

03-1165-CD

JEFFREY L. CARNES, et al vs. LEONARD O SWITZER, SR. et al.

NOT
USED

Date: 02/12/2004

Time: 09:12 AM

Page 1 of 1

Clearfield County Court of Common Pleas

User: BANDERSON

ROA Report

Case: 2003-01165-CD

Current Judge: Fredric Joseph Ammerman

Jeffrey L. Carns, Susan K. Carns, Adonai Land Company vs. Leonard O. Swisher Sr., Swisher Contracting Inc.

Civil Other

Date	Judge
08/07/2003	Filing: Writ of Summons Paid by: Mikesell, Warren B. II (attorney for Carns, Jeffrey L.) Receipt number: 1864311 Dated: 08/07/2003 Amount: \$85.00 (Check) No Judge ✓
09/23/2003	Sheriff Returns: Now Aug. 13, 2003 served complaint on Josh Berndt and Rick Berndt. Shff. Hawkins \$143.17 Surcharge 20.00 Paid by Atty. No Judge ✓
11/17/2003	Complaint. filed by, s/Warren B. Mikesell, II, Esquire Verification s/Jeffrey L. Carns t/d/b/a ADONAI LAND COMPANY s/Susan K. Carns, t/d/b/a ADONAI LAND COMPANY 4 cc Atty Mikesell No Judge ✓
12/09/2003	Preliminary Objections. filed by, s/James A. Naddeo, Esquire Certificate No Judge of Service 1 cc Atty Naddeo ✓
01/09/2004	ORDER, NOW, this 7th day of January, 2004, Rule issued upon Plaintiffs. Fredric Joseph Ammerman Rule Returnable scheduled for the 19th day of February, 2004, at 9:00 a.m. by the Court, s/FJA, P.J. 2 cc w/service memo to Atty Naddeo ✓
01/29/2004	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Fredric Joseph Ammerman ✓

*** ACTIVITY REPORT ***

Feb. 6 '04 1:28

Tx. TOTAL PAGES 006603
Rx. TOTAL PAGES 002494
PRINT TOTAL PAGES 005780

No.	DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
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Tx.

Rx.

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JEFFREY L. CARNS and	:	
SUSAN K. CARNS, t/d/b/a	:	
ADONAI LAND COMPANY,	:	
Plaintiffs,	:	
vs.	:	No. 03-1165 -CD
LEONARD O. SWISHER, SR.,	:	
Individually and as President,	:	
SWISHER CONTRACTING, INC.	:	
Defendants,	:	

To: William A. Shaw, Prothonotary.

Sir: Please enter my appearance for the Plaintiffs listed above and issue a Writ of Summon in Trespass, as captioned above, and instruct the Sheriff to serve the Writ of Summons on the Defendant, Leonard O. Swisher, Sr., individually and as President, Swisher Contracting, Inc. at R.D. #3, Lawrence Township, Clearfield, Pennsylvania, 16830.

COUNSEL OF RECORD
FOR THIS PARTY:



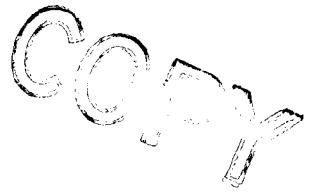
Warren B. Mikesell, II, Esquire
Supreme Court No. 63717
Mikesell & Mikesell
115 East Locust Street
Clearfield, PA 16830
(814) 765-6605

FILED

AUG 07 2003

William A. Shaw
Prothonotary/Clerk of Courts

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



SUMMONS

**Jeffrey L. Carns and
Susan K. Carns, t/d/b/a
Adonai Land Company**

Vs.

NO.: 2003-01165-CD

**Leonard O. Swisher Sr., individually
and as President Swisher Contracting Inc.**

**TO: LEONARD O. SWISHER SR., Individually and as President,
SWISHER CONTRACTING INC.**

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 08/07/2003

William A. Shaw
Prothonotary

Issuing Attorney:

Warren B. Mikesell II
115 East Locust St.
Clearfield, PA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

CARNS, JEFFREY L.; SUSAN K. t/d/b/a ADONAI LAND CO.

VS.

SWISHER, LEONARD O. SR. ind And As President Swisher Contracting Inc

Sheriff Docket # 14399

03-1165-CD

SUMMONS

SHERIFF RETURNS

NOW AUGUST 12, 2003 AT 3:00 PM SERVED THE WITHIN SUMMONS ON LEONARD O. SWISHER SR., IND., DEFENDANT AT RESIDENCE, RD#3, LAWRENCE TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LEONARD O. SWISHER SR., IND. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

NOW AUGUST 12, 2003 AT 3:00 PM SERVED THE WITHIN SUMMONS ON LEONARD O. SWISHER SR., PRESIDENT SWISHER CONTRACTING INC., DEFENDANT AT RESIDENCE, RD#3, LAWRENCE TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LEONARD O. SWISHER SR. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

Return Costs

Cost	Description
29.41	SHERIFF HAWKINS PAID BY: ATTY CK# 1959
20.00	SURCHARGE PAID BY: ATTY CK# 1960

Sworn to Before Me This

23 Day Of Sept 2003
William A. Shaw

So Answers,


Chester A. Hawkins
Sheriff

FILED

0 1:39 PM

SEP 23 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JEFFREY L. CARNS and :
SUSAN K. CARNS, t/d/b/a :
ADONAI LAND COMPANY, :
Plaintiffs, :
: :
vs. : No. 03-1165-CD :
: :
LEONARD O. SWISHER, SR., :
Individually and as President, :
SWISHER CONTRACTING, INC. :
Defendants, :
:

CASE NUMBER: 2003- -CD

TYPE OF CASE: ACTION IN TRESPASS

TYPE OF PLEADING: COMPLAINT

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD
FOR THIS PARTY: Warren B. Mikesell, II, Esquire
Supreme Court No. 63717
Mikesell & Mikesell
115 East Locust Street
Clearfield, PA 16830
(814) 765-6605

FILED

NOV 17 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JEFFREY L. CARNS and	:	
SUSAN K. CARNS, t/d/b/a	:	
ADONAI LAND COMPANY,	:	
Plaintiffs,	:	
	:	
vs.	:	No. 03-1165-CD
	:	
LEONARD O. SWISHER, SR.,	:	
Individually and as President,	:	
SWISHER CONTRACTING, INC.	:	
Defendants,	:	

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claim 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 FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR'S OFFICE
CLEARFIELD COUNTY COURTHOUSE
2nd & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JEFFREY L. CARNS and	:	
SUSAN K. CARNS, t/d/b/a	:	
ADONAI LAND COMPANY,	:	
Plaintiffs,	:	
vs.	:	No. 03- 1165-CD
LEONARD O. SWISHER, SR.,	:	
Individually and as President,	:	
SWISHER CONTRACTING, INC.	:	
Defendants,	:	

COMPLAINT

The Plaintiffs, JEFFREY L. CARNS and SUSAN K. CARNS, t/d/b/a ADONAI LAND COMPANY, by and through their attorney, WARREN B. MIKESELL, II, complains upon a cause of action whereof the following is a statement.

1. That the Plaintiffs are adult individuals, residing at R.D. #1, box 266-A, Clearfield, Pennsylvania, 16830.
2. That the Defendant, LEONARD O. SWISHER, SR., Individually and as President Swisher Contracting, Inc., operating as a strip mining coal business with its principal place of business listed as R.D. #3, Clearfield, Pennsylvania, 16830.
3. That the said Plaintiffs, JEFFREY L. CARNS and SUSAN K. CARNS, t/d/b/a ADONAI LAND COMPANY, are the owners of all those certain premises situate in Lawrence Township, Clearfield County, Pennsylvania, and more particularly described in the Deed dated October 15, 1999, as recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania as Instrument Number 1999017113; being Clearfield Map Number J07-639-002.1 and J07-000-61.
4. That on or before August 31, 2001, the Defendant, did enter upon the property of the Plaintiff's without permission and did so remove coal, transport coal over and across Plaintiff's property and did deposit tons of spoil or overburden upon Plaintiff's property without permission or under a valid lease agreement.

5. That during Defendant's trespass upon Plaintiff's property and adjoining properties, the Defendant did unlawfully deposit tons of spoil or overburden without permission upon Plaintiff's property and failed to do so in compliance with current Federal, State and laws, regulations and local ordinances the same.

6. That during Defendant's trespass upon Plaintiff's property and adjoining properties, the Defendant may have caused or did cause the following to occur which will have an economic and environmental impact of Plaintiff's property:

a. Numerous tons of public waste to be buried on or near Plaintiff's property line without permission to do so and not in compliance with current Federal, State and laws, regulations and local ordinances governing the same.

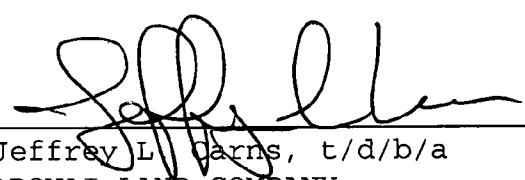
b. Several gallons of water was permitted accumulate in the adjoining open pit which was on or near Plaintiff's property which was permitted to become stagnant, thus causing harm to source water for Plaintiff's property.

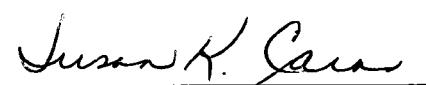
c. That the overburden or spoil so placed upon Plaintiff's property will add additional costs for future mining and make it economically impractical for the owners of the coal and Plaintiff to mine the remaining coal beneath the surface.

7. That the Defendant's conduct was willful and intentional.

WHEREFORE, Plaintiff seeks judgement in favor and against the Defendant for damages in an amount in excess of \$20,000.00 and additional costs of attorney fees and Court costs, and such other relief as the Court deems just, proper and equitable.

Respectfully submitted,

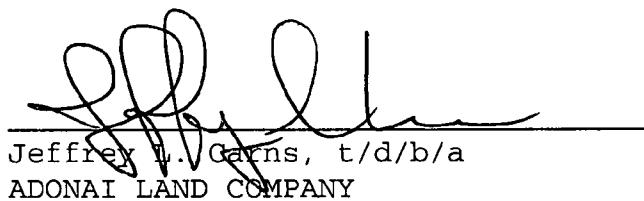

Jeffrey L. Carns, t/d/b/a
ADONAI LAND COMPANY


Susan K. Carns, t/d/b/a
ADONAI LAND COMPANY


Warren B. Mikesell, II,
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :
:

JEFFREY L. CARNS and SUSAN K. CARNS, t/d/b/a ADONAI LAND COMPANY being duly sworn according to law, deposes and say that they are the Plaintiffs in the foregoing Complaint and that the facts set forth therein are true and correct to the best of their knowledge, information and belief.



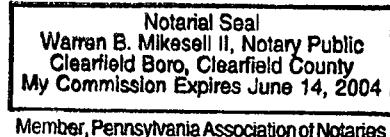
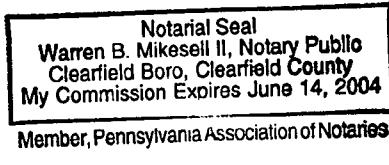
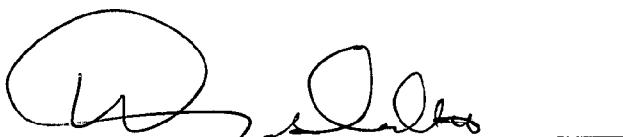
Jeffrey L. Carns, t/d/b/a
ADONAI LAND COMPANY



Susan K. Carns, t/d/b/a
ADONAI LAND COMPANY

Sworn to and subscribed
before me this 6th day
of November, 2003.

Sworn to and subscribed
before me this 16th day
of November, 2003.



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

JEFFREY L. CARNS and
SUSAN K. CARNS, t/d/b/a
ADONAI LAND COMPANY,
Plaintiffs

*
*
*
*
*

vs.

* No. 03-1165-CD

LEONARD O. WISHER, SR.,
individually and as 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

DEC 09 2003

William A. Shaw
Prothonotary

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

JEFFREY L. CARNS and *
SUSAN K. CARNS, t/d/b/a *
ADONAI LAND COMPANY, *
Plaintiffs *
*
vs. * No. 03-1165-CD
*
LEONARD O. WISHER, SR., *
individually and as President, *
SWISHER CONTRACTING, INC., *
Defendants *

PRELIMINARY OBJECTIONS

Defendant, Leonard O. Swisher, Sr., by his undersigned
counsel, preliminarily object to Plaintiffs' Complaint as
follows:

I. Preliminary Objection Raising Legal Insufficiency
of Plaintiffs' Complaint Pursuant to Pa.R.C.P. 1028(a)(4)

1. Plaintiffs' Complaint alleges a cause of action
against Leonard O. Swisher, Sr., individually.

2. Plaintiffs' Complaint alleges correctly that a
trespass, if such occurred, was committed by Swisher
Contracting, Inc.

3. Plaintiffs' Complaint fails to allege any facts
upon which liability for the alleged trespass can be visited
upon Leonard O. Swisher, Sr., individually.

WHEREFORE, Defendant respectfully requests that your Honorable Court grant Defendant's preliminary objections by way of demurrer and dismiss Plaintiffs' Complaint.

II. Preliminary Objection Raising an Issue of Lack of Specificity Pursuant to Pa.R.C.P. 1028(a)(3)

4. Plaintiffs' Complaint alleges that Defendant committed an intentional trespass to Plaintiffs' property.

5. Plaintiffs' Complaint sets forth various claims as to the manner in which Plaintiffs' property was allegedly damaged.

6. Plaintiffs' Complaint fails to specify the following:

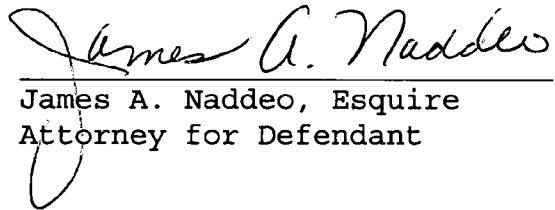
A. Monetary cost of restoring Plaintiffs' property provided said cost does not exceed the value of the land itself;

B. Extent to which Plaintiffs' water source was degraded;

C. Monetary cost of restoring or correcting the degradation of Plaintiffs' water supply; and

D. Monetary value of the coal in place that Plaintiffs claim to have lost.

WHEREFORE, Defendant respectfully requests that Plaintiffs be directed to file a more specific pleading.



James A. Naddeo, Esquire
Attorney for Defendant

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

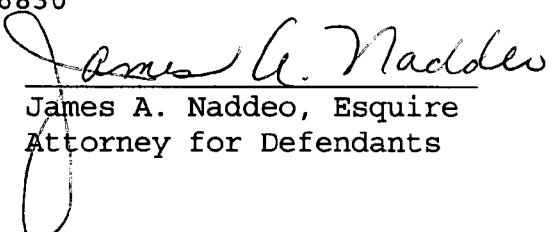
JEFFREY L. CARNS and *
SUSAN K. CARNS, t/d/b/a *
ADONAI LAND COMPANY, *
Plaintiffs *
*
vs. * No. 03-1165-CD
*
LEONARD O. WISHER, SR., *
individually and as President, *
SWISHER CONTRACTING, INC., *
Defendants *

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 9th day of December, 2003:

First-Class Mail, Postage Prepaid

Warren B. Mikesell, II
MIKESELL & MIKESELL
115 East Locust Street
Clearfield, PA 16830


James A. Naddeo, Esquire
Attorney for Defendants

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

JEFFREY L. CARNS and SUSAN K. :
CARNS, t/d/b/a ADONAI LAND :
COMPANY :
vs. : No. 03-1165-CD
LEONARD O. SWISHER, SR., :
individually and as President, :
SWISHER CONTRACTING, INC. :
:

ORDER

NOW, this 7 day of January, 2004, upon consideration of Defendant's Preliminary Objections, a Rule is hereby issued upon Plaintiffs to Appear and Show Cause why the Preliminary Objections should not be granted. Rule Returnable is scheduled the 17 day of February, 2004, at 9:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

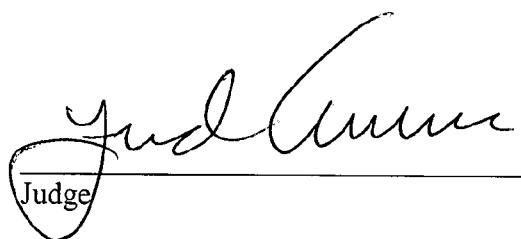
FILED

BY THE COURT:

JAN 08 2004

William A. Shew
Prothonotary/Clerk of Courts

Judge



In The Court of Common Pleas of Clearfield County, Pennsylvania

CARNS, JEFFREY L. & SUSAN K. t/d/d/a ADONAI LAND COMPANY

VS.

SWISHER, LEONARD O. SR. ind & as President, SWISHER CONTRACTING

COMPLAINT (TRESPASS)

Sheriff Docket # 14894

03-1165-CD

SHERIFF RETURNS

NOW DECEMBER 5, 2003 AT 10:30 AM SERVED THE WITHIN LEONARD O. SWISHER SR., IND., DEFENDANT AT EMPLOYMENT, RD#3, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO KIM KOVALL, SECRETARY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

NOW DECEMBER 5, 2003 AT 10:30 AM SERVED THE WITHIN COMPLAINT ON LEONARD O. SWISHER SR. , PRESIDENT SWISHER CONTRACTING INC., DEFENDANT AT EMPLOYMENT, RD#3, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO KIM KOVALL, SECRETARY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

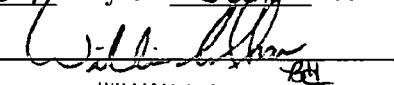
SERVED BY: COUDRIET/RYEN

Return Costs

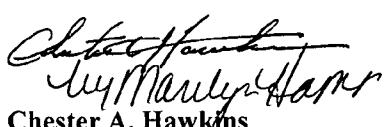
Cost	Description
26.37	SHERIFF HAWKINS PAID BY: ATTY CK# 2019
20.00	SURCHARGE PAID BY: ATTY CK# 2020

Sworn to Before Me This

29th Day Of Jan 2004


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

So Answers,


Chester A. Hawkins
Sheriff

FILED

09:01 AM
JAN 29 2004

William A. Shaw
Prothonotary/Clerk of Courts

CA

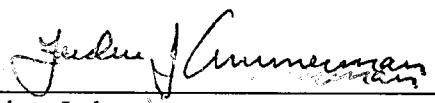
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JEFFREY L. CARNS and SUSAN K. :
CARNS, t/d/b/a ADONAI LAND :
COMPANY :
vs. : No. 03-1165-CD
LEONARD O. SWISHER, SR., :
individually and as President, :
SWISHER CONTRACTING, INC. :
:

ORDER

NOW, this 18th day of February, 2004, it is the ORDER of
the Court that argument on Defendant's Preliminary Objections scheduled for
February 19, 2004 is hereby continued. Argument on this matter will not be
rescheduled unless request is made by counsel for the Defendant.

BY THE COURT:



President Judge

FILED

FEB 18 2004

William A. Shaw
Prothonotary

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

Jeffrey L. Carns and Susan K. Carns,
t/d/b/a Adonai Land Company
Plaintiff : No. 03-1165-CD

VS. :

Leonard O. Swisher, Sr., Indiv. and as
President, Swisher Contracting, Inc.,
Defendant :

Type of Pleading:
Notice of Intent to Proceed

Filed on Behalf of:
Plaintiff: Jeffrey L. Carns and Susan K.
Carns, t/d/b/a Adonai Land Company

Counsel of Record for this Party:

Warren B. Mikesell II, Esquire
Supreme Court I.D. #63717
115 East Locust Street
Clearfield, PA 16830
(814) 765-6605

FILED 4CC A/H
O/10:35 AM
JUL 13 2007
WM

William A. Shaw
Prothonotary/Clerk of Courts

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

Jeffrey L. Carns and Susan K. Carns :
t/d/b/a Adonai Land Company :
Plaintiff : No. 03-1165-CD
VS. :
Leonard O. Swisher, Sr., Indiv. and as :
President, Swisher Contracting, Inc., :
Defendant :
:

NOTICE OF INTENT TO PROCEED

I wish to inform the Prothonotary's Office of my intention to proceed with this case on behalf of my client, Jeffrey L. Carns and Susan K. Carns, t/d/b/a Adonai Land Company. I therefore, would request that this case remain open and active.

Respectfully submitted,



Warren B. Mikesell, II, Esquire
Attorney for Plaintiff:
Jeffrey L. Carns and Susan K. Carns,
t/d/b/a Adonai Land Company

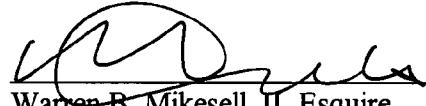
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Jeffrey L. Carns and Susan K. Carns	:
t/d/b/a Adonai Land Company	:
Plaintiff	: No. 03-1165-CD
VS.	:
Leonard O. Swisher, Sr., Indiv. and as	:
President, Swisher Contracting, Inc.,	:
Defendant	:

CERTIFICATE OF SERVICE

I certify that on this 24 day of July, 2007, a copy of the foregoing Notice of Intent to Proceed was served by hand delivery upon counsel for Defendant at the following address:

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



Warren B. Mikesell, II, Esquire

Attorney for Plaintiff:

Jeffrey L. Carns and Susan K. Carns,
t/d/b/a Adonai Land Company

FILED *4CC 1A14*
9/11/11 cm
JUL 13 2007
cm

William A. Shaw
Prothonotary/Clerk of Courts

CH

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

JEFFREY L. CARNS, SUSAN K. CARNS and
ADONAI LAND CO,

Plaintiffs

vs.

LEONARD O. SWISHER, SR.
SWISHER CONTRACTING, INC.,
Defendants

* NO. 2003-1165-CD

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*
*

FILED

APR 16 2013
04/16/2013

William A. Shaw
Prothonotary/Clerk of Courts

44-11-307C
order to
williams
MAY 10 2013

ORDER

NOW, this 15th day of April, 2013, following a review of the docket, due to the case's extended period of time in pending status; it is the ORDER of this Court that a **status conference** be and is hereby scheduled for the **8th day of May, 2013 at 1:30 p.m.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

If this case has been concluded, the moving party is directed to file the appropriate Praeclipe with the Prothonotary of Clearfield County to finalize that status of the case.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

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

JEFFREY L. CARN'S,
SUSAN K. CARN'S and
ADONAI LAND CO,

Plaintiffs

vs.

LEONARD O. SWISHER, SR.
SWISHER CONTRACTING, INC.
Defendants

FILED

APR 18 2013

S William A. Shaw
Prothonotary/Clerk of Courts

1 CCR-TR
ATTN

* 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

* Naddeo & Lewis, LLC
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

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

JEFFREY L. CARNES, *
SUSAN K. CARNES and *
ADONAI LAND CO, *
Plaintiffs *
vs. * No. 2003-1165-CD
*
LEONARD O. SWISHER, SR. *
SWISHER CONTRACTING, INC. *
Defendants *

MOTION FOR CONTINUANCE

AND NOW comes James A. Naddeo, Esquire, attorney for the Defendants in the above-captioned matter, and sets for the following:

1. That on April 15, 2013 an Order was entered scheduling a status conference for May 8, 2013 at 1:30 p.m.
2. That counsel for Defendants will be out of town on said date.

WHEREFORE, counsel for Defendants respectfully requests that the status conference scheduled for May 8, 2013, be continued.

Respectfully submitted,

NADDEO & LEWIS, LLC

BY: 
James A. Naddeo, Esquire
Attorney for Defendants

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

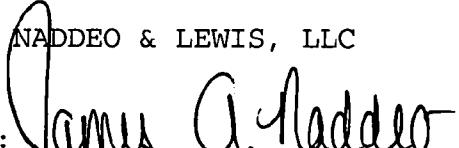
JEFFREY L. CARNS,	*
SUSAN K. CARNS and	*
ADONAI LAND CO,	*
Plaintiffs	*
vs.	*
	No. 2003-1165-CD
	*
LEONARD O. SWISHER, SR.	*
SWISHER CONTRACTING, INC.	*
Defendants	*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Motion for Continuance filed in the above-captioned case was served on the following and in the following manner on the 18th day of April, 2013:

First-Class Mail, Postage Prepaid

Warren B. Mikesell, II, Esquire
115 East Locust Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC
By: 
James A. Naddeo
Attorney for Defendant

OA

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

JEFFREY L. CARNS, *
SUSAN K. CARNS and *
ADONAI LAND CO, *
Plaintiffs *
vs. * No. 2003-1165-CD
*
LEONARD O. SWISHER, SR. *
SWISHER CONTRACTING, INC. *
Defendants *

O R D E R

AND NOW this 22nd day of April, 2013, upon
consideration of the Motion of James A. Naddeo, attorney of
record for Defendants, it is the Order of this Court that the
status conference scheduled for May 8, 2013, be continued to the
27th day of June, 2013 at 1:30 p.m in Courtroom No.
1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FILED 1cc Atty
O/8:47LM Naddeo
APR 23 2013
S
William A. Shaw (S)
Prothonotary/Clerk of Courts

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

JEFFREY L. CARNS,
SUSAN K. CARNS and
ADONAI LAND CO,

Plaintiffs

vs.

LEONARD O. SWISHER, SR.
SWISHER CONTRACTING, INC.
Defendants

* No. 2003-1165-CD

* 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

* Naddeo & Lewis, LLC
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

10:58AM
FILED *No CC*
APR 24 2013

William A. Shaw
Prothonotary/Clerk of Courts

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

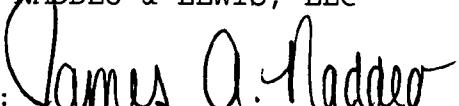
JEFFREY L. CARNS,	*
SUSAN K. CARNS and	*
ADONAI LAND CO,	*
	Plaintiffs
vs.	*
	No. 2003-1165-CD
LEONARD O. SWISHER, SR.	*
SWISHER CONTRACTING, INC.	*
	Defendants
	*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Motion for Continuance filed in the above-captioned case was served on the following and in the following manner on the 24th day of April, 2013:

First-Class Mail, Postage Prepaid

Warren B. Mikesell, II, Esquire
115 East Locust Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC
By: 
James A. Naddeo
Attorney for Defendant

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

JEFFREY L. CARNS,
SUSAN K. CARNS and
ADONAI LAND CO,

Plaintiffs

VS.

LEONARD O. SWISHER, SR.
SWISHER CONTRACTING, INC.
Defendants

* No. 2003-1165-CD

* Type of Pleading:

* **NOTICE OF DEATH**

* Filed on behalf of:

* Defendants

* Counsel of Record for
* this party:

* James A. Naddeo, Esq.
* Pa I.D. 06820

* Naddeo & Lewis, LLC
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

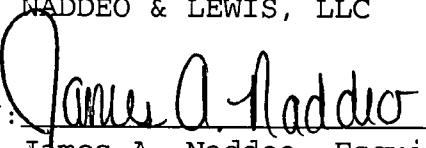
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013:39pm JUL 01 2013 Naddeo
S William A. Shaw 68
Prothonotary/Clerk of Courts

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

JEFFREY L. CARNS,	*
SUSAN K. CARNS and	*
ADONAI LAND CO,	*
Plaintiffs	*
vs.	* No. 2003-1165-CD
*	
LEONARD O. SWISHER, SR.	*
SWISHER CONTRACTING, INC.	*
Defendants	*

NOTICE OF DEATH

The death of Leonard O. Swisher, Sr., a party to the above action, during the pendency of this action is noted upon the record.

NADDEO & LEWIS, LLC
BY: 
James A. Naddeo, Esquire
Attorney for Defendants

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

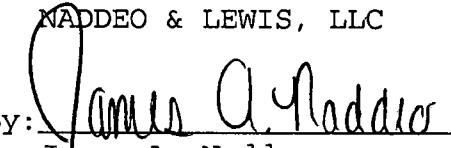
JEFFREY L. CARNS,	*
SUSAN K. CARNS and	*
ADONAI LAND CO,	*
	Plaintiffs
vs.	*
	No. 2003-1165-CD
LEONARD O. SWISHER, SR.	*
SWISHER CONTRACTING, INC.	*
	Defendants
	*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Notice of Death filed in the above-captioned case was served on the following and in the following manner on the 1st day of July, 2013:

First-Class Mail, Postage Prepaid

Warren B. Mikesell, II, Esquire
115 East Locust Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC
By: 
James A. Naddeo
Attorney for Defendants

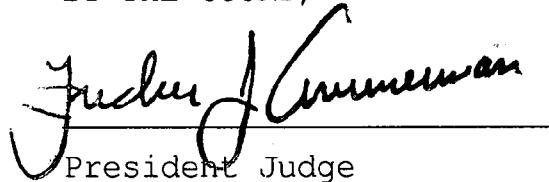
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JEFFREY L. CARNS, SUSAN K.)
CARNS and ADONAI LAND COMPANY)
)
)
VS.) NO. 2003-1165-CD
)
LEONARD O. SWISHER, SR.;)
SWISHER CONTRACTING, INC.)

O R D E R

NOW this 27th day of June, 2013, this being the date set for call of List of Inactive Cases; counsel being present; it is the ORDER of this Court that this matter is scheduled for Pretrial Conference at 3:00pm on Thursday, August 29, 2013, in chambers, with thirty (30) minutes being allotted for said conference.

BY THE COURT,



President Judge

FILED 1CC Atty
SOL 3:22pm JUL 02 2013 m. koseff
S JUL 02 2013 Naddes
William A. Shaw
Prothonotary/Clerk of Courts
6K

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

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S William A. Shaw
Prothonotary/Clerk of Courts

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

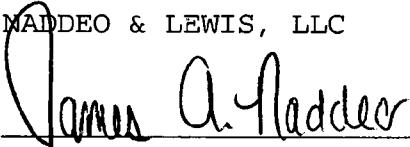
JEFFREY L. CARNS,	*
SUSAN K. CARNS and	*
ADONAI LAND CO,	*
Plaintiffs	*
vs.	*
	No. 2003-1165-CD
LEONARD O. SWISHER, SR.	*
SWISHER CONTRACTING, INC.	*
Defendants	*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that Defendant's Pre-Trial Statement filed in the above-captioned case was served on the following and in the following manner on the 22nd day of August, 2013:

First-Class Mail, Postage Prepaid

Warren B. Mikesell, II, Esquire
115 East Locust Street
Clearfield, PA 16830

By: 
James A. Naddeo
Attorney for Defendants

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

JEFFREY L. CARNS *
SUSAN K. CARNS and ADONAI LAND CO., *
Plaintiffs *
vs. *
LEONARD O. SWISHER, SR., SWISHER *
CONTRACTING, INC., *
Defendants *

NO. 2003-1165-CD

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S AUG 30 2013 *atty mitesell*

William A. Shaw
Prothonotary/Clerk of Courts

6K

ORDER

NOW, this 29th day of August, 2013, following Pre-Trial Conference with counsel and the Court; it is the ORDER of this Court that a one half day non-jury trial be and is hereby scheduled for **JANUARY 10, 2014** commencing at **9:00 a.m.** in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

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

JEFFREY L. CARNS, *
SUSAN K. CARNS and *
ADONAI LAND CO, *
Plaintiffs *
vs. * No. 2003-1165-CD
*
LEONARD O. SWISHER, SR. *
SWISHER CONTRACTING, INC. *
Defendants *

* Type of Pleading:

* **MOTION TO PRODUCE
EXPERT REPORTS**

* Filed on behalf of:
* Defendants *

* Counsel of Record for
* this party:
*
*
* James A. Naddeo, Esq.

* Pa I.D. 06820
*
* Naddeo & Lewis, LLC
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED 2 CC A/H
013:47pm OCT 25 2013 Naddeo

William A. Shaw
Prothonotary/Clerk of Courts GK

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

JEFFREY L. CARNS,	*
SUSAN K. CARNS and	*
ADONAI LAND CO,	*
Plaintiffs	*
vs.	*
	No. 2003 - 1165 - CD
	*
LEONARD O. SWISHER, SR.	*
SWISHER CONTRACTING, INC.	*
Defendants	*

MOTION TO PRODUCE EXPERT REPORTS

AND NOW COMES James A. Naddeo, Esquire, attorney for Defendants in the above-captioned matter, and sets for the following:

1. That the Court conducted a Pre-Trial Conference in this case on August 29, 2013.
2. That Counsel for Plaintiffs indicated that Plaintiffs' claim was based on coal removed by the Defendant from Plaintiff's property.
3. That Plaintiff has failed to produce a report or other documents verifying that Defendant removed coal from Plaintiffs' property.
4. That in fact no coal was removed by the Defendant from Plaintiffs' property and to the contrary Defendant inadvertently placed backfill material on Plaintiffs' property as the result of a survey error.

5. That alternatively Plaintiffs claim a diminution in value of their property incident to Defendant's inadvertent trespass.

6. That Plaintiffs have failed to produce an expert report as to the before and after value of Plaintiffs' property incident to any alleged damage caused by Defendant's inadvertent trespass.

7. That the property infringed on by Defendant has been previously stripped and was in a severe state of disrepair when Defendant placed backfill material on Plaintiffs' property.

8. That Defendant was required by the Pennsylvania Department of Environmental Protection to reclaim the spoil placed on Plaintiffs' property in accordance with DEP Mining Regulations.

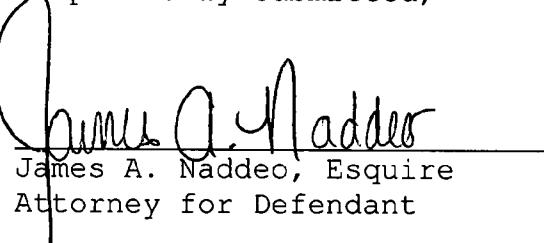
9. That it is believed and therefore averred that the reclamation of Plaintiffs' property improved its value.

10. That Defendant has a right prior to trial to have any expert reports in the possession of Plaintiffs that establishes the removal of coal from Plaintiffs' property and the amount of any diminution in value of Plaintiffs' property caused by Defendant inadvertent trespass onto Plaintiffs' property.

11. That Plaintiffs failed to file a Pre-Trial Statement which requires the production of expert reports if any.

WHEREFORE, Defendant respectfully requests that the Court enter a Rule to Show Cause why Plaintiffs should not be directed to provide Defendant with its expert reports and/or be precluded from producing expert reports at the trial of this case.

Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Defendant

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

JEFFREY L. CARNS, *
SUSAN K. CARNS and *
ADONAI LAND CO, *
Plaintiffs *
vs. * No. 2003-1165-CD
*
LEONARD O. SWISHER, SR. *
SWISHER CONTRACTING, INC. *
Defendants *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Motion to Produce Expert Reports filed in the above-captioned case was served on the following and in the following manner on the 25th day of October, 2013:

First-Class Mail, Postage Prepaid

Warren B. Mikesell, II, Esquire
115 East Locust Street
Clearfield, PA 16830

MADDEO & LEWIS, LLC
By: James A. Naddeo
James A. Naddeo
Attorney for Defendants

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

JEFFREY L. CARNS, *
SUSAN K. CARNS and *
ADONAI LAND CO, *
Plaintiffs *
vs. * No. 2003 - 1165 - CD
*
LEONARD O. SWISHER, SR. *
SWISHER CONTRACTING, INC. *
Defendants *

FILED 2CC A/H

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William A. Shaw
Prothonotary/Clerk of Courts

AND NOW, this 29th day of October, 2013, upon consideration of the attached Motion, a Rule is hereby issued upon Respondent to show cause why the Motion should not be granted. Rule Returnable the 19th of November, 2013, at 9:00 a.m., in Court Room No. 1, Clearfield County Courthouse, Clearfield, for hearing.

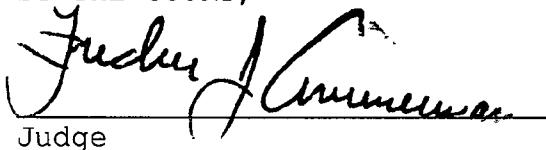
NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION, YOU MUST TAKE ACTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE 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.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA 16830
(814) 765-2641, Ext. 5982

BY THE COURT,


Judge

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

JEFFREY L. CARNS,
SUSAN K. CARNS and
ADONAI LAND CO,

Plaintiffs

vs.

LEONARD O. SWISHER, SR.
SWISHER CONTRACTING, INC.

Defendants

*

*

*

*

*

No. 2003-1165-CD

*

*

*

*

*

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

*

Naddeo & Lewis, LLC
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

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OCT 30 2013

William A. Shaw
Prothonotary/Clerk of Courts

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

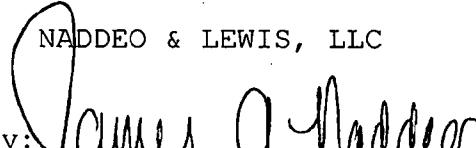
JEFFREY L. CARNS,	*
SUSAN K. CARNS and	*
ADONAI LAND CO,	*
	*
Plaintiffs	*
vs.	*
	No. 2003-1165-CD
	*
LEONARD O. SWISHER, SR.	*
SWISHER CONTRACTING, INC.	*
Defendants	*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Motion to Produce Expert Reports filed in the above-captioned case was served on the following and in the following manner on the 29th day of October, 2013:

First-Class Mail, Postage Prepaid

Warren B. Mikesell, II, Esquire
115 East Locust Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC
By: 
James A. Naddeo
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JEFFREY L. CARNS and
SUSAN K. CARNS, t/d/b/a
ADONAI LAND COMPANY,
Plaintiffs,

vs.

LEONARD O. SWISHER, SR.,
Individually and as President,
SWISHER CONTRACTING, INC.
Defendants,

FILED

7 DEC 17 2013

William A. Shaw
Prothonotary/Clerk of Courts

4 cent P

A + T,

To: William A. Shaw, Prothonotary.

Sir: Kindly mark the above captioned matter as "Settled, Discontinued and Ended" as of this date.

Date: 12/3/13

Warren B. Mikesell, II, Esquire
Attorney for Plaintiff

Warren B. Mikesell, II, Esq.