

03-1271-CD
THOMAS COAL SALES

inc. vs. R. J. CORMAN COMPANY, et al

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

THOMAS COAL SALES, INC., :
'PLAINTIFF :
vs. : NO. 03 - 1271 - CD
: :
R. J. CORMAN COMPANY and :
KOVALCHICK CORPORATION, :
DEFENDANTS :
:

Filed on Behalf of:
Plaintiff

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

AUG 26 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS COAL SALES, INC., :
PLAINTIFF :
vs. : NO. 03 - - CD
: :
R. J. CORMAN COMPANY and :
KOVALCHICK CORPORATION, :
DEFENDANTS :
:

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a writ of summons in the above-captioned
matter.

BELIN & KUBISTA


Carl A. Belin, Jr., Esquire

BELIN & KUBISTA

CLEARFIELD, PENNSYLVANIA 16830

• BOX 1

51

IS NORTH F

ATTORNEYS AT LAW

ELIN & KUBISIA

ESTATE PLANNING

CLEARFIELD, PENNSYLVANIA 1683

• BOX 1

51

IS NORTH F

ATTORNEYS AT LAW

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25 RITE

FILED
AUG 26 2003
2003-25244

Atty Ad. 85.00

William A. Shaw
Prothonotary/Clerk of Courts

to ~~200~~ 200
Atty Bell

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

COPY

SUMMONS

Thomas Coal Sales, Inc.

Vs.

NO.: 2003-01271-CD

**R. J. Corman Company and
Kovalchick Corporation**

**TO: R. J. CORMAN COMPANY
KOVALCHICK CORPORATION**

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: 08/26/2003

William A. Shaw
Prothonotary

Issuing Attorney:
Carl A. Belin Jr.
P. O. Box 1
Clearfield, PA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

THOMAS COAL SALES, INC.

VS.

R.J. CORMAN COMPANY and KOVALCHICK CORP.

Sheriff Docket # 14483

03-1271-CD

SUMMONS

SHERIFF RETURNS

NOW AUGUST 28, 2003 AT 2:45 PM SERVED THE WITHIN SUMMONS ON R.J. CORMAN COMPANY, DEFENDANT AT EMPLOYMENT, CLEARFIELD YARD, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO BILL WILSON, ROAD MASTER A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: NEVLING/MCCLEARY

NOW AUGUST 28, 2003 DONALD BECKWITH, SHERIFF OF INDIANA COUNTY WAS DEPUTIZED BY CHESER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN SUMMONS ON KOVALCHICK CORPORATION, DEFENDANT.

NOW SEPTEMBER 9, 2003 SERVED THE WITHIN SUMMONS ON KOVALCHICK CORPORATION, DEFENDANT BY DEPUTIZING THE SHERIFF OF INDIANA COUNTY. THE RETURN OF SHERIFF BECKWITH IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED MATT LEE, P.I.C.

Return Costs

Cost	Description
35.74	SHERIFF HAWKINS PAID BY: ATTY CK# 16630
20.00	SURCHARGE PAID BY: ATTY
37.00	INDIANA CO. SHFF. PAID BY: ATTY.

Sworn to Before Me This

20th Day Of Sept. 2003
WILLIAM A. SHAW

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

So Answers,

Chester A. Hawkins

Chester A. Hawkins
Sheriff

FILED

013458X
SEP 29 2003

William A. Shaw
Prothonotary/Clerk of Courts

INDIANA COUNTY SHERIFF'S OFFICE

PLAINTIFF	THOMS COAL S	date received:	9/3/03	status:	C
VS		case number:	031271CD		
DEFENDANT	RJ CORMAN CO	paper type:	WRIT		
ATTORNEY'S NAME:	CLEARFIELD CTY SHF	LAST DAY OF SERVICE:	9/25/03		
ATTORNEY'S ADDRESS:		# of services:	1		
ADVANCE CHARGED:		\$37.00			
RECEIVING DOCKETING:		\$9.00	SURCHARGE:	\$0.00	
FOUND SERVICE:		\$9.00	NOTARY FEE:	\$3.00	
NOT FOUND		\$0.00	RELEASE:	\$16.00	
ADDITIONAL DEFENDANTS SERVED		\$0.00	POSTAGE:	\$0.00	
DEPUTIZATION		\$0.00			
			TOTAL COSTS:	\$37.00	
			REFUND DUE:	\$0.00	

RETURN OF SERVICE:

NOW 9/9/03 AT 8:44AM SERVED KOVALCHICK CORP BY
 HANDING TO MATT LEE, PERSON IN CHARGE AT 1060 WAYNE AVE
 INDIANA PA-STUCHELL

SWORN AND SUBSCRIBED BEFORE ME
 THIS 16 DAY OF Sept 2003

Loretta J. Wissinger

NOTARIAL SEAL
 LORETTA J. WISSINGER, NOTARY PUBLIC
 INDIANA, INDIANA CO
 MY COMMISSION EXPIRES MARCH 6, 2006

Donald L. Beckwith
 DONALD L. BECKWITH, SHERIFF
 BY: Neil Stuchell
 DEPUTY NEIL STUCHELL

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

Thomas Coal Sales, Inc.
Plaintiff

*

*

-vs-

*

Docket No. 03-1271-CD

R. J. Corman Company

*

and

*

Covalchick Corporation
Defendants

*

*

Type of Pleading:
PRAECIPE TO ENTER APPEARANCE

Filed on behalf of:
R. J. Corman Company

Counsel of record for
this party:

Dwight L. Koerber, Jr.
PA I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

OCT 16 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

Thomas Coal Sales, Inc.
Plaintiff

*

*

-vs-

*

Docket No. 03-1271-CD

R. J. Corman Company

*

and

*

Covalchick Corporation
Defendants

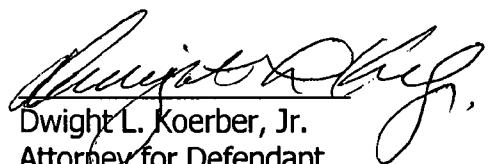
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*

PRAECIPE TO ENTER APPEARANCE

Please enter my appearance on behalf of Defendant, R. J. Corman Company
(Corporate name: R.J. Corman Railroad Company/Pennsylvania Lines, Inc.) in the above-referenced matter.

Respectfully Submitted,


Dwight L. Koerber, Jr.
Attorney for Defendant,
R. J. Corman Company (Corporate name: R.J.
Corman Railroad Company/Pennsylvania Lines, Inc.)

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

Thomas Coal Sales, Inc.
Plaintiff

*

*

-vs-

*

Docket No. 03-1271-CD

R. J. Corman Company

*

and

*

Covalchick Corporation
Defendants

*

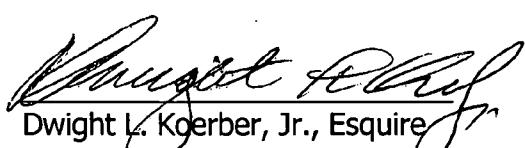
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CERTIFICATE OF SERVICE

This is to certify that on the 16th day of October, 2003 the undersigned served a true and correct copy of the PRAECIPE TO ENTER APPEARANCE in the above captioned matter upon counsel for Plaintiff and upon Defendant, Covalchick Corporation. Such document was served and United States First Class Mail upon the following:

Carl A. Belin, Esquire
BELIN & KUBISTA
15 North Front Street
Clearfield, PA 16830

Covalchick Corporation
1060 Wayne Avenue
Indiana, PA 15701


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
R. J. Corman Company (Corporate name: R.J.
Corman Railroad Company/Pennsylvania Lines, Inc.)

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
DOCKET NO: 03-1271-CD

Thomas Coal Sales, Inc.

-vs-

R. J. Corman Company

and

Covalchick Corporation

PRAECIPE TO ENTER APPEARANCE

FILED 4CC
OCT 30 2003
1 AM
Koerber
William A. Shaw
Prothonotary/Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICE

DWIGHT KOERBER, JR.
ATTORNEY-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

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

THOMAS COAL SALES, INC., :
Plaintiff :
: No. 03 - 1271 - CD
vs. :
: COMPLAINT
R. J. CORMAN COMPANY and :
KOVALCHICK CORPORATION, :
Defendants :
:

Filed on Behalf of:
Plaintiff

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN, KUBISTA & RYAN
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972 (PHONE)
(814) 765-9893 (FAX)

FILED ^{1cc}
6/25/03 Atty Belin
JAN 22 2007
GP

William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS COAL SALES, INC., :
Plaintiff :
: No. 03 - 1271 - CD
vs. :
: R. J. CORMAN COMPANY and :
KOVALCHICK CORPORATION, :
Defendants :
:

NOTICE

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830

(814) 765-2641 Ex 5982

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

THOMAS COAL SALES, INC., :
Plaintiff :
: No. 03 - 1271 - CD
vs. :
: R. J. CORMAN COMPANY and :
KOVALCHICK CORPORATION, :
Defendants :
:

COMPLAINT

AND NOW comes Plaintiff, Thomas Coal Sales, Inc., by and through its attorneys, Belin, Kubista & Ryan, files the following Complaint, and in support thereof avers as follows:

1. That Thomas Coal Sales, Inc., is a Pennsylvania corporation which has an office and place of business at 15 North Front Street, Clearfield, Clearfield County, Pennsylvania 16830 ("TCS").
2. That R. J. Corman Company is a corporation operating under the laws of the Commonwealth of Pennsylvania and has a place of business at Clearfield Yard, in the Borough of Clearfield, Clearfield County, Pennsylvania 16830 ("Corman").
3. That the Kovalchick Corporation is believed to be a Pennsylvania corporation operating under the laws of the Commonwealth of Pennsylvania and has a place of business at 1060 Wayne Avenue, Indiana, Indiana County, Pennsylvania 15701 ("Kovalchick").

4. That TCS is the owner and operator of a tipple facility, which is located in the Bells Landing area of Greenwood Township, Clearfield County, Pennsylvania ("tipple").

5. That TCS secured sidetrack agreements along the main tracks of Consolidated Rail Corporation ("Conrail") in the area of the tipple on or about June 24, 1977, a copy of which is recorded in Clearfield County Recorder of Deeds Office in Misc. Book 209, Page 224 ("recorded in Misc. Book 209, Page 224"), and by a series of amendments: dated September 16, 1977 recorded in Misc. Book 210, Page 563; December 5, 1978, recorded in Misc. Book 218, Page 090; April 18, 1979 recorded in Misc. Book 219, Page 567.

6. That TCS then purchased the rail and constructed a side track which was approximately 11,000 feet in length and purchased switches to be placed on the main line upon which to load unit trains.

7. That Conrail attempted to terminate the side track agreements by a letter on September 13, 1983, which is hereto attached, made a part hereof, and marked Exhibit "A."

8. That Conrail also attempted to buy TCS's rail placed by it on the side track for \$300,000.00 by a letter dated September 16, 1983, a copy of which is hereto attached, made a part hereof, and marked Exhibit "B."

9. That TCS filed an action against Conrail in the United States District Court for the Western District of Pennsylvania at Civil Action No. 83-2520 as to the attempted termination and the matter was settled by a settlement agreement which changed the side track agreements into an easement. The settlement agreement was recorded in Deed Book 989, Page 250, a copy of which is hereto attached, made a part hereof, and marked Exhibit "C."

10. That thereafter TCS and Conrail proceeded under the settlement agreement and TCS did not make any further rental payments but continued to load unit trains upon the easement.

11. That the main track and associated land was conveyed by Conrail to Corman by deed dated December 29, 1995, and recorded in Deed Book 1780, Page 89.

12. That Corman entered into an agreement with Kovalchick to purchase and remove track abandoned as established by Corman. A copy of said award is hereto attached, made a part hereof, and marked Exhibit "D."

13. That apparently Corman intended and did include the tracks within the easement of TCS as a part of said project.

14. That prior to the removal of said rails, TCS, through counsel, made Corman aware of its ownership interest in the side track by letter dated August 1, 2002, a copy of which is hereto attached, made a part hereof, and marked Exhibit "E."

15. That following an oral request from Corman's counsel to set forth the basis for claiming ownership in the side track, TCS, through counsel, set forth the basis for its claim of ownership by letter dated October 28, 2002, a copy of which is hereto attached, made a part hereof, and marked Exhibit "F."

16. That notwithstanding the two (2) letters set forth in Paragraphs 12 and 13 of this Complaint, which are hereby incorporated by reference and made a part hereof, Kovalchick and Corman nonetheless proceeded to enter upon the easement of TCS and wrongfully removed the rail, ties, and ballast which belonged to and were owned by TCS, and converted the rails, ties and ballast for their own use and profit.

17. That said actions of Corman and Kovalchick constitute a trespass on said easement, as a result of which said siding was rendered useless and a conversion of the rails, ties, and ballast that was the property of TCS.

18. That TCS hereby claims damages to the side track and tipple for the elimination of the rails, ties and ballast and consequential loss caused to the tipple as a result of said actions.

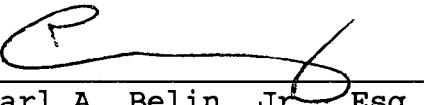
19. That TCS hereby claims damages for the conversion of the rails and ties removed by Corman and Kovalchick from the TCS easement.

20. That TCS claims punitive damages due to the intentional actions of Corman after receiving notice of TCS's ownership.

WHEREFORE, TCS seeks damages in excess of \$50,000.00, which is above the arbitration limits of Clearfield County.

AND IT WILL EVER PRAY.

BELIN, KUBISTA & RYAN

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiff

CONRAIL



September 16, 1983

Fahy W. McDonald, President
Thomas Coal Sales, Inc.
Box 188
Grampian, PA 16838

Re: Lease Agreement for Sidetrack in Bells Landing
dated as of June 24, 1977 between Consolidated
Rail Corporation and Thomas Coal Sales, Inc.

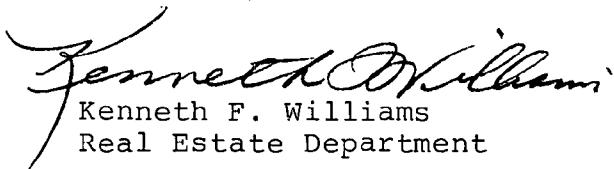
Mr. McDonald:

This letter will serve as notice to you that Consolidated Rail Corporation (Conrail) will terminate the above referenced lease agreement on October 17, 1983, thirty days from the date first written above, pursuant to paragraph III of said agreement and the Seventh paragraph of the Private Sidetrack Agreements, first executed as of July 29, 1946 and August 8, 1949 and made expressly applicable to the lease agreement by the terms thereof.

Under the terms of the controlling agreements, Thomas Coal Sales, Inc. has thirty days from the date of termination to remove its track from and otherwise vacate Conrail's premises before Conrail can exercise its right to purchase the track for the fair market value of the track material. However, Conrail remains willing to negotiate the purchase of the track prior to this time.

A letter containing a purchase offer for the track is being delivered to you on the same date as this letter. This termination is the necessary result of Conrail's evaluation of its track requirements and shippers' service needs in the Clearfield area. We remain ready to provide to you the same level of service as in the past.

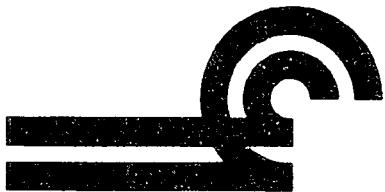
Very truly yours,


Kenneth F. Williams
Real Estate Department

KFW/jk
cc: Carl A. Belin, Jr., Esquire

Exhibit "A"

CONRAIL



September 16, 1983

Fahy W. McDonald, President
Thomas Coal Sales, Inc.
Box 188
Grampian, PA 16838

Re: Sidetrack at Bells Landing, Pennsylvania

Mr. McDonald:

In light of Consolidated Rail Corporation's (Conrail) notice of termination of its Lease Agreement with Thomas Coal Sales, Inc., served upon you this date, Conrail is prepared to offer three hundred thousand dollars (\$300,000) to purchase nine thousand four hundred thirty-one feet of sidetrack at Bells Landing from Thomas Coal Sales, Inc.

Please note that your acceptance of this offer will spare your company the expense of removing the track from Conrail premises within thirty days of termination, as provided in the controlling provisions of the lease and private sidetrack agreements, and will make removal of your company's coal loader unnecessary. As explained, we plan to provide your company with the same level of service as in the past.

We appreciate your prompt consideration of this proposal and will be happy to meet with you to discuss this further.

Very truly yours,


Ralph E. Gratz
General Manager

REG/jk
cc: Carl A. Belin, Jr., Esquire

Exhibit "B"

1571
3
VOL 980 pg 248

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS COAL SALES, INC.,
a corporation,

Plaintiff,

v.

Civil Action No. 83-2520

CONSOLIDATED RAIL CORPORATION,
a corporation, HEPBURNIA COAL
COMPANY, a corporation, ROBERT G.
SPENCER, DARRELL G. SPENCER
and RAY L. SPENCER, t/d/b/a
SPENCER LAND COMPANY, a partner-
ship, and ROBERT G. SPENCER,
DARRELL G. SPENCER and RAY L.
SPENCER, individuals,

Defendants.

CLEARED FOR RECORD 12-27-84
ENTERED ON REC'D. 12-27-84
TIME 9:42 AM
BY Civil Clerk
FEES 0.00
Michael R. Lytle, Recorder

MOTION TO DISMISS

Plaintiff moves this Honorable Court for an
order dismissing this suit against all defendants with
prejudice, pursuant to Rule 41(a)(2) of the Federal Rules
of Civil Procedure, each party to bear its costs. The
plaintiff makes this motion on the basis of a settlement
agreement to which all parties have given their assent.

The terms of the settlement agreement are set forth in the
letter attached hereto as Exhibit A. The counterclaim of
defendant Consolidated Rail Corporation is dismissed with

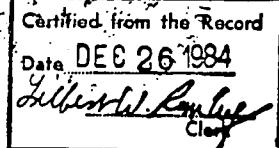


Exhibit "C"

VOL 989 ²⁴⁹

prejudice by stipulation of the parties, pursuant to Rule 41(a)(1). The stipulation is being filed simultaneously with this motion.

Dale Denney

Eckert, Seamans, Cherin & Mellott
ECKERT, SEAMANS, CHERIN & MELLOTT
42nd Floor - 600 Grant Street
Pittsburgh, Pennsylvania 15219
Counsel for Plaintiff

January 5, 1984

VOL 980 250

ATTORNEYS AT LAW
600 GRANT STREET - FORTY-SECOND FLOOR
PITTSBURGH, PA 15219
(412) 566-6000

TELEX-866172
TELECOPIER-(412) 566-8099
(412) 566-5952

January 4, 1984

DALE HERSHY
DIRECT DIAL (412) 566-6054

Laurence Z. Shiekman, Esq.
Pepper, Hamilton & Scheetz
20th Floor
The Fidelity Building
123 South Broad Street
Philadelphia, PA 19109

Re: Thomas Coal Sales, Inc. v. Conrail
Civil Action No. 83-2520

Dear Mr. Shiekman:

On the basis of our telephone conversation, it is
our mutual understanding that the above case is to be settled
and discontinued on the following terms:

1. Conrail withdraws its notice of termination of
Thomas Coal Sales' lease to the premises on which Thomas Coal
Sales has constructed the Greenwood siding. Conrail also with-
draws its offer to purchase the siding made on September 16, 1983.

2. Subject to paragraph 7 hereof regarding the
negotiation of an easement to replace the lease, Conrail agrees
that it will not terminate the lease to the premises on which
the Greenwood siding is constructed unless Thomas Coal Sales
or its successor fails to pay rent as provided in the lease, dis-
continues the business of loading coal at the Greenwood siding
or misuses the Greenwood siding (i.e., engages in conduct with
respect to the siding which is prohibited in the lease). Conrail
acknowledges that Thomas is not now in default on any provisions
of the lease.

3. Thomas Coal Sales shall continue to be able to
use the Conrail-owned Bell Run siding for the loading of coal
as it has in the past. Conrail reserves the right to operate
over the Bell Run siding for its own use or to permit the loading
of small blocks of cars for others on the Bell Run siding.

4. Thomas Coal Sales shall discontinue the above-
captioned case against all parties with prejudice.

5. This agreement shall not be construed as a
waiver by Thomas Coal Sales of any claim not specifically raised
in the above-captioned case, including claims for discrimination.

EXHIBIT A

6. In view of the disagreement between Conrail and Thomas Coal Sales as to whether the lease permits Conrail or a Conrail licensee to construct a conveyor or conveyors through the air above the surface of the leased premises, it is agreed that Thomas Coal Sales waives any right it may have to object to the construction of such a conveyor or conveyors which do not interfere with Thomas' use of the leased premises in exchange for a payment by Conrail to Thomas Coal Sales in the amount of \$50,000.

7. Conrail and Thomas Coal Sales shall as soon as practicable negotiate an agreement providing for the grant by Conrail of a surface easement to Thomas Coal Sales and its successors which would replace the present lease agreement. The easement to be granted by Conrail to Thomas would give to Thomas the right to construct, own, use and maintain the Greenwood siding and related coal loading facilities on the premises which are subject to the present lease. The easement shall provide for Conrail and Thomas the rights and reservations contained in the present lease with the exception that Thomas shall no longer have an obligation to pay rent. Conrail shall not construct or permit the construction of any track or siding which crosses the easement without the written consent of Thomas. Presently existing sidings and tracks can be maintained. The term of the easement shall be for as long as Thomas or its successors engage in the business of loading coal at the Greenwood siding, but the easement may be terminated in the event that Thomas or its successors misuse the Greenwood siding (i.e., engage in conduct with respect to the siding which is prohibited in the present lease).

8. Conrail shall discontinue its counterclaim in the above-captioned case with prejudice.

It is also our understanding, based upon a discussion with David Ammerman, counsel for the defendants other than Conrail, that those defendants have no objection to termination of the case on the basis of the above agreement.

Having read the foregoing terms to you over the telephone, and having obtained your agreement that they accurately set forth the terms of the agreement between Conrail and Thomas Coal Sales, I shall inform the Court that the case has been settled and shall prepare the necessary papers to terminate the case of record.

Very truly yours,

Dale Hershey

Dale Hershey

cc: David S. Ammerman, Esq.

VOL 989 pg 252

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS COAL SALES, INC.,
a corporation,

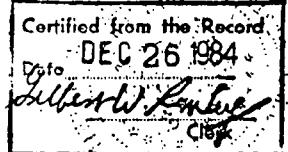
Plaintiff,

v.

Civil Action No. 83-2520

CONSOLIDATED RAIL CORPORATION,
a corporation, HEPBURNIA COAL
COMPANY, a corporation, ROBERT G.
SPENCER, DARRELL G. SPENCER
and RAY L. SPENCER, t/d/b/a
SPENCER LAND COMPANY, a partner-
ship, and ROBERT G. SPENCER,
DARRELL G. SPENCER and RAY L.
SPENCER, individuals,

Defendants.



STIPULATION OF DISMISSAL

It is hereby stipulated and agreed by Consolidated
Rail Corporation and Thomas Coal Sales, Inc. that the counter-
claim of Consolidated Rail Corporation against Thomas Coal
Sales, Inc. is hereby voluntarily dismissed with prejudice,
pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil
Procedure.

January 5, 1984

Lester W. Lanier
Piper, Hamilton & Schift
Counsel for Consolidated Rail
Corporation

Dale Hensley

Eckar, Seaman, Cheim & Mellott
Counsel for Thomas Coal Sales, Inc.

CASE CLOSED VOL 980 PAGE 253

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS COAL SALES, INC.,
a corporation,

Plaintiff,

v.

CONSOLIDATED RAIL CORPORATION,
a corporation, HEPBURNIA COAL
COMPANY, a corporation, ROBERT G.
SPENCER, DARRELL G. SPENCER, and
RAY L. SPENCER, t/d/b/a SPENCER
LAND COMPANY, a partnership, and
ROBERT G. SPENCER, DARRELL G.
SPENCER and RAY L. SPENCER,
individuals,

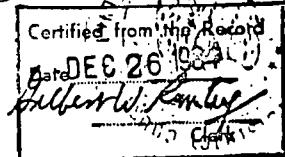
Defendants.

Civil Action No. 83-2520

STATE OF PENNSYLVANIA, ss
COUNTY OF CLEARFIELD, ss
RECORDED in the Recorder's Office in and for said
County in Deeds and Records Book No. 989
Page 248 rec'd
WITNESS my hand and seal of office this
28 day of December 1984
Michael R. Lytle
Recorder

My Commission Expires
First Monday in January, 1988

AND NOW, this 5th day of January, 1984, in con-
sideration of plaintiff's motion to dismiss this action against
all defendants with prejudice and in consideration of the stipu-
lation of dismissal with prejudice of the counterclaim of de-
fendant Consolidated Rail Corporation, it is hereby ORDERED
that the above case, including the counterclaim, be and hereby
is dismissed with prejudice, each party to bear its costs.



Entered of Record Dec 28 1984, 9:47 A.M. Michael R. Lytle, Recorder

CB
768-9993

Preston Marwick

Memo

Date: June 24, 2002

To: Nathan Kovalchick
Kovalchick Corporation

Re: Contract Award – Track Abandonment/Removal Projects
Bid Package No. 3 – Dated April 15, 2002
Clearfield, PA

Cc: Tammie Taylor, R. J. Corman Railroad Group

In regards to Bid Package No. 3, R. J. Corman Railroad Company accepts your bid proposal for the purchase of Track Abandonment Project (s) as listed below, under terms and conditions indicated in the bid package.

Project No. 1 – Irwona Subdivision

Frugality Milepost 17.5 to 18.2 130# PS – 0.6 tenths mile
Leave 550 TF in place from P.O.S. at MP 17.5

Project No. 2

Ashville – Milepost 8.4 – 9.0 – 130# PS 0.6 tenths mile
3200 - 2618 of 130

Project No. 3 – Ebensburg, PA

Black Lick Milepost 12.0 to 16.0 – 130# PS Track Feet 4.0 miles
[CWR – MP 12 to 13.5 – Jointed Rail MP 13.5 to 16]
Contractor to remove only that material in Track! No loose material.
R. J. Corman will remove all loose rail/ties, including rail in track at
WYE, MP 10.5

Project No. 4

KY Sub. Divn. Milepost 6.4 105# Dudley – 33 rail length long
Includes loose rails in stockpile.

Project No. 5

D F Sub. Divn. Milepost 11.2 125# PS 2500 TF

Project No. 6

Milepost 26.5 100# PS – 22 rail lengths long.

BID PACKAGE NO. 3 [To be complete within 120 days from sale date]

Project No. 1 - Irvona Subdivision

Frugality Milepost 17.5 to 18.2 130# PS - 0.6 tenths Mile

Leave 550 TF in place from P.O.S. at MP 17.5

~~R.J.Corman Railroad to retain 40% relay ties To be spotted by R.J.Corman.~~

Project No. 2

Ashville Milepost 8.4 to 9.0 - 130# PS 0.6 Tenths mile

~~R.J.Corman Railroad to retain 40% relay ties To be Spotted by R.J.Corman~~

Project No. 3 - Ebensburg, PA

Black Lick Milepost 12.0 to 16.0 - 130# PS Track Feet 4.0 Miles

[CWR - MP 12 to 13.5 - Jointed Rail MP 13.5 to 16]

Contractor to remove only that material in Track! No loose material.

R J Corman will remove all loose rail/ties, including rail in track at WYE, MP 10.5

Project No. 4

KY Sub. Divn. Milepost 6.4 105# Dudley - 33 rail length long - Includes loose rails in stockpile.

Project No. 5

D F Sub. Divn. Milepost 11.2 125# PS ~~2500~~

~~2500~~ TF

Project No. 6

Milepost 26.5 100# PS - 22 rail lengths long.

Project No. 7

Milepost 28.5 100# PS - 8 rail lengths long.

10 Rail Length

Project No. 8

Milepost 35.3 - L J 100# PS

3000 TF

Project No. 9

Milepost 39.5 - 105# Dudley - 18 rail lengths long

Project No. 10

Bear Run [Hillman] Milepost 0.0 to 1.5 - 100# PS 1.5 Miles

Project No. 11

Milepost 5.8 100# PS

1000 TF

Project No. 12

Milepost 43 105# PS

40 rail lengths long

Project No. 13

Milepost 46 127# Dudley JT. - 56 rail lengths long / 105# 268 rail lengths long

Lump Sum Credit to R J Corman Railroad LS \$ _____

Project No. 7

Milepost 28.5

100# PS - 8 rail lengths long.

10 Rail truck

Project No. 8

Milepost 35.3 - L J

100# PS

3000 TF

222

Project No. 9

Milepost 39.5 - 105# Dudley - 18 rail lengths long

657'

Project No. 10

Bear Run [Hillman] Milepost 0.0 to 1.5 - 100# PS

1.5 miles

Quantity 5000'

1/2 payably

Project No. 11

Milepost 5.8

100# PS

1000 TF

1200'

Project No. 12

Milepost 43

105# PS

40 rail lengths long

1700'

2160'

Project No. 13

Milepost 46

127# Dudley JT. - 56 rail lengths long

53

Grand Total Credit to R. J. Corman Railroad Company/Pennsylvania Lines

[Bid proposal based solely on Contractor's Inspection of track footage, etc.]

We must receive all funds for Bid Package no later than Friday, June 28, 2002. Funds must be received before you will have access to the property. Funds are payable by either electronic wire transfer to Central Bank and Trust Company, Lexington, KY, acct number 10301763, routing number 042100146 or by certified check. Check must be made to R. J. Corman Railroad Company/Pennsylvania Lines and mailed to my attention at P.O. Box 788, Nicholasville, KY 40340. Once funds are received and verified you will be notified with the name of a contact person at the location to arrange a time for work to begin.

You will need to provide R. J. Corman with a copy of a valid insurance certificate in the amount of two million dollars liability and a notification of workman's comp insurance.

If you should have any questions, please feel free to contact me at (859) 885-9457 Ext. 249.

Thank you,
Melissa Estes

BELIN & KUBISTA

ATTORNEYS AT LAW

15 NORTH FRONT STREET

CARL A. BELIN, JR.
KIMBERLY M. KUBISTA

P. O. BOX 1
CLEARFIELD, PENNSYLVANIA 16830

CARL A. BELIN
1901-1997

AREA CODE 814
TELEPHONE 765-8972
TELECOPIER (814) 765-9893

August 1, 2002

Mr. Brad Brown
R.J. Corman Company
P.O. Box 788
Nicholasville, KY 40340

In re: Thomas Coal Sales, Inc.

Dear Mr. Brown:

I was requested by Tim Potts of your Clearfield office to write this letter. I am the general counsel for Thomas Coal Sales, Inc. which is a Pennsylvania corporation with its present office situate in our office. Thomas Coal Sales, Inc. is the owner of a tipple and siding which is located in Greenwood Township, Clearfield County. I wish to advise you that Thomas Coal Sales, Inc. owns the tract which is located parallel to your main track and which extends for several miles. Thomas Coal Sales, Inc.'s tract begins where the rails go from 127 pounds to 105 pounds.

It is my understanding that Kovalchick Salvage is in the process of removing track and some of the side track and I wish to advise you of our ownership to avoid any problem regarding ownership.

Very truly yours,

BELIN & KUBISTA

Carl A. Belin, Jr.

CABjr:smh

Cc: Mr. Tim Potts
Mr. Fahy McDonald
Michael Catalano, CPA

BELIN & KUBISTA

ATTORNEYS AT LAW

15 NORTH FRONT STREET

P. O. BOX 1

CLEARFIELD, PENNSYLVANIA 16830

CARL A. BELIN, JR.
KIMBERLY M. KUBISTA

October 28, 2002

CARL A. BELIN
1901-1997

AREA CODE 814
TELEPHONE 765-8972
TELECOPIER (814) 765-9893

Dwight L. Koerber, Jr., Esquire
110 North Second Street
P.O. Box 1320
Clearfield, PA 16830

In re: Thomas Coal Sales, Inc./R. J. Corman

Dear Skip:

As I indicated to you before, Thomas Coal Sales ("Thomas") was involved in a suit with Consolidated Rail Corporation ("Conrail") in the United States District Court of the Middle District of Pennsylvania at No. 83-2520. The settlement that was reached in that agreement was recorded on December 28, 1984 in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Deed and Record Book 989, page 248. I enclose a copy of that for your review.

Under the agreement, Conrail was to provide Thomas with an easement as set forth in Paragraph 7 of the agreement. Please note that Thomas had no obligation to pay rent under this easement agreement and consequently no rent has been charged since 1984 to date. Under this please note that we were given the right "to construct, use, and maintain the easement." Pursuant to that agreement, Thomas constructed 10,500 feet of track in that area. It is my understanding that Conrail removed the track notwithstanding the letter I sent to it on August 1, 2002, a copy of which I enclose.

I wish to advise you that we will enforce this agreement against Conrail as the presently existing sidings and tracks were to be maintained. We are not interested in any settlement which

Dwight L. Koerber, Jr., Esquire
October 28, 2002
2

merely reflects salvage value of the rails.

Very truly yours,

BELIN & KUBISTA

Carl A. Belin, Jr.

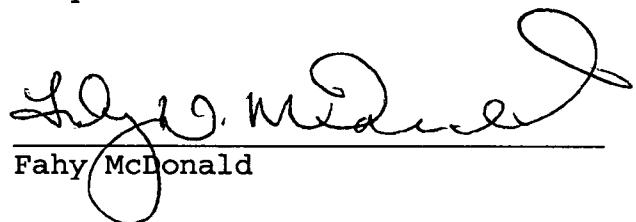
CABjr:smh

Enclosures

cc: Mr. Fahy McDonald, w/enclosures
Michael Catalano, CPA, w/enclosures

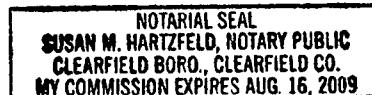
COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :

On this the 22nd day of January, 2007, before me, a notary public, the undersigned officer, personally appeared Fahy McDonald, who acknowledged himself to be President of Thomas Coal Sales, Inc., and as such President is authorized to do so, and acknowledged that he executed the foregoing instrument for the purposes therein contained by signing the name of Thomas Coal Sales, Inc. by himself as President.


Fahy McDonald

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


Susan M. Hartzfeld
Notary Public



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

THOMAS COAL SALES, INC., :
Plaintiff :
: No. 03 - 1271 - CD
vs. :
: R. J. CORMAN COMPANY and
KOVALCHICK CORPORATION, :
Defendants :
:

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a certified copy of the Complaint on behalf of the Plaintiff in the above-captioned matter to the following party by facsimile and by postage prepaid United States first class mail on the 22nd day of January, 2007:

Dwight L. Koerber, Jr., Esquire
110 North Second Street
P.O. Box 1320
Clearfield, PA 16830

BELIN, KUBISTA & RYAN

By 
Carl A. Belin, Jr. Esq.
Attorney for Plaintiff

2003-1271-CV

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

THOMAS COAL SALES INC

(b) County of Residence of First Listed Plaintiff CLEARFIELD
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
CARL A. BELIN, JR., ESQUIRE
BELIN KUBISTA & RYAN

15 NORTH FRONT STREET, CLEARFIELD
(Place an "X" in One Box Only)
PH#(814)765-8972

II. BASIS OF JURISDICTION
(Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

DEFENDANTS

R.J. CORMAN RAILWAY COMPANY

County of Residence of First Listed Defendant CLEARFIELD
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) **JOHN A. SNYDER, ESQUIRE**
MCQUAIDE BLASKO LAW OFFICES
811 UNIVERSITY DRIVE

III. CITIZENSHIP OF PRINCIPAL PARTIES
(Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Product Liability	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 410 Agriculture	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 420 Other Food & Drug	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challengc 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 423 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 810 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 811 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 894 Energy Allocation Act	
<input checked="" type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 950 Constitutionality of State Statutes	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

FILED

FEB 22 2007

My 10-5th

William A. Shaw
Prothonotary/Clerk of Courts

No C/C

V. ORIGIN

(Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Brief description of cause:

NOTICE OF REMOVAL

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/20/07

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS COAL SALES, INC.,

Plaintiff,

No. 3:07-cv-36

vs.

Judge _____

R. J. CORMAN COMPANY and
KOVALCHICK CORPORATION,

Electronically Filed

Defendants.

NOTICE OF REMOVAL

Defendant R.J. Corman Railway Company/Pennsylvania Lines, Inc.
("RJCRC/PLI")¹ files this Notice of Removal of the above-described action to the
United States District Court for the Western District of Pennsylvania, Johnstown
Division, from the Court of Common Pleas of Clearfield County, Pennsylvania,

¹ Although Plaintiff has named "R.J. Corman Company" as defendant, Defendant RJCRC/PLI believes this reference was in error and that RJCRC/PLI is the proper entity.

where the action is now pending as provided by Title 28, U.S. Code, Chapter 89 and states:

1. This cause of action was commenced via Writ of Summons in the Court of Common Pleas of Clearfield County, Pennsylvania, No. 03-1271-CD on or about August 26, 2003, and a Complaint was subsequently filed on or about January 22, 2007.

2. The action is a civil action in which Plaintiff seeks damages from Defendants for alleged trespass on an easement, as well as wrongful conversion of property.

3. The United States District Court for the Western District of Pennsylvania has jurisdiction by reason of the subject matter of Plaintiff's cause of action.

4. Plaintiff avers that Defendants violated side track agreements and entered upon the easement of Plaintiff.

5. Further, Plaintiff alleges that Defendants wrongfully removed rails, ties, and ballasts, allegedly owned by Plaintiff, and converted same for their own use and profit.

6. Federal statutory law, 49 U.S.C. §10501(b)(2), vests exclusive jurisdiction of this subject matter with the Federal system.

7. Specifically, 49 U.S.C. §10501(b)(2) states that remedies sought regarding the "construction, acquisition, operation, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely within one state is exclusive" with the Federal Surface Transportation Board and "preempts the remedies under State law."

8. A copy of all process, pleadings, and orders served upon Defendant is filed with this notice. (*See* Exhibit "A" attached hereto).

9. On February 15, 2007, Defendant's filed Preliminary Objections to Plaintiff's Complaint. (*See* Exhibit "B" attached hereto).

9. Defendant will give written Notice of the filing of this notice as required by 28 U.S.C. § 1446(d).

10. A copy of this Notice will be filed with the clerk of the Court of Common Pleas of Clearfield County, Pennsylvania as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant RJCRC/PLI requests that this action proceed in the United States District Court for the Western District of Pennsylvania as an action properly removed to it.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

Date: February 20, 2007

By: s/John A. Snyder

John A. Snyder
PA I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS COAL SALES, INC., :
Plaintiff, : No. _____
vs. : Judge _____
R. J. CORMAN COMPANY and :
KOVALCHICK CORPORATION, :
Defendants. : *Electronically Filed*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant RJCRC/PLI's Notice of Removal in the above-captioned matter was served via First Class Mail on this 20th day of February, 2007 upon the following party:

Carl A. Belin, Jr., Esquire
Belin, Kubista & Ryan
15 North Front Street
P.O. Box 1
Clearfield, PA 16830

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: s/John A. Snyder

John A. Snyder, Esquire
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Atorneys for Defendant

EXHIBIT A

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

THOMAS COAL SALES, INC., :
Plaintiff :
vs. : No. 03 - 1271 - CD
: COMPLAINT
R. J. CORMAN COMPANY and :
KOVALCHICK CORPORATION, :
Defendants :

Filed on Behalf of:
Plaintiff

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06B05

BELIN, KUBISTA & RYAN
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972 (PHONE)
(814) 765-9893 (FAX)

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

JAN 22 2007

Attest.

William J. Corman
Prothonotary/
Clerk of Courts

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

THOMAS COAL SALES, INC., :
Plaintiff :
: No. 03 - 1271 - CD
vs. :
: R. J. CORMAN COMPANY and :
KOVALCHICK CORPORATION, :
Defendants :
:

NOTICE

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830

(814) 765-2641 Ex 5982

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

THOMAS COAL SALES, INC., :
Plaintiff :
: No. 03 - 1271 - CD
vs. :
: R. J. CORMAN COMPANY and
KOVALCHICK CORPORATION,
Defendants :

COMPLAINT

AND NOW comes Plaintiff, Thomas Coal Sales, Inc., by and through its attorneys, Belin, Kubista & Ryan, files the following Complaint, and in support thereof avers as follows:

1. That Thomas Coal Sales, Inc., is a Pennsylvania corporation which has an office and place of business at 15 North Front Street, Clearfield, Clearfield County, Pennsylvania 16830 ("TCS").

2. That R. J. Corman Company is a corporation operating under the laws of the Commonwealth of Pennsylvania and has a place of business at Clearfield Yard, in the Borough of Clearfield, Clearfield County, Pennsylvania 16830 ("Corman").

3. That the Kovalchick Corporation is believed to be a Pennsylvania corporation operating under the laws of the Commonwealth of Pennsylvania and has a place of business at 1060 Wayne Avenue, Indiana, Indiana County, Pennsylvania 15701 ("Kovalchick").

4. That TCS is the owner and operator of a tipple facility, which is located in the Bells Landing area of Greenwood Township, Clearfield County, Pennsylvania ("tipple").

5. That TCS secured sidetrack agreements along the main tracks of Consolidated Rail Corporation ("Conrail") in the area of the tipple on or about June 24, 1977, a copy of which is recorded in Clearfield County Recorder of Deeds Office in Misc. Book 209, Page 224 ("recorded in Misc. Book 209, Page 224"), and by a series of amendments: dated September 16, 1977 recorded in Misc. Book 210, Page 563; December 5, 1978, recorded in Misc. Book 218, Page 090; April 18, 1979 recorded in Misc. Book 219, Page 567.

6. That TCS then purchased the rail and constructed a side track which was approximately 11,000 feet in length and purchased switches to be placed on the main line upon which to load unit trains.

7. That Conrail attempted to terminate the side track agreements by a letter on September 13, 1983, which is hereto attached, made a part hereof, and marked Exhibit "A."

8. That Conrail also attempted to buy TCS's rail placed by it on the side track for \$300,000.00 by a letter dated September 16, 1983, a copy of which is hereto attached, made a part hereof, and marked Exhibit "B."

9. That TCS filed an action against Conrail in the United States District Court for the Western District of Pennsylvania at Civil Action No. 83-2520 as to the attempted termination and the matter was settled by a settlement agreement which changed the side track agreements into an easement. The settlement agreement was recorded in Deed Book 989, Page 250, a copy of which is hereto attached, made a part hereof, and marked Exhibit "C."

10. That thereafter TCS and Conrail proceeded under the settlement agreement and TCS did not make any further rental payments but continued to load unit trains upon the easement.

11. That the main track and associated land was conveyed by Conrail to Corman by deed dated December 29, 1995, and recorded in Deed Book 1780, Page 89.

12. That Corman entered into an agreement with Kovalchick to purchase and remove track abandoned as established by Corman. A copy of said award is hereto attached, made a part hereof, and marked Exhibit "D."

13. That apparently Corman intended and did include the tracks within the easement of TCS as a part of said project.

14. That prior to the removal of said rails, TCS, through counsel, made Corman aware of its ownership interest in the side track by letter dated August 1, 2002, a copy of which is hereto attached, made a part hereof, and marked Exhibit "E."

15. That following an oral request from Corman's counsel to set forth the basis for claiming ownership in the side track, TCS, through counsel, set forth the basis for its claim of ownership by letter dated October 28, 2002, a copy of which is hereto attached, made a part hereof, and marked Exhibit "F."

16. That notwithstanding the two (2) letters set forth in Paragraphs 12 and 13 of this Complaint, which are hereby incorporated by reference and made a part hereof, Kovalchick and Corman nonetheless proceeded to enter upon the easement of TCS and wrongfully removed the rail, ties, and ballast which belonged to and were owned by TCS, and converted the rails, ties and ballast for their own use and profit.

17. That said actions of Corman and Kovalchick constitute a trespass on said easement, as a result of which said siding was rendered useless and a conversion of the rails, ties, and ballast that was the property of TCS.

18. That TCS hereby claims damages to the side track and
tipple for the elimination of the rails, ties and ballast and
consequential loss caused to the tipple as a result of said
actions.

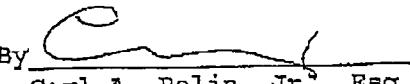
19. That TCS hereby claims damages for the conversion of the rails and ties removed by Corman and Kovalchick from the TCS easement.

20. That TCS claims punitive damages due to the intentional actions of Corman after receiving notice of TCS's ownership.

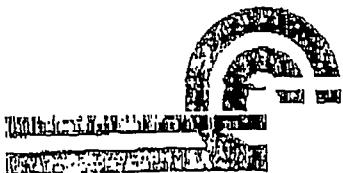
WHEREFORE, TCS seeks damages in excess of \$50,000.00, which is above the arbitration limits of Clearfield County.

AND IT WILL EVER PRAY.

BELIN, KUBISTA & RYAN

By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiff

CONRAIL



September 16, 1983

Fahy W. McDonald, President
Thomas Coal Sales, Inc.
Box 188
Grampian, PA 16838

Re: Lease Agreement for Sidetrack in Bells Landing
dated as of June 24, 1977 between Consolidated
Rail Corporation and Thomas Coal Sales, Inc.

Mr. McDonald:

This letter will serve as notice to you that Consolidated Rail Corporation (Conrail) will terminate the above referenced lease agreement on October 17, 1983, thirty days from the date first written above, pursuant to paragraph III of said agreement and the Seventh paragraph of the Private Sidetrack Agreements, first executed as of July 29, 1946 and August 8, 1949 and made expressly applicable to the lease agreement by the terms thereof.

Under the terms of the controlling agreements, Thomas Coal Sales, Inc. has thirty days from the date of termination to remove its track from and otherwise vacate Conrail's premises before Conrail can exercise its right to purchase the track for the fair market value of the track material. However, Conrail remains willing to negotiate the purchase of the track prior to this time.

A letter containing a purchase offer for the track is being delivered to you on the same date as this letter. This termination is the necessary result of Conrail's evaluation of its track requirements and shippers' service needs in the Clearfield area. We remain ready to provide to you the same level of service as in the past.

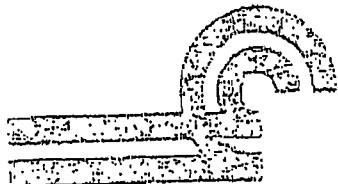
Very truly yours,

Kenneth F. Williams
Kenneth F. Williams
Real Estate Department

KFW/jk
cc: Carl A. Belin, Jr., Esquire

Exhibit "A"

CONRAIL



September 16, 1983

Fahy W. McDonald, President
Thomas Coal Sales, Inc.
Box 188
Grampian, PA 16838

Re: Sidetrack at Bells Landing, Pennsylvania

Mr. McDonald:

In light of Consolidated Rail Corporation's (Conrail) notice of termination of its Lease Agreement with Thomas Coal Sales, Inc., served upon you this date, Conrail is prepared to offer three hundred thousand dollars (\$300,000) to purchase nine thousand four hundred thirty-one feet of sidetrack at Bells Landing from Thomas Coal Sales, Inc.

Please note that your acceptance of this offer will spare your company the expense of removing the track from Conrail premises within thirty days of termination, as provided in the controlling provisions of the lease and private sidetrack agreements, and will make removal of your company's coal loader unnecessary. As explained, we plan to provide your company with the same level of service as in the past.

We appreciate your prompt consideration of this proposal and will be happy to meet with you to discuss this further.

Very truly yours,


Ralph E. Gratz
General Manager

REG/jk
cc: Carl A. Belin, Jr., Esquire

Exhibit "B"

vol 980 248

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIATHOMAS COAL SALES, INC.,
a corporation,

Plaintiff,

v.

Civil Action No. 83-2520

CONSOLIDATED RAIL CORPORATION,
a corporation, HEPBURNIA COAL
COMPANY, a corporation, ROBERT G.
SPENCER, DARRELL G. SPENCER
and RAY L. SPENCER, t/d/b/a
SPENCER LAND COMPANY, a partner-
ship, and ROBERT G. SPENCER,
DARRELL G. SPENCER and RAY L.
SPENCER, individuals,

Defendants.

CLEARED FOR SIGN
BUREAU OF SEC'DY 12-27-84
THUR 9/1/84
BY (Signature) Michael R. Lyle, Recorder
FEE'S 20.00
Michael R. Lyle, RecorderMOTION TO DISMISS

Plaintiff moves this Honorable Court for an order dismissing this suit against all defendants with prejudice, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, each party to bear its costs. The plaintiff makes this motion on the basis of a settlement agreement to which all parties have given their assent. The terms of the settlement agreement are set forth in the letter attached hereto as Exhibit A. The countercivil defendant Consolidated Rail Corporation is dismissed.

Continued from the Record
Date DEC 26 1984
W. Lyle

Exhibit "C"

vol 589 pg 249

prejudice by stipulation of the parties, pursuant to Rule 41(a)(1). The stipulation is being filed simultaneously with this motion.

Paul Denker

Eckert, Seamans, Cherin & Mellott
ECKERT, SEAMANS, CHERIN & MELLOTT
42nd Floor - 600 Grant Street
Pittsburgh, Pennsylvania 15219
Counsel for Plaintiff

January 5, 1984

VOL 000-11250

ATTORNEYS AT LAW
600 GRANT STREET • FORTY-SECOND FLOOR
PITTSBURGH, PA 15219
(412) 261-0000

TELETYPE (412) 266-0099
(412) 266-5958

January 4, 1984

DALE HERSHEY
DIRECT DIAL (412) 261-0010

Laurence Z. Shickman, Esq.
Popper, Hamilton & Scheetz
20th Floor
The Fidelity Building
123 South Broad Street
Philadelphia, PA 19109

Re: Thomas Coal Sales, Inc. v. Conrail
Civil Action No. 83-1520

Dear Mr. Shickman:

On the basis of our telephone conversation, it is
our mutual understanding that the above case is to be settled
and discontinued on the following terms:

1. Conrail withdraws its notice of termination of Thomas Coal Sales' lease to the premises on which Thomas Coal Sales has constructed the Greenwood siding. Conrail also withdraws its offer to purchase the siding made on September 16, 1983.
2. Subject to paragraph 7 hereof regarding the negotiation of an easement to replace the lease, Conrail agrees that it will not terminate the lease to the premises on which the Greenwood siding is constructed unless Thomas Coal Sales or its successor fails to pay rent as provided in the lease, discontinues the business of loading coal at the Greenwood siding or misuses the Greenwood siding (i.e., engages in conduct with respect to the siding which is prohibited in the lease). Conrail acknowledges that Thomas is not now in default on any provisions of the lease.
3. Thomas Coal Sales shall continue to be able to use the Conrail-owned Bell Run siding for the loading of coal as it has in the past. Conrail reserves the right to operate over the Bell Run siding for its own use or to permit the loading of small blocks of cars for others on the Bell Run siding.
4. Thomas Coal Sales shall discontinue the above-captioned case against all parties with prejudice.
5. This agreement shall not be construed as a waiver by Thomas Coal Sales of any claim not specifically raised in the above-captioned case, including claims for discrimination.

EXHIBIT A

VOL 989 pg 251

6. In view of the disagreement between Conrail and Thomas Coal Sales as to whether the lease permits Conrail or a Conrail licensee to construct a conveyor or conveyors through the air above the surface of the leased premises, it is agreed that Thomas Coal Sales waives any right it may have to object to the construction of such a conveyor or conveyors which do not interfere with Thomas' use of the leased premises in exchange for a payment by Conrail to Thomas Coal Sales in the amount of \$50,000.

7. Conrail and Thomas Coal Sales shall as soon as practicable negotiate an agreement providing for the grant by Conrail of a surface easement to Thomas Coal Sales and its successors which would replace the present lease agreement. The easement to be granted by Conrail to Thomas would give to Thomas the right to construct, own, use and maintain the Greenwood siding and related coal loading facilities on the premises which are subject to the present lease. The easement shall provide for Conrail and Thomas the rights and reservations contained in the present lease with the exception that Thomas shall no longer have an obligation to pay rent. Conrail shall not construct or permit the construction of any track or siding which crosses the easement without the written consent of Thomas. Presently existing sidings and tracks can be maintained. The term of the easement shall be for as long as Thomas or its successors engage in the business of loading coal at the Greenwood siding, but the easement may be terminated in the event that Thomas or its successors misuse the Greenwood siding (i.e., engage in conduct with respect to the siding which is prohibited in the present lease).

8. Conrail shall discontinue its counterclaim in the above-captioned case with prejudice.

It is also our understanding, based upon a discussion with David Amerman, counsel for the defendants other than Conrail, that these defendants have no objection to termination of the case on the basis of the above agreement.

Having read the foregoing terms to you over the telephone, and having obtained your agreement that they accurately set forth the terms of the agreement between Conrail and Thomas Coal Sales, I shall inform the Court that the case has been settled and shall prepare the necessary papers to terminate the case of record.

Very truly yours,

Dale Hershey
Dale Hershey

cc: David S. Amerman, Esq.

VOL 880 pg 252

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA40
40THOMAS COAL SALES, INC.,
a corporation,

Plaintiff,

v.

Civil Action No. 83-2520

CONSOLIDATED RAIL CORPORATION,
a corporation, ZEPHYRUS COAL
COMPANY, a corporation, ROBERT G.
SPENCER, DARRELL G. SPENCER
and RAY L. SPENCER, t/d/b/a
SPENCER LAND COMPANY, a partner-
ship, and ROBERT G. SPENCER,
DARRELL G. SPENCER and RAY L.
SPENCER, individuals,

Defendants.

40

Certified to the Record	
Date	DEC 26 1984
Dafford Justice	
Clerk	

STIPULATION OF DISMISSAL

It is hereby stipulated and agreed by Consolidated
Rail Corporation and Thomas Coal Sales, Inc. that the counter-
claim of Consolidated Rail Corporation against Thomas Coal
Sales, Inc. is hereby voluntarily dismissed with prejudice,
pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil
Procedure.

January 5, 1984

P. M. Henley, Schilt
Counsel for Consolidated Rail
Corporation

Pete Henley

Eduard, Seaman, Clemin & Neustadt
Counsel for Thomas Coal Sales, Inc.

CASE NUMBER VOL 980 pg 253

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIATHOMAS COAL SALES, INC.,
a corporation,

Plaintiff,

v.

CONSOLIDATED RAIL CORPORATION,
a corporation, HEPBURNIA COAL
COMPANY, a corporation, ROBERT G.
SPENCER, DARRELL G. SPENCER, and
RAY L. SPENCER, t/d/b/a SPENCER
LAND COMPANY, a partnership, and
ROBERT G. SPENCER, DARRELL G.
SPENCER and RAY L. SPENCER,
individuals,

Defendants.

Civil Action No. 83-2520

STATE OF PENNSYLVANIA
COUNTY OF CLEARFIELD
RECORDED in the Register's Office in the said
County in Donald M. Morris book No. 987
Page 248
WITNESS my hand and seal of office this
28 day of December 1987
Michael R. Lytle, Recorder

ORDER

My Commission Expires
First Monday in January, 1988

AND NOW, this 28th day of January, 1988, in con-
sideration of plaintiff's motion to dismiss this action against
all defendants with prejudice and in consideration of the stipu-
lation of dismissal with prejudice of the counterclaim of de-
fendant Consolidated Rail Corporation, it is hereby ORDERED
that the above case, including the counterclaim, be and hereby
is dismissed with prejudice, each party to bear its costs.

Michael R. Lytle
Certified from the Record
Date DEC 26 1987
S. Michael R. Lytle
Michael R. Lytle

Entered of Record Dec 28 1987, 9:42 a.m. Michael R. Lytle, Recorder

CP
765-9993

Preston Marissa

Memo

Date: June 24, 2002

To: Nathan Kovalchick
Kovalchick CorporationRe: Contract Award - Track Abandonment/Removal Projects
Bid Package No. 3 - Dated April 13, 2002
Clearfield, PA

Cc: Tammy Taylor, R. J. Corman Railroad Group

In regards to Bid Package No. 3, R. J. Corman Railroad Company accepts your bid proposal for the purchase of Track Abandonment Project(s) as listed below, under terms and conditions indicated in the bid package.

Project No. 1 - Irionia SubdivisionFrugality Milepost 17.5 to 18.2 130# PS - 0.6 tenths mile
Leave 550 TF in place from P.O.S. at MP 17.5Project No. 2Ashville - Milepost 8.4 - 9.0 - 130# PS 0.6 tenths mile
3200 - 2016 g / 30Project No. 3 - Ebensburg, PABlack Lick Milepost 12.0 to 16.0 - 130# PS Track Feet 4.0 miles
[CWR - MP 12 to 13.5 - Jointed Rail MP 13.5 to 15]
Contractor to remove only that material in Track! No loose material.
R. J. Corman will remove all loose rail/ties, including rail in track at
WYE, MP 10.5Project No. 4KY Sub. Divn. Milepost 6.4 105# Dudley - 33 rail length long
Includes loose rails in stockpile.Project No. 5

D F Sub. Divn. Milepost 11.2 126# PS 2500 TF

Project No. 6

Milepost 26.5 100# PS - 22 rail lengths long.

Exhibit "D"

BID PACKAGE NO. 3 [To be complete within 120 days from sale date]Project No. 1 - Irvington Subdivision

Frugality Milepost 17.5 to 18.2 130# PS - 0.6 tenths Mile

Leave 550 TF in place from P.O.S. at MP 17.5

~~R J Corman Railroad to retain 40% relay ties To be Spotted by R J Corman~~Project No. 2

Ashville Milepost 8.4 to 9.0 - 130# PS 0.6 Tenths mile

~~R J Corman Railroad to retain 40% relay ties To be Spotted by R J Corman~~Project No. 3 - Ebensburg, PA

Black Lick Milepost 12.0 to 16.0 - 130# PS Track Feet 4.0 Miles

[CWR - MP 12 to 13.5 - Jointed Rail MP 13.5 to 16]

Contractor to remove only that material in Track! No loose material.

R J Corman will remove all loose rail/ties, including rail in track at WYE, MP 19.5

Project No. 4

KY Sub. Divn. Milepost 6.4 105# Dudley - 33 rail length long - Includes loose rails in stockpile.

2520

Project No. 5

D F Sub. Divn. Milepost 11.2 125# PS

250

2500 TF

Project No. 6

Milepost 26.5 100# PS - 22 rail lengths long

10 Rail length

Project No. 7

Milepost 28.5 100# PS - 8 rail lengths long

Project No. 8

Milepost 35.3 - L J 100# PS

3000 TF

Project No. 9

Milepost 39.5 - 105# Dudley - 18 rail lengths long

Project No. 10

Bear Run [Hillman] Milepost 0.0 to 1.5 - 100# PS 1.5 Miles

Project No. 11

Milepost 5.8 100# PS

1000 TF

Project No. 12

Milepost 43 105# PS

40 rail lengths long

Project No. 13

Milepost 46 127# Dudley JT, - 56 rail lengths long / 105# 263 rail lengths long

Lump Sum Credit to R J Corman Railroad

LS \$

Project No. 7
Milepost 28.5

100# PS - 8 rail lengths long. *10 feet track*

Project No. 8
Milepost 35.3 - L J

100# PS

3000 TF *3 3 2*

Project No. 9
Milepost 39.5 - 105# Dudley

- 18 rail lengths long

657

Project No. 10
Bear Run [Hillman] Milepost 0.0 to 1.5 - 100# PS

1.5 miles

*fraction 5000/
42 probably*

Project No. 11
Milepost 5.8

100# PS

1000 TF

1200

*fraction 5000/
42 probably*

Project No. 12
Milepost 43

105# PS

40 rail lengths long

1700

42 22

Project No. 13
Milepost 48

127# Dudley JT.

- 56 rail lengths long

53

2160

Grand Total Credit to R. J. Corman Railroad Company/Pennsylvania Lines

[Bid proposal based solely on Contractor's Inspection of track footage, etc.]

We must receive all funds for Bid Package no later than Friday, June 28, 2002. Funds must be received before you will have access to the property. Funds are payable by either electronic wire transfer to Central Bank and Trust Company, Lexington, KY, acct number 10301763, routing number 042100146 or by certified check. Check must be made to R. J. Corman Railroad Company/Pennsylvania Lines and mailed to my attention at P.O. Box 788, Nicholasville, KY 40340. Once funds are received and verified you will be notified with the name of a contact person at the location to arrange a time for work to begin.

You will need to provide R. J. Corman with a copy of a valid insurance certificate in the amount of two million dollars liability and a notification of workman's comp insurance.

If you should have any questions, please feel free to contact me at (859) 885-9457 Ext. 249.

Thank you,
Melissa Estes

CARL A. BELIN, JR.
KIMBERLY M. KUBISTA

BELIN & KUBISTA
ATTORNEYS AT LAW
15 NORTH FRONT STREET
P. O. BOX 1
CLEARFIELD, PENNSYLVANIA 16830

CARL A. BELIN
1901-1997

AREA CODE 814
TELEPHONE 765-8972
TELECOPIER (814) 765-9893

August 1, 2002

Mr. Brad Brown
R.J. Corman Company
P.O. Box 788
Nicholasville, KY 40340

In re: Thomas Coal Sales, Inc.

Dear Mr. Brown:

I was requested by Tim Potts of your Clearfield office to write this letter. I am the general counsel for Thomas Coal Sales, Inc. which is a Pennsylvania corporation with its present office situate in our office. Thomas Coal Sales, Inc. is the owner of a tipple and siding which is located in Greenwood Township, Clearfield County. I wish to advise you that Thomas Coal Sales, Inc. owns the tract which is located parallel to your main track and which extends for several miles. Thomas Coal Sales, Inc.'s tract begins where the rails go from 127 pounds to 105 pounds.

It is my understanding that Kovalchick Salvage is in the process of removing track and some of the side track and I wish to advise you of our ownership to avoid any problem regarding ownership.

Very truly yours,

BELIN & KUBISTA

Carl A. Belin, Jr.

CABjr:smh

Cc: Mr. Tim Potts
Mr. Fahy McDonald
Michael Catalano, CPA

Exhibit "E"

CARLA BELIN, JR.
KIMBERLY M. KUBISTA

BELIN & KUBISTA
ATTORNEYS AT LAW
15 NORTH FRONT STREET
P.O. BOX 1
CLEARFIELD, PENNSYLVANIA 16830
October 28, 2002

CARL A. BELIN
1900-1997
AREA CODE 814
TELEPHONE 265-8872
TELECOPIER (814) 765-8893

Dwight L. Koerber, Jr., Esquire
110 North Second Street
P.O. Box 1320
Clearfield, PA 16830

In re: Thomas Coal Sales, Inc./R. J. Corman

Dear Skip:

As I indicated to you before, Thomas Coal Sales ("Thomas") was involved in a suit with Consolidated Rail Corporation ("Conrail") in the United States District Court of the Middle District of Pennsylvania at No. 83-2520. The settlement that was reached in that agreement was recorded on December 28, 1984 in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Deed and Record Book 989, page 248. I enclose a copy of that for your review.

Under the agreement, Conrail was to provide Thomas with an easement as set forth in Paragraph 7 of the agreement. Please note that Thomas had no obligation to pay rent under this easement agreement and consequently no rent has been charged since 1984 to date. Under this please note that we were given the right "to construct, use, and maintain the easement." Pursuant to that agreement, Thomas constructed 10,500 feet of track in that area. It is my understanding that Conrail removed the track notwithstanding the letter I sent to it on August 1, 2002, a copy of which I enclose.

I wish to advise you that we will enforce this agreement against Conrail as the presently existing sidings and tracks were to be maintained. We are not interested in any settlement which

Exhibit "F"

Dwight L. Koerber, Jr., Esquire
October 28, 2002
2

merely reflects salvage value of the rails.

Very truly yours,

BELIN & KUBISTA

Carl A. Belin, Jr.

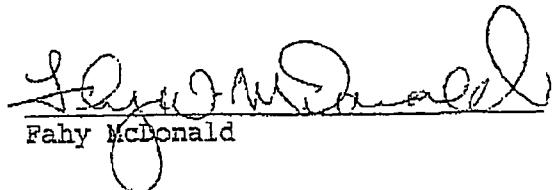
CABjr:smh

Enclosures

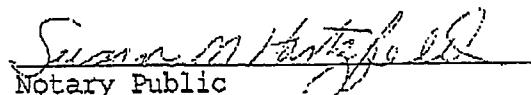
cc: Mr. Fahy McDonald, w/enclosures
Michael Catalano, CPA, w/enclosures

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :

On this the 22nd day of January, 2007, before me, a notary public, the undersigned officer, personally appeared Fahy McDonald, who acknowledged himself to be President of Thomas Coal Sales, Inc., and as such President is authorized to do so, and acknowledged that he executed the foregoing instrument for the purposes therein contained by signing the name of Thomas Coal Sales, Inc. by himself as President.


Fahy McDonald

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


Susan M. Hartzfeld
Notary Public

NOTARIAL SEAL
SUSAN M. HARTZFELD, NOTARY PUBLIC
CLEARFIELD BORO., CLEARFIELD CO.
MY COMMISSION EXPIRES AUG. 16, 2007

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

THOMAS COAL SALES, INC., :
Plaintiff :
: NO. 03 - 1271 - CD
vs. :
: R. J. CORMAN COMPANY and :
KOVALCHICK CORPORATION, :
Defendants :

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a certified copy of the Complaint on behalf of the Plaintiff in the above-captioned matter to the following party by facsimile and by postage prepaid United States first class mail on the 22nd day of January, 2007;

Dwight L. Koerber, Jr., Esquire
110 North Second Street
P.O. Box 1320
Clearfield, PA 16830

BELIN, KUBISTA & RYAN

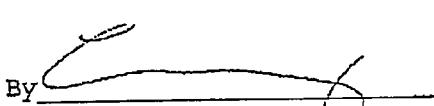
By 
Carl A. Belin, Jr., Esq.
Attorney for Plaintiff

EXHIBIT B

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

THOMAS COAL SALES, INC.,

Plaintiff,

vs.

R. J. CORMAN COMPANY and
KOVALCHICK CORPORATION,

Defendants.

: No. 2003-1271-CD

: Type of Pleading:
**Preliminary Objections to
Plaintiff's Complaint**

: Type of Case: **Civil**

: Filed on behalf of: **Defendant
R. J. Corman Company (R.J. Corman
Railway Company/Pennsylvania Lines,
Inc.)**

: Counsel of Record for this Party:
John A. Snyder
I.D. No. 66295
McQuaide, Blasko,
Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801
Phone: (814) 238-4926
Fax: (814) 238-9624

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

THOMAS COAL SALES, INC.,

: No. 2003-1271-CD

Plaintiff,

vs.

R. J. CORMAN COMPANY and
KOVALCHICK CORPORATION,

Defendants.

**DEFENDANT R.J. CORMAN RAILWAY COMPANY/PENNSYLVANIA LINES, INC.'S
PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT**

AND NOW, comes Defendant R.J. Corman Railway Company/Pennsylvania Lines, Inc. ("RJCRC/PLI")¹ by and through its counsel McQuaide, Blasko, Fleming & Faulkner, Inc., and preliminarily objects to Plaintiff's Complaint as follows:

1. Plaintiff initiated this cause of action by filing a Praecept for Writ of Summons on August 26, 2003.
2. Thereafter, on January 22, 2007, Plaintiff filed its Complaint in this action.
3. The Complaint asserts intentional tort claims against Defendants which arise from assertions that Defendants trespassed on an easement of Plaintiff and wrongfully removed and converted property owned by Plaintiff. (See Complaint ¶¶ 16, 17).
4. Specifically, Plaintiff avers that it is the owner and operator of a tipple facility located in the Bells Landing area of Greenwood Township, Clearfield County, Pennsylvania, and it secured sidetrack agreements along the main tracks of Consolidated Rail Corporation ("Conrail") in the area of the tipple on or about June 24, 1977. (See Complaint ¶¶ 4, 5).

¹ Although Plaintiff has named "R.J. Corman Company" as defendant, Defendant RJCRC/PLI believes this reference was in error and that RJCRC/PLI is the proper entity.

5. Plaintiff contends it purchased the rail and Conrail later attempted to buy the rail back and terminate the existing side track agreements. (See Complaint ¶¶ 6-8).

6. As a result, Plaintiff avers that it filed an action in the United States District Court for the Western District of Pennsylvania and the matter was settled pursuant to an agreement which contemplated the creation of an easement in favor of Plaintiff. (See Complaint ¶ 9).

7. Plaintiff alleges that the main track and associated land was conveyed from Conrail to RJCRC/PLI by deed dated December 29, 1995, and thereafter RJCRC/PLI entered into an agreement with Kovalchick to purchase and remove track abandoned by RJCRC/PLI. (See Complaint ¶¶ 11-12).

8. Plaintiff avers that Defendants proceeded to enter upon the easement of Plaintiff and wrongfully removed the rail, ties, and ballast that were allegedly owned by Plaintiff, and converted same for their own use and profit. (See Complaint ¶ 16).

9. Plaintiff seeks damages in excess of \$50,000.

10. Defendants file the instant Preliminary Objections to the Complaint on the following grounds: (1) lack of subject matter jurisdiction; (2) failure to exercise or exhaust statutory authority; and (3) failure to state a claim upon which relief can be granted.

I. LACK OF SUBJECT MATTER JURISDICTION
PURSUANT TO Pa. R.C.P. 1028(a)(1)

11. Paragraphs 1-10 are incorporated herein as if set forth at length.

12. The action set forth in Plaintiff's Complaint seeks relief from the Clearfield County Court of Common Pleas for intentional tort claims arising under Pennsylvania state law.

13. Specifically, Plaintiff alleges Defendants wrongfully removed and converted rails, ties, and ballasts.

14. Under 49 U.S.C. §10501(b)(2), however, the jurisdiction over the subject matter of this action is vested exclusively with the Surface Transportation Board (STB).

15. Specifically, remedies sought regarding the “construction, acquisition, operation, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely within one state is exclusive” with the STB and “preempts the remedies under State law.” 49 U.S.C. §10501(b)(2).

16. Thus, this Court has no jurisdiction over the subject matter of this action because the federal statutory law, cited above, vests exclusive jurisdiction within the federal system.

WHEREFORE, Defendant RJCRC/PLI respectfully requests that this Court grant Defendant's Preliminary Objections and dismiss Plaintiff's Complaint, with prejudice.

**II. FAILURE TO EXHAUST OR EXERCISE A STATUTORY REMEDY
PURSUANT TO Pa.R.C.P. 1028(a)(7)**

17. Paragraphs 1-16 are incorporated herein as if set forth at length.

18. Plaintiff seeks damages arising out of Defendant RJCRC/PLI's alleged actions relative to side tracks and/or side track agreements, specifically including rails, ties, and ballasts.

19. Under 49 U.S.C. §10501(b)(2) remedies for such allegations are clearly provided within the statute.

20. Plaintiff has failed to exercise or exhaust any remedy pursuant to 49 U.S.C. §10501(b)(2), and has failed to plead a basis for not exhausting said statutory remedy.

WHEREFORE, Defendant RJCRC/PLI respectfully requests this Court grant Defendant's Preliminary Objections and dismiss Plaintiff's Complaint, with prejudice, for failure to exercise or exhaust statutory authority pursuant to Pa.R.C.P. 1028(a)(7).

III. FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

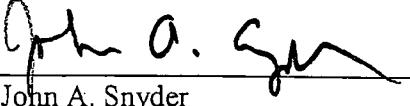
21. Paragraphs 1-20 are incorporated herein as if set forth at length.
22. The prior agreement between the Plaintiff and Conrail clearly states that upon the expiration or termination of the lease, the Lessee (Plaintiff) "shall remove from the premises any materials" and if Lessee (Plaintiff) "fails, neglects or refuses to remove such property", the Lessor (Conrail) shall have the right to "remove such property" and/or "retain and use such property for any purpose whatsoever free and clear of any right, title, or interest of Lessee." (See Lease Agreement attached hereto as Exhibit A).
23. Per Plaintiff allegations, the lease agreement changed into an easement as a result of the settlement agreement arising from the matter filed in the United States District Court in the Western District of Pennsylvania. However, the settlement agreement expressly incorporated the lease provisions with the exceptions of rental payments. (Settlement Agreement, ¶ 7).
24. Subsequently, in 1995, Conrail conveyed all of its interests in the main track and land associated with it to Defendant RJCRC/PLI.
25. Thus, Defendant RJCRC/PLI was able to exercise all rights received from Conrail and remove all of the property of Plaintiff pursuant to the above language of the agreement.
26. Under the circumstances, Defendant RJCRC/PLI had a legal right to take the action complained of by Plaintiff, and consequently Plaintiff's claims lack merit.

WHEREFORE, Defendant RJCRC/PLI respectfully requests this Court grant the preliminary objections and dismiss Plaintiff's Complaint, with prejudice.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

Dated: February 15, 2007

By: 

John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

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

THOMAS COAL SALES, INC.,

No. 2003-1271-CD

Plaintiff,

vs.

R. J. CORMAN COMPANY and
KOVALCHICK CORPORATION,

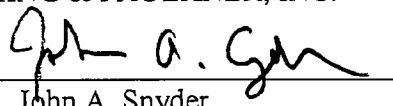
Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant R.J. Corman Railway Company/Pennsylvania Lines, Inc.'s Preliminary Objections to Plaintiff's Complaint in the above-captioned matter was served by U.S. First Class Mail, postage prepaid, on this 15th day of February, 2007, to the attorneys/parties of record:

Carl A. Belin, Jr., Esquire
Belin, Kubista & Ryan
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
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Attorneys for Defendant

CA

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

THOMAS COAL SALES, INC.,

Plaintiff,

vs.

R. J. CORMAN COMPANY and
KOVALCHICK CORPORATION,

Defendants.

: No. 2003-1271-CD
: Type of Pleading:
: **Preliminary Objections to**
: **Plaintiff's Complaint**
: Type of Case: **Civil**
: Filed on behalf of: **Defendant**
: **R. J. Corman Company (R.J. Corman**
: **Railway Company/Pennsylvania Lines,**
: **Inc.)**
: Counsel of Record for this Party:
: John A. Snyder
: I.D. No. 66295
: McQuaide, Blasko,
: Fleming & Faulkner, Inc.
: 811 University Drive
: State College, PA 16801
: Phone: (814) 238-4926
: Fax: (814) 238-9624

FILED *W.C.*
1/10/2007
FEB 16 2007 *GR*

William A. Shaw
Prothonotary/Clerk of Courts

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

THOMAS COAL SALES, INC., :
Plaintiff, : No. 2003-1271-CD
vs. :
R. J. CORMAN COMPANY and :
KOVALCHICK CORPORATION, :
Defendants. :
:

**DEFENDANT R.J. CORMAN RAILWAY COMPANY/PENNSYLVANIA LINES, INC.'S
PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT**

AND NOW, comes Defendant R.J. Corman Railway Company/Pennsylvania Lines, Inc. (“RJCRC/PLI”)¹ by and through its counsel McQuaide, Blasko, Fleming & Faulkner, Inc., and preliminarily objects to Plaintiff's Complaint as follows:

1. Plaintiff initiated this cause of action by filing a Praecept for Writ of Summons on August 26, 2003.
2. Thereafter, on January 22, 2007, Plaintiff filed its Complaint in this action.
3. The Complaint asserts intentional tort claims against Defendants which arise from assertions that Defendants trespassed on an easement of Plaintiff and wrongfully removed and converted property owned by Plaintiff. (See Complaint ¶¶ 16, 17).
4. Specifically, Plaintiff avers that it is the owner and operator of a tipple facility located in the Bells Landing area of Greenwood Township, Clearfield County, Pennsylvania, and it secured sidetrack agreements along the main tracks of Consolidated Rail Corporation (“Conrail”) in the area of the tipple on or about June 24, 1977. (See Complaint ¶¶ 4, 5).

¹ Although Plaintiff has named “R.J. Corman Company” as defendant, Defendant RJCRC/PLI believes this reference was in error and that RJCRC/PLI is the proper entity.

5. Plaintiff contends it purchased the rail and Conrail later attempted to buy the rail back and terminate the existing side track agreements. (See Complaint ¶¶ 6-8).

6. As a result, Plaintiff avers that it filed an action in the United States District Court for the Western District of Pennsylvania and the matter was settled pursuant to an agreement which contemplated the creation of an easement in favor of Plaintiff. (See Complaint ¶ 9).

7. Plaintiff alleges that the main track and associated land was conveyed from Conrail to RJCRC/PLI by deed dated December 29, 1995, and thereafter RJCRC/PLI entered into an agreement with Kovalchick to purchase and remove track abandoned by RJCRC/PLI. (See Complaint ¶¶ 11-12).

8. Plaintiff avers that Defendants proceeded to enter upon the easement of Plaintiff and wrongfully removed the rail, ties, and ballast that were allegedly owned by Plaintiff, and converted same for their own use and profit. (See Complaint ¶ 16).

9. Plaintiff seeks damages in excess of \$50,000.

10. Defendants file the instant Preliminary Objections to the Complaint on the following grounds: (1) lack of subject matter jurisdiction; (2) failure to exercise or exhaust statutory authority; and (3) failure to state a claim upon which relief can be granted.

I. LACK OF SUBJECT MATTER JURISDICTION
PURSUANT TO Pa. R.C.P. 1028(a)(1)

11. Paragraphs 1-10 are incorporated herein as if set forth at length.

12. The action set forth in Plaintiff's Complaint seeks relief from the Clearfield County Court of Common Pleas for intentional tort claims arising under Pennsylvania state law.

13. Specifically, Plaintiff alleges Defendants wrongfully removed and converted rails, ties, and ballasts.

14. Under 49 U.S.C. §10501(b)(2), however, the jurisdiction over the subject matter of this action is vested exclusively with the Surface Transportation Board (STB).

15. Specifically, remedies sought regarding the “construction, acquisition, operation, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely within one state is exclusive” with the STB and “preempts the remedies under State law.” 49 U.S.C. §10501(b)(2).

16. Thus, this Court has no jurisdiction over the subject matter of this action because the federal statutory law, cited above, vests exclusive jurisdiction within the federal system.

WHEREFORE, Defendant RJCRC/PLI respectfully requests that this Court grant Defendant’s Preliminary Objections and dismiss Plaintiff’s Complaint, with prejudice.

II. FAILURE TO EXHAUST OR EXERCISE A STATUTORY REMEDY
PURSUANT TO Pa.R.C.P. 1028(a)(7)

17. Paragraphs 1-16 are incorporated herein as if set forth at length.

18. Plaintiff seeks damages arising out of Defendant RJCRC/PLI’s alleged actions relative to side tracks and/or side track agreements, specifically including rails, ties, and ballasts.

19. Under 49 U.S.C. §10501(b)(2) remedies for such allegations are clearly provided within the statute.

20. Plaintiff has failed to exercise or exhaust any remedy pursuant to 49 U.S.C. §10501(b)(2), and has failed to plead a basis for not exhausting said statutory remedy.

WHEREFORE, Defendant RJCRC/PLI respectfully requests this Court grant Defendant’s Preliminary Objections and dismiss Plaintiff’s Complaint, with prejudice, for failure to exercise or exhaust statutory authority pursuant to Pa.R.C.P. 1028(a)(7).

III. FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

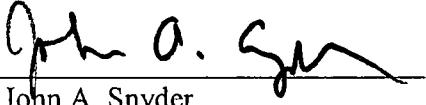
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Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

Dated: February 15, 2007

By: 

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Attorneys for Defendant

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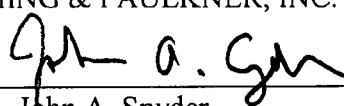
THOMAS COAL SALES, INC., :
Plaintiff, : No. 2003-1271-CD
vs. :
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KOVALCHICK CORPORATION, :
Defendants. :

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By: 

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Attorneys for Defendant

FILED

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William A. Shaw
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