse possession, and a demand for compensation thereof in the amount of $162,500.00. And further notified that failure to settle the matter within thirty (30) days, by June 14, 2003, will represent just cause for seeking relief through the

Court and additional costs of attorney fees, Court cost, and such other relief as the Court deems just, proper and equitable.

(3). Complaint filed with Prothonotary June 13, 2003, Ogden vs. Swisher, No. 03-869-CD and demand of jury trial..

(4). Pursuant to Order by the Court 12th day of December, 2003:

1. Plaintiff shall within twenty (20) days of this date file with the Court and serve on Defense counsel a copy of the agreement of lease upon which his claim is based;

2. In all other respects, the preliminary objections of the Defendant are dismissed and Defendant is directed to file a responsive pleading within forty (40) days of this date.

(5) Plaintiff filed copy of Agreement of Lease with Prothonotary January 6, 2004.

(6) Answer To Complaint filed with Prothonotary January 9, 2004 by counsel for Defendant, James A. Naddeo

(7) April 15, 2004, Plaintiff requests that Court Administrator supply date of jury trial,

(8). April 30, 2004, Order by the Court, Fredric J. Ammerman, President Judge, stating that Civil Non-Jury Trial has been scheduled for Tuesday, May 18, 2004 at 11:00 A.M. before the Honorable J. Michael Williamson, Specially Presiding.

(9). May 4, 2004, Plaintiff's letter to David S. Meholick , Court Administrator, challenges Order of Court by Fredric J. Ammerman, President Judge, entered 30th day of April, 2004, whereby scheduling the matter for Civil Non-Jury Trial, and for reason of Plaintiff's Complaint containing demand of jury trial, and also for reason of Judge Ammerman having once recused himself from further participation in the case.

(10). May 10, 2004, Order, by the Court, J. Michael Williamson, Judge Specially Presiding, ordered as follows:

1. The non-jury trial scheduled for May 18, 2004, at 11:00 a.m. is continued, to be rescheduled at the Court's convenience.

2. A status conference will be held on May 18, 2004, at 1100 a.m. in the Clearfield County Courthouse, at which time the Court will consider all outstanding motions and establish a trial date.

(11) On this date, May 18, 2004, Plaintiff requests the Honorable Court to issue Order Directing Defendant to Account For Disposition of Public Waste in that a large deposit of public waste and a large pile of automotive wheels and tires have been disposed of by the operator at his coal mining site,

(12) Plaintiff would like to use this occasion to focus Court attention on Defendant's improper conduct since terminating Agreement of Lease on January 27, 2003:

(a) Defendant failed, and continues to fail, to reclaim the mine site in compliance with Permit issued by Pa. Department of Environmental Protection

(b) Defendant continues to use land of Plaintiff without authorization.

(c) Defendant's failure to reclaim the land, pursuant to Permit, has delayed Plaintiff's need to sell the property for fair value.

(d) Defendant's failure to conduct the minng operation in compliance with known law have caused injury to the environment, potential injury to ground water used by local residents, and subtracted from value of Plaintiff's land and that of adjacent property owners.

Wherefore; Plaintiff requests, for reason of being 80 years of age and in declyning health, that the Honorable Court instruct Court Administrator to schedule the matter for jury trial at the earliest time.

Thank you

_____
Chester A. Ogden, Plaintiff.

cc; David S. Meholick, Court Adm'r.
J. Michael Williamson, Judge S.P.
James A. Naddeo, Esquire

OFFICE OF COURT ADMINISTRATOR

FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-6089

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

May 10, 2004

Chester A. Ogden
Pauline Springs
512 Hartshorn Road
Clearfield, Pennsylvania 16830

RE: Ogden vs. Swisher
No. 2003-869-CD

Dear Mr. Ogden:

Thank you for your letter of May 4, 2004. As you know, the above captioned case is assigned to the Honorable J. Michael Williamson, Specially Presiding. It is my understanding that none of the Clearfield County Judges desire to be assigned the matter, which includes Senior Judge John K. Reilly, Jr., Judge Paul E. Cherry and President Judge Fredric J. Ammerman.

Upon receipt of your letter demanding a Jury Trial, it was forwarded to Judge Williamson. Judge Williamson then contacted me and indicated he would instead be scheduling a Non-Jury Trial for May 18, 2004. My office prepared the Order dated May 3, 2004 scheduling a Non-Jury Trial at the direction of Judge Williamson. This Order was provided to, and signed by, President Judge Ammerman solely as a convenience to Judge Williamson since his office is located in Lock Haven. However, since you apparently mistakenly believe that the Order of May 3, 2004 somehow violates your rights, I have discussed your concerns with President Judge Ammerman. As a result thereof, he has executed an Order rescinding the Order of May 3, 2004. A copy is enclosed. In order that there be no further misunderstanding on your part, I will have all further scheduling Orders signed only by Judge Williamson.

I would expect that you will receive an Order or correspondence shortly as to the continued scheduling of the May 18, 2004 trial. I also received today a Motion for Continuance from Attorney Naddeo. Please note that whether you plan to attend any particular proceeding or if you will not attend due to some sort of protest should be directed to Judge Williamson.

Sincerely,

DAVID S. MEHOLICK
COURT ADMINISTRATOR

Encl(1)
cc: President Judge Fredric J. Ammerman
Judge J. Michael Williamson
James A. Naddeo, Esquire

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

CHESTER A. OGDEN	:	
vs.	:	No. 03-869-CD
LEONARD A. SWISHER, SR.,	:	
PRESIDENT, SWISHER	:	
CONTRACTING, INC.	:	

ORDER

NOW, this 11th day of May, 2004, it is the ORDER of this Court that Order entered on April 30, 2004, in the above-captioned civil matter, scheduling said case for a Civil Non-Jury Trial to be held on Tuesday, May 18, 2004, at 11:00 A.M. before the Honorable J. Michael Williamson, Specially Presiding, at the Clearfield County Courthouse, be and is hereby VACATED.

IT IS THE FURTHER ORDER OF THIS COURT that any and all further future scheduling Orders in this matter shall only be signed by the Honorable J. Michael Williamson.

BY THE COURT,

President Judge

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

MAY 11 2004

Attest.

Prothonotary/
Clerk of Courts

David S. Meholick, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, Pa. 16830

May 4, 2004

RE; Ogden vs. Swisher
Case No. 03-869-CD

Dear Mr. Meholick:

This is to challenge Order of Court by Fredric J. Ammerman, President Judge, dated May 3, 2004, whereby it states "Civil Non-Jury Trial in the above matter has been scheduled for Tuesday, May 18, 2004 at 11:00 A.M, before the Honorable J. Michael Williamson, Specially Presiding, Clearfield County Courthouse,....", involving above referenced case.

As Record indicates: I, Chester A. Ogden, petitioned the Court for redress of grievance and demanded trial by jury, pursuant to Complaint filed with Clerk of Court June 13, 2003.

With Judge Ammerman having once recused himself from further participation in any case, he is not permitted by law to re-enter the matter (see ORDER by the Court, John K. Reilly,Jr., President Judge, 13th day of February, 2001 Case No, 00-760-CD)

Judge Ammerman's Order, scheduling the matter for Non-Jury Trial, violates citizen's civil right of trial by jury..

For reason of having demanded disposition of the matter by jury trial, I will not participate in Non-Jury Trial scheduled for May 18, 2004 at Clearfield County Courhouse.

Therefore, It is requested that the Court Administrator schedule the matter for Jury Trial and with adequate allowance of time to permit planned public attendance.

Respectfully submitted,

Chester A. Ogden

Chester A. Ogden
512 Hartshorn Road
Clearfield, Pa. 16830

cc: Fredric J. Ammerman, President Judge
J. Michael Williamson, Judge,S.P.
James A. Naddeo, Esquire