

03-1704-CD
WALTER HOPKINS & COMPANY L.L. P. vs. KEPHART TRUCKING CO.

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

WALTER HOPKINS & COMPANY,	:
L.L.P.,	:
Plaintiff	:
VS.	:
KEPHART TRUCKING COMPANY,	:
INC.,	:
Defendant	:

NO. 03-1704 C.D.

COMPLAINT

Filed on behalf of
Plaintiff

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

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

FILED

NOV 17 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

WALTER HOPKINS & COMPANY,	:
L.L.P.,	:
Plaintiff	:
VS.	:
	NO. 03 - - C.D.
KEPHART TRUCKING COMPANY,	:
INC.,	:
Defendant	:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Pleading 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 Pleading 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's Office
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, Ext. 1300

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

WALTER HOPKINS & COMPANY, L.L.P.,	:	
	:	
Plaintiff	:	
	:	
VS.	:	NO. 03 - - C.D.
	:	
KEPHART TRUCKING COMPANY, INC.,	:	
	:	
Defendant	:	
	:	

COMPLAINT

NOW COMES, Walter Hopkins & Company, L.L.P., and by its Attorneys, Belin & Kubista, avers as follows:

1. Plaintiff is Walter Hopkins & Company, L. L. P., a limited liability partnership organized and existing under the laws of the Commonwealth of Pennsylvania and having its principal place of business at 1107 Linden Street, Clearfield, Pennsylvania 16830.
2. Defendant is Kephart Trucking Company, Inc. believed to be a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and having its principal place of business at Box 386, Bigler, Pennsylvania 16825.
3. On or about January 31, 2002, Defendant engaged the services of Plaintiff to perform various accounting services including the review of financial statements, preparation of reports and tax returns. A letter confirming the nature of the engagement of Plaintiff's services was executed by Tim Kephart, President of Kephart Trucking on January 31, 2002. A true and correct copy of the engagement letter is attached hereto, marked Exhibit "A", and incorporated herein by reference as if set forth at length.

statement dated February 28, 2003 is attached hereto, marked Exhibit "D" and incorporated herein by reference as if set forth at length.

9. Defendant has failed and refused to pay the above statements despite regular monthly billing on the part of Plaintiff.
10. At the present time, the total balance due and owing by Defendant to Plaintiff is Twenty Nine Thousand Nine Hundred Eighty Three Dollars, representing the balance owed for services rendered together with the monthly finance charge in the amount of One Percent (1%). A true and correct copy of the most recent statement sent to Defendant is attached hereto, marked Exhibit "E" and incorporated herein by reference as if set forth at length.
11. Defendant will continue to accrue the aforesaid monthly service charge until the balance is paid in full.

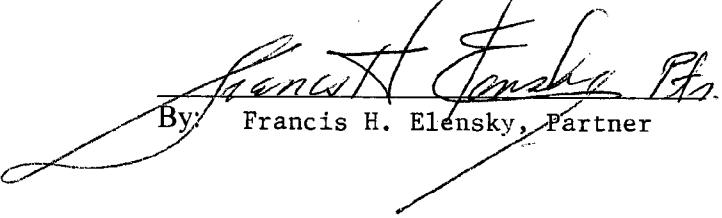
COUNT ONE
BREACH OF CONTRACT

12. Paragraphs 1 through and including Paragraph 11 are incorporated herein by reference as if set forth at length.
13. The actions of Defendant as aforesaid are willful and constitute a material breach of the contracts between the Plaintiff and Defendant as set forth in the engagement letter attached hereto as Exhibits "A" and "B".
14. As the direct and proximate result of the actions of the Defendant as aforesaid, Plaintiff has suffered and continues to suffer damages, including the loss of the monies owed to it by Defendant, loss of use of said monies, lost interest on the money and other damages as may be discovered.

4. The financial statements contracted to be prepared by Plaintiff were completed and delivered to Defendant on or about May 20, 2002. The tax returns were delivered in September and October, 2002. All work was completed in a timely fashion and in accordance with the terms of the engagement letter.
5. On or about September 27, 2002, Defendant engaged the services of Plaintiff to perform various accounting services in the nature of an audit of Defendant's 401 (k) plan, and the preparation of the statements required to fulfill Defendant's reporting requirements for said plan. A true and correct copy of the engagement letter dated September 27, 2002 and executed by Tim Kephart, President of Defendant Kephart Trucking Company is attached hereto, marked Exhibit "B" and incorporated herein by reference as if set forth at length.
6. The services for which Defendant contracted with Plaintiff were performed and the audit delivered to Defendant on or about January 27, 2003. All such work was done in a timely fashion and in accordance with the terms of the engagement letter.
7. Plaintiff issued to Defendant a statement for its services in connection with the engagement letter executed January 31, 2002 on November 30, 2003 in the amount of Twenty Four Thousand Four Hundred Seventy Five Dollars (\$24,475.00). A true and correct copy of the statement dated November 30, 2002 is attached hereto, marked Exhibit "C" and incorporated herein by reference as if set forth at length.
8. Plaintiff issued to Defendant a statement for its services in connection with the engagement letter executed September, 27, 2002 on February 28, 2003 in the amount of Two Thousand Eight Hundred Fifty Dollars (\$2,850.00). A true and correct copy of the

I verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of Pa. C.S. 4904, relating to unsworn falsification to authorities.

WALTER HOPKINS & COMPANY, L.L.P.

By: 
Francis H. Elensky, Partner

2

WALTER HOPKINS & COMPANY, L.L.P.

CERTIFIED PUBLIC ACCOUNTANTS



1107 Linden Street • P.O. Box 910-A • Clearfield, PA 16830
(814) 765-7876 • Fax (814) 768-9426

Route 322 West • P.O. Box 684 • Philipsburg, PA 16866
(814) 342-2155 • Fax (814) 342-4014

Walter Hopkins 1927 - 1981
Frank W. Fulton, CPA 1947 - 1978
Robert L. Mitchell, CPA 1951 - 1993
Samuel P. Bachelier 1957 - 1995

Francis H. Elensky, CPA
Fred C. Lucas, Jr., CPA
John H. Musser, CPA
Charles T. Adamson, CPA
Samuel J. Maney, CPA

Danette M. Brown, CPA
Katherine B. Eckley, CPA

Kephart Trucking Company
Box 386
Bigler, PA 16825

January 20, 2002

This letter is to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

We will perform the following services:

1. We will review the balance sheet of Kephart Trucking Company as of December 29, 2001, and the related statements of income, retained earnings, and cash flows for the 52-week period then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. Our review will consist primarily of inquiries of company personnel and analytical procedures applied to financial data, and we will require a representation letter from management. A review does not contemplate obtaining an understanding of the internal control or assessing control risk, tests of accounting records and responses to inquiries by obtaining corroborating evidential matter, and certain other procedures ordinarily performed during an audit. Thus, a review does not provide assurance that we will become aware of all significant matters that would be disclosed in an audit. Our engagement cannot be relied upon to disclose errors, fraud, or illegal acts that may exist. However, we will inform you of any material errors that come to our attention and any fraud or illegal acts that come to our attention, unless they are clearly inconsequential. In addition, we have no responsibility to identify and communicate significant deficiencies or material weaknesses in your internal control as part of this engagement. We will not perform an audit of such financial statements, the objective of which is the expression of an opinion regarding the financial statements taken as a whole, and, accordingly, we will not express such an opinion on them.

Our report on the financial statements is presently expected to read as follows:

We have reviewed the accompanying balance sheet of Kephart Trucking Company as of December 29, 2001, and the related statements of income, retained earnings, and cash flows for the 52-week period then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management of Kephart Trucking Company

EXHIBIT "A"

A review consists principally of inquiries of Company personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.

If, for any reason, we are unable to complete our review of your financial statements, we will not issue a report on such statements as a result of this engagement.

2. We will also assist your bookkeeper in adjusting the books of accounts so that they will be able to provide us with any supporting schedules we require.
3. We will prepare the federal and Pennsylvania corporate income tax returns for the year ended December 29, 2001 and each year thereafter.

Our fees for these services will be based on the number of hours spent and the staff position of the individuals involved.

Walter Hopkins & Company, LLP, has adopted a firm policy whereby all company workpapers, financial statements, individual and business tax returns and copies of client records will be retained a maximum of seven (7) years. If original documentation is given to our office personnel for preparation of any of the above listed engagements and not returned, it is the responsibility of the client to request that it be returned.

In order to meet the requirements of the Gramm-Leach-Bliley Act of 1999, we are including the following to inform you of the privacy policy of this firm.

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications, tax organizers, worksheets, and other documents;
- Information about your transactions with us, our affiliates, or others.

We do not disclose any nonpublic personal information about our clients or former clients to anyone, except as permitted by law.

We restrict access to nonpublic personal information about you to those members of our firm who need to know that information to provide services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

We shall be pleased to discuss this letter with you at any time.

If the foregoing is in accordance with your understanding, please sign the copy of this letter in the space provided and return it to us.

Sincerely,



WALTER HOPKINS & COMPANY, LLP

Acknowledged:
Kephart Trucking Company


President

01 3102

Date

5 WALTER HOPKINS & COMPANY, L.L.P.

CERTIFIED PUBLIC ACCOUNTANTS



1107 Linden Street • P.O. Box 910-A • Clearfield, PA 16830
(814) 765-7876 • Fax (814) 768-9426
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Samuel J. Maney, CPA
Danette M. Brown, CPA
Katherine B. Eckley, CPA

Clearfield, Pennsylvania
September 27, 2002

Kephart Trucking Company 401(k) Plan
PO Box 386
Bigler, PA 16825

We are pleased to confirm our understanding of the services we are to provide for Kephart Trucking Company 401(k) Plan for the years ended December 31, 2001 and 2000 in connection with its annual reporting obligation under the Employee Retirement Income Security Act of 1974 (ERISA). Except as described below, we will audit the Statements of Net Assets Available for Benefits of Kephart Trucking Company 401(k) Plan as of December 31, 2001 and 2000 and the related Statements of Changes in Net Assets Available for Benefits for the years then ended. Also, the document we will submit to you will include the following supplemental schedules, as applicable, that will be subjected to the auditing procedures applied in our audit of the financial statements:

1. Assets (Held at End of Year) and Assets (Acquired and Disposed of Within Year).
2. Loans or Fixed Income Obligations in Default or Classified as Uncollectible.
3. Leases in Default or Classified as Uncollectible.
4. Reportable Transactions.
5. Nonexempt Transactions.

These financial statements and supplemental schedules are required by the Department of Labor's (DOL) Rules and Regulations for Reporting and Disclosure under ERISA to be filed with Form 5500.

Audit Objectives

Our audit will be conducted in accordance with U.S. generally accepted auditing standards except that, as permitted by Regulation 2520.103-8 of the DOL's Rules and Regulations for Reporting and Disclosure under ERISA and as instructed by you, we will not perform any auditing procedures with respect to information prepared and certified to by The Guardian Life Insurance Company of America, the custodian of the investments, in accordance with DOL Regulation 2520.103-5, other than comparing the information with the related information included in the financial statements and supplemental schedules. Because of the significance of the information that we will not audit, we will not express an opinion on the financial statements and schedules taken as a whole. The form and content of the information included in the financial statements and schedules, other than that derived from the

EXHIBIT "B"

information certified to by the custodian, will be audited by us in accordance with U.S. generally accepted auditing standards, and will be subjected to tests of your accounting records and other procedures we consider necessary to enable us to express an opinion that they are presented in compliance with the DOL Rules and Regulations for Reporting and Disclosure under ERISA. If for any reason we are unable to complete the engagement, we will not issue a report on this engagement.

Audit Procedures

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts and direct confirmation of investments except those certified to by the custodian, and certain other assets and liabilities by correspondence with financial institutions, and other third parties. We will also request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested, except that assets and related transactions certified to by the custodian will not be tested. Also, we will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations, including prohibited transactions with parties in interest or other violations of ERISA rules and regulations, that are attributable to the plan or to acts by management or employees acting on behalf of the plan. Because an audit is designed to provide reasonable, but not absolute, assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform you of any material errors that come to our attention, and we will inform you of any fraudulent financial reporting or misappropriation of assets that comes to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and will include prohibited transactions in the supplemental schedules of nonexempt transactions. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Except as described in the second paragraph, our audit will include obtaining an understanding of internal control sufficient to plan the audit and to determine the nature, timing, and extent of audit procedures to be performed. An audit is not designed to provide assurance on internal control or to identify reportable conditions, that is, significant deficiencies in the design or operation of internal control. However, during the audit, if we become aware of such reportable conditions, we will communicate them to the board of trustees in a separate letter.

In addition, we will perform certain procedures directed at considering the Plan's compliance with applicable Internal Revenue Service (IRS) requirements for tax exempt status and ERISA plan qualification requirements. However, you should understand that our audit is not specifically designed for and should not be relied upon to disclose matters affecting plan qualifications or compliance with the ERISA and IRS requirements. If during the audit we become aware of any instances of any such matters or ways in which management practices can be improved, we will communicate them to you.

Management Responsibilities

You are responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. We will advise you about appropriate accounting principles and their application and will assist in the preparation of your financial statements, but the responsibility for the financial statements remains with you. This responsibility includes the

establishment and maintenance of adequate records and effective internal controls over financial reporting, the selection and application of accounting principles, and the safeguarding of assets. You are responsible for adjusting the financial statements to correct material misstatements and for confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole. You are also responsible for identifying and ensuring that the plan complies with applicable laws and regulations.

We understand that your personnel will prepare schedules and analyses and type all confirmations we request and will locate any invoices or other documents selected by us for testing.

Form 5500

As you have instructed, our engagement does not include preparation of the Plan's Form 5500.

The AICPA's Audits of Employee Benefit Plans requires that, before an auditor's report on the Plan's financial statements can be included with a filed Form 5500 (including any related Schedules), the auditor must review the Form 5500 and consider whether there are any material inconsistencies between the other information in the form and the audited financial statements (including the required supplemental schedules) or any material misstatement of fact. We will, therefore, not issue our auditor's report until the completed Form 5500 has been provided for our review.

Administration, Fees, and Other

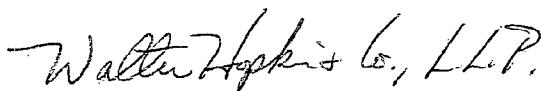
The workpapers for this engagement are the property of Walter Hopkins & Company, L.L.P. and constitute confidential information. However, we may be requested to make certain workpapers available to the U.S. Department of Labor pursuant to authority given to it by law. If requested, access to such workpapers will be provided under the supervision of Walter Hopkins & Company, L.L.P.'s personnel. Furthermore, upon request, we may provide photocopies of selected workpapers to the U.S. Department of Labor. The U.S. Department of Labor may intend, or decide, to distribute the photocopies of information contained therein to others, including other governmental agencies.

The fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

Walter Hopkins & Company, L.L.P. has adopted firm policy whereby all company workpapers, financial statements, individual and business tax returns and copies of client records will be retained for a maximum of seven (7) years. If original documentation is given to our office personnel for preparation of any of the above listed engagements and not returned, it is the responsibility of the client to request that it be returned.

We appreciate the opportunity to be of service to Kephart Trucking Company 401(k) Plan and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

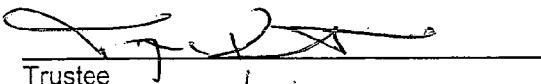


WALTER HOPKINS & COMPANY, L.L.P.

September 27, 2002

RESPONSE:

This letter correctly sets forth the understanding of Kephart Trucking Company 401(k) Plan.


Trustee

9/27/02
Date

WALTER HOPKINS & COMPANY, L.L.P.

CERTIFIED PUBLIC ACCOUNTANTS

1107 Linden Street • P.O. Box 910-A • Clearfield, PA 16830
(814) 765-7876 • Fax (814) 768-9426

No. #1067P

November 30, 2002

Kephart Trucking Company
Box 386
Bigler, PA 16825

Client #19170

SERVICES		
Tax and accounting services through November 2002, including review and analysis of existing records for calendar year 2001. Making necessary adjusting general journal entries, accruals, schedules and reconciliations as of December 30, 2001.		
Preparation of: Financial statements as of December 30, 2001. 2001 Federal and state corporate income tax returns. 2001 Federal and state individual income tax returns for corporate shareholders.	Total Amount Due \$24,475.00	

EXHIBIT "C"

WALTER HOPKINS & COMPANY, L.L.P.

No. #159P

CERTIFIED PUBLIC ACCOUNTANTS

1107 Linden Street • P.O. Box 910-A • Clearfield, PA 16830

(814) 765-7876 • Fax (814) 768-9426

February 28, 2003

Kephart Trucking Company
Box 386
Bigler, PA 16825

Client #19170

SERVICES	
Services in regard to preparation of financial statements of Kephart Trucking Company Retirement Plan for the years ended December 31, 2000, and December 31, 2001.	
Review of Form 5500 for Kephart Trucking Company Retirement Plan for the year ended December 31, 2000, and December 31, 2001.	\$2,850.00

EXHIBIT "D"

W
H
C

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Walter Hopkins & Company, L.L.P.

Certified Public Accountants
 1107 Linden Street
 P. O. Box 910 A
 Clearfield PA 16830

Phone: (814) 765-7876 Fax: (814) 768-9426

Kephart Trucking Company
 Box 386
 Bigler PA 16825

For charges through: 10/31/03

Client No.: 19170

Please reference client number on remittance.

STATEMENT

<u>Invoice Ref</u>	<u>Inv Date</u>	<u>Due Date</u>	<u>Amount</u>	<u>Payments</u>	<u>Sc/DMs</u>	<u>CMs</u>	<u>Last Pmt</u>	<u>Balance</u>
1067P	11/30/02	12/30/02	\$24,475.00		245.00			\$24,475.00
31449	01/31/03	03/02/03	0.00		245.00			245.00
31790	02/28/03	03/30/03	0.00		245.00			2,850.00
159P	02/28/03	03/30/03	2,850.00		245.00			245.00
32422	03/31/03	04/30/03	0.00		273.00			273.00
33168	04/30/03	05/30/03	0.00		273.00			273.00
33350	05/31/03	06/30/03	0.00		273.00			273.00
33613	06/30/03	07/30/03	0.00		273.00			273.00
Statement	07/31/03	08/30/03	0.00		278.00			278.00
Statement	08/31/03	09/30/03	0.00		278.00			270.00
Statement	09/30/03	10/30/03	0.00		270.00			270.00
								\$29,705.00
				Prior Balance:				0.00
				New Charges:				278.00
				Service Charge:				0.00
				Less Payment:				0.00
				Less Adjustment:				0.00
				New Balance:				<u>\$29,983.00</u>

Aged Balances

<u>10/31/03</u>	<u>09/30/03</u>	<u>08/31/03</u>	<u>07/31/03</u>	<u>06/30/03</u>	<u>05/31/03±</u>	<u>Total</u>
278.00	270.00	278.00	278.00	273.00	28,606.00	\$29,983.00

Past due amounts will incur a monthly finance charge of 1%.

DETIN a KUBISTA

FILED 3cc Atty Ryan
10:48 AM
NOV 17 2003 Atty pd 85.00
William A. Shaw

Prothonotary Clerk of Courts

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

Walter Hopkins & Company, L.L.P.
Plaintiff

*

*

-vs-

*

Docket No. 03-1704-CD

Kephart Trucking Company, Inc.
Defendant

*

*

Type of Pleading:
PRAECIPE TO ENTER APPEARANCE

Filed on behalf of:
Defendant
Kephart Trucking Co.

Counsel of record for
this party:

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

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

FILED

DEC 02 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

Walter Hopkins & Company, L.L.P.
Plaintiff

*

*

-vs-

*

Docket No. 03-1704-CD

Kephart Trucking Company, Inc.
Defendant

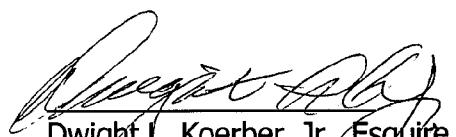
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PRAECIPE TO ENTER APPEARANCE

Please enter my appearance on behalf of Defendant, Kephart Trucking Co. in the
above-referenced matter.

Respectfully Submitted,



Dwight L. Koerber, Jr., Esquire
Attorney for Defendant,
Kephart Trucking Co.

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

Walter Hopkins & Company, L.L.P.
Plaintiff

*

*

-vs-

*

Docket No. 03-1704-CD

Kephart Trucking Company, Inc.
Defendant

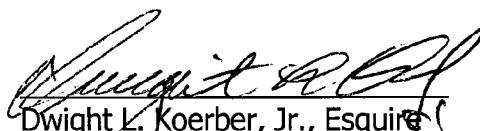
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CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of December, 2003 the undersigned served a true and correct copy of the PRAECIPE TO ENTER APPEARANCE in the above captioned matter upon counsel for Plaintiff. Such documents were served via United States First Class Mail upon the following:

John R. Ryan, Esquire
BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830



Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
Kephart Trucking Co.



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET NO: 03-1704-CD

Walter Hopkins & Company, L.L.P.

-vs-

Kephart Trucking Company, Inc.

PRAECIPE TO ENTER APPEARANCE

3cc
Dwight Koerber
DEC 02 2003

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 DIVISION**

WALTER HOPKINS & COMPANY, LLP.,
Plaintiff

*

*

*

v.

*

Docket No. 03-1704-CD

*

*

KEPHART TRUCKING CO.

Defendant

*

Type of Pleading:
ANSWER AND NEW MATER

Filed on Behalf of:

DEFENDANT

Kephart Trucking Co.

Counsel of record of this party:

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

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

FILED

DEC 18 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

WALTER HOPKINS & COMPANY, LLP., *
Plaintiff *
*
V. * Docket No. 03-1704-CD
*
KEPHART TRUCKING CO. *
Defendant *

ANSWER AND NEW MATTER

COMES NOW, Kephart Trucking Co., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Answer and New Matter to the Complaint filed in this case.

- (1.) Admitted.
- (2.) Admitted, with the explanation that the proper name of Defendant is Kephart Trucking Co.
- (3.) Admitted, subject to the explanation set forth in New Matter.
- (4.) No number.
- (5.) Admitted, subject to the explanation set forth in New Matter.
- (6.) Admitted, subject to the explanation set forth in New Matter.
- (7.) Admitted.
- (8.) Admitted
- (9.) Admitted, subject to the explanation set forth in New Matter.
- (10.) Denied. The engagement letter of the parties did not call for interest

payments. Financing charges were not part of the terms of this transaction.

(11.) Denied, Legal conclusion.

COUNT ONE

(12.) No answer required.

(13.) Legal conclusion, no answer required.

(14.) Legal conclusion, no answer required.

WHEREFORE, Defendant prays that the Complaint be dismissed and that judgment be entered in its favor and against Plaintiff.

COUNT TWO

(15.) No answer required.

(16.) Admitted, subject to the explanation set forth in New Matter.

(17.) Denied.

(18.) Defendant is prepared to begin installment payments covering a portion of the claim that has been made.

(19.) Admitted, subject to the explanation set forth in New Matter.

(20.) Admitted, subject to the explanation set forth in New Matter.

WHEREFORE, Defendant prays that the Complaint be dismissed and that judgment be entered in its favor and against Plaintiff.

NEW MATTER

In support of its position herein, Defendant sets forth the following New Matter.

(21.) In the engagement letter, attached to the Complaint, Plaintiff never set forth the hourly rate at which services were to be rendered nor did it give an itemization as to how the charges were eventually computed.

(22.) Until a full accounting of the services rendered is set forth, Defendant submits that the Plaintiff has failed to demonstrate an entitlement for the fees that have been requested.

(23.) At no time during the negotiations of the parties nor from past business relationships did the Plaintiff set forth an agreement or terms of representation that provided for the assessing of financing charges. For these reasons, there is no legal basis for assessing them at the present time.

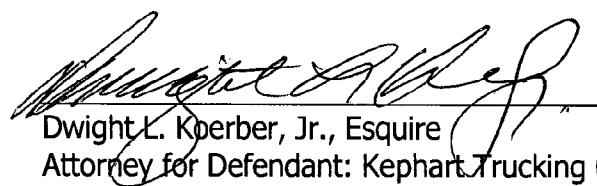
(24.) In the performance of an audit for the 401(k) Plan, Plaintiff performed certain work which related to filings with the U. S. Department of Labor. The U. S. Department of Labor has objected to certain aspects of the information presented through the 401(k) Plan which ties into the audit, thereby subjecting Defendant to additional expenses and fees in order to correct these problems.

(25.) In view of the problems in the 401(k) audit and the filings made with the U. S. Department of Labor, Plaintiff has incurred certain unliquidated expenses that serve as a set off against the amount which Plaintiff seeks to collect in this proceeding.

(26.) In addition to a set off for the difficulties arising out of its 401(k) audit, Defendant also seeks a further detailed accounting of the charges assessed for the services for which Plaintiff is now seeking to recover in this proceeding.

WHEREFORE, Defendant prays that the Complaint filed herein be dismissed, or, in the alternative, that it be reduced in accordance with the set off that has been outlined in the New Matter presented.

Respectfully submitted,



Dwight L. Koerber, Jr., Esquire
Attorney for Defendant: Kephart Trucking Co.

VERIFICATION

I verify the statements made in this document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

A handwritten signature in black ink, appearing to read "Mark Michael", is written over a horizontal line.

Mark Michael, Financial Officer
KEPHART TRUCKING CO.

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

WALTER HOPKINS & COMPANY, LLP.,

Plaintiff

*

*

*

v.

* Docket No. 03-1704-CD

*

*

*

KEPHART TRUCKING CO.

Defendant

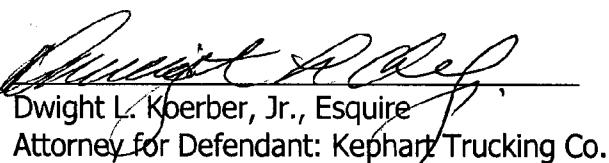
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*

CERTIFICATE OF SERVICE

I certify that on the 18th day of December, 2003, the undersigned served a certified copy of the Answer and New Matter in the above-captioned matter upon counsel for Walter Hopkins & Company, LLP. Such documents were served via United States First Class Mail upon the following:

John R. Ryan, Esquire
BELIN & KUBISTA
15 N. Front Street
P. O. Box 1
Clearfield, PA 16830


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant: Kephart Trucking Co.



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET NO. 03-1704-GD

WALTER HOPKINS & COMPANY, LLP

Plaintiff

v.

KEPHART TRUCKING CO.

Defendant

ANSWER AND NEW MATTER

300

1/3/5/04 Atty Koerber

Co
KPA

Law Office

DWIGHT L. 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 DIVISION

WALTER HOPKINS & COMPANY, :
L.L.P., :
Plaintiff :
VS. : NO. 03 - 1704 - C.D.
: :
KEPHART TRUCKING COMPANY, :
INC., :
Defendant :
:

REPLY TO NEW MATTER

Filed on behalf of
Plaintiff

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

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

FILED

DEC 29 2003

6/2/04 1:00 PM

William A. Shaw

Prothonotary/Clerk of Courts

3 Encl to Att

WPA
9/2/04

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

WALTER HOPKINS & COMPANY,	:
L.L.P.,	:
Plaintiff	:
VS.	:
	NO. 03 - 1704 - C.D.
KEPHART TRUCKING COMPANY,	:
INC.,	:
Defendant	:

REPLY TO NEW MATTER

NOW COMES, Walter Hopkins & Company, LLP, Plaintiff above named, and by its Attorneys, Belin & Kubista, files its Reply to the New Matter of Defendant as follows:

21. Admitted insofar as the engagement letters did not set forth an hourly rate nor an itemization of how the charges were computed. However, by way of further response, Plaintiff avers that it has in the past performed accounting services for Defendant of a similar nature and Defendant has in the past paid all bills for such services without question or complaint. Further, at no time prior to the filing of its New Matter did Defendant question or complain as to the amount or type of billing submitted by the Plaintiff.
22. Denied for the reasons set forth in Paragraph 21 above.
23. Admitted insofar as the engagement letter did not contain a provision for a finance charge. However, by way of further response, all statements sent to Defendant after the initial billings contained an express provision that past due amounts will incur a monthly finance charge of 1%. Therefore, Defendant was

and has been on notice that said finance charge was due and payable on the past due balance owed to Plaintiff.

24. Plaintiff is without knowledge as to any objections or issues raised by the Department of Labor relating to filings prepared by Plaintiff nor does Plaintiff have any knowledge as to any expenses or fees incurred by Defendant as the result of such objections, and therefore denies the allegations of Paragraph 24 and demands strict proof thereof at the time of trial. By way of further response, Plaintiff avers that at no time prior to the filing of this action did Defendant advise Plaintiff of any such problems, nor has Defendant averred any specific amount of expenses or fees incurred.
25. Denied for the reasons set forth at Paragraph 24.
26. Plaintiff is prepared to demonstrate, as a matter of proving its causes of action, the means by which the statements were generated and the basis for the amounts which it seeks to recover. However, by way of further response, Plaintiff avers that it has in the past performed accounting services for Defendant of a similar nature and Defendant has in the past paid all bills for such services without question or complaint. Further, at no time prior to the filing of its New Matter did Defendant question or complain as to the amount or type of billing submitted by the Plaintiff.

WHEREFORE, Plaintiff requests that judgment be entered in its favor and against Defendant as set forth in its Complaint.

Respectfully submitted,

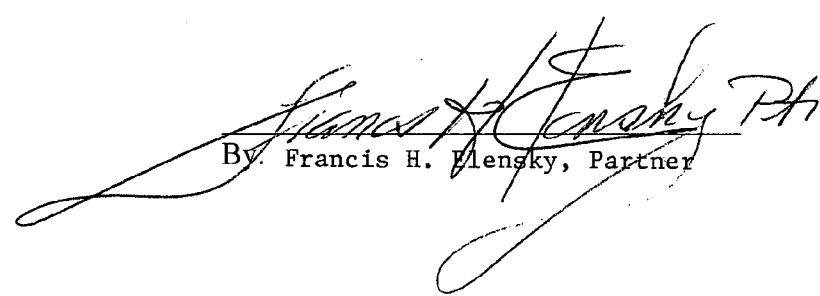
BELIN & KUBISTA



John R. Ryan
Attorney for Plaintiff

I verify that the statements made in this Reply to New Matter are true and correct. I understand that false statements herein are made subject to the penalties of Pa. C.S. 4904, relating to unsworn falsification to authorities.

WALTER HOPKINS & COMPANY, L.L.P.


By: Francis H. Elensky, Partner

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

In The Court of Common Pleas of Clearfield County, Pennsylvania

WALTER HOPKINS & COMPANY LLP

VS.

KEPHART TRUCKING COMPANY INC

COMPLAINT

Sheriff Docket # 14818

03-1704-CD

SHERIFF RETURNS

NOW NOVEMBER 17, 2003 AT 2:45 PM SERVED THE WITHIN COMPLAINT ON KEPHART TRUCKING COMPANY INC., DEFENDANT AT EMPLOYMENT, BOX 386, BIGLER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO TIM KEPHART, V.P. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

Return Costs

Cost	Description
24.13	SHERIFF HAWKINS PAID BY: ATTY CK# 16980
10.00	SURCHARGE PAID BY: ATTY CK# 16981

Sworn to Before Me This

10th Day Of Jan 2004

William A. Shaw

WILLIAM A. SHAW

Prothonotary

My Commission Expires

1st Monday in Jan. 2006

Clearfield Co., Clearfield, PA

So Answers,

*Chester A. Hawkins
by Marilyn Harris*

Chester A. Hawkins

Sheriff

FILED

*01/19/04
JAN 19 2004*

EJH

William A. Shaw
Prothonotary/Clerk of Courts

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

WALTER HOPKINS & COMPANY, L.L.P.,	:	No. 03 - 1704 - C.D.
Plaintiff	:	PRAECLP TO AMEND CAPTION
vs.	:	Filed on Behalf of: Plaintiff, WALTER HOPKINS & COMPANY, L.L.P.
KEPHART TRUCKING COMPANY, INC.,	:	Counsel of Record for This Party:
Defendant	:	John R. Ryan, Esquire Pa. I.D. #38379
	:	BELIN & KUBISTA 15 North Front Street P.O. Box 1 Clearfield, PA 16830 (814) 765-8972

FILED

JAN 21 2004

William A. Shaw
Prothonotary

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

WALTER HOPKINS & COMPANY,
L.L.P.,

Plaintiff

vs.

No. 03 - 1704 - C.D.

KEPHART TRUCKING COMPANY,
INC.,

Defendant

PRAECIPE TO AMEND CAPTION

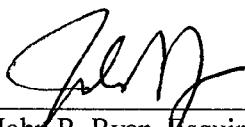
TO: WILLIAM SHAW, PROTHONOTARY

Please amend the caption of the above-referenced matter to indicate that the proper name of the Defendant is "KEPHART TRUCKING CO.".

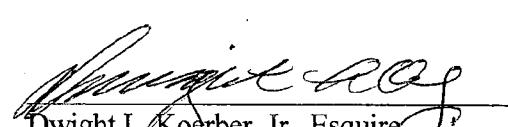
The consent of counsel of record for KEPHART TRUCKING CO. to the amendment of the caption is set forth below as required by Pennsylvania Rule of Civil Procedure 1033.

BELIN & KUBISTA

BY:


John R. Ryan, Esquire
Attorney for Plaintiff

I hereby consent to the amendment of the caption of this case as set forth hereinabove.


Dwight L. Koerber, Jr., Esquire
Attorney for Kephart Trucking Co.

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

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

WALTER HOPKINS & COMPANY, :
L.L.P., :
Plaintiff :
:
vs. : No. 03 - 1704 - C.D.
:
KEPHART TRUCKING CO., :
Defendant :
:

ORDER

Filed on behalf of
Plaintiff

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

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

FILED

MAR 22 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

WALTER HOPKINS & COMPANY,	:
L.L.P.,	:
Plaintiff	:
VS.	NO. 03 - 1704 - C.D.
KEPHART TRUCKING CO.,	:
Defendant	:

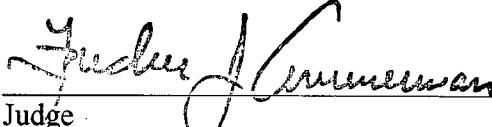
ORDER

AND NOW, this *22nd* day of *March*, 2004, the parties having reached agreement as to resolution of the above captioned action, and having acknowledged their consent to the entry of this Order, it is the ORDER of the Court as follows:

1. Defendant shall pay to Plaintiff, through counsel, the total sum of Twenty Four Thousand Four Hundred Seventy Five Dollars (\$24,475.00), in eight (8) weekly installments, commencing March 22, 2004, as follows:
 - a. March 22, 2004 \$3,475.00;
 - b. March 29, 2004 \$3,000.00;
 - c. April 5, 2004 \$3,000.00;
 - d. April 12, 2004 \$3,000.00;
 - e. April 19, 2004 \$3,000.00;
 - f. April 26, 2004 \$3,000.00;
 - g. May 3, 2004 \$3,000.00;
 - h. May 10, 2004 \$3,000.00;

2. In the event that Defendant fails to make any payment as set forth in Paragraph 1 of this Order, Defendant shall have a period of five days following written notice in which to cure such default. After that time, and Defendant having failed to cure such default, Plaintiff may enter judgment in its favor and against the Defendant in the amount of the unpaid balance.
3. In the event that the Defendant fails to make payment as set forth at Paragraph 2 herein, and in addition to the remedies set forth at Paragraph 2, Plaintiff shall have the right to seek sanctions for contempt, including an award of counsel fees and costs, together with any other remedy or remedies provided by law, including but not limited to execution on the judgment to the extent of the amount unpaid. The parties acknowledge that in arriving at the above amount, Plaintiff has agreed to forego its claim of interest. Should Defendant fail to cure a default, Plaintiff may reassert its claim for interest on the amount then unpaid, without prejudice.
4. The parties agree that there is an additional amount of Two Thousand Eight Hundred Fifty Dollars (\$2,850.00) which Plaintiff claims is owed by Defendant and which Defendant disputes. With respect to the claim or defense regarding that amount, neither party is prejudiced by the entry of this order.

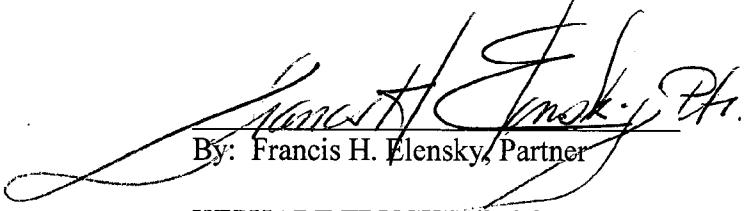
BY THE COURT:



Judge

We, the undersigned, hereby consent to the entry of the above Order.

WALTER HOPKINS & COMPANY, L.L.P.


By: Francis H. Elensky, Partner

KEPHART TRUCKING CO.


By: Timothy L. Kephart
President 3/18/04

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

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

WALTER HOPKINS & COMPANY, :
L.L.P., :
Plaintiff :
: :
vs. : NO. 03 - 1704 - C.D.
: :
KEPHART TRUCKING CO., :
Defendant :
:

**PRAECIPE TO SETTLE,
DISCONTINUE AND END**

Filed on behalf of
Plaintiff

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

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

FILED

JUN 30 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

WALTER HOPKINS & COMPANY, :
L.L.P., :
Plaintiff :
vs. : NO. 03 - 1704 - C.D.
KEPHART TRUCKING CO., :
Defendant :
:

PRAECIPE

TO: WILLIAM SHAW, PROTHONOTARY

Please mark the above-captioned case settled, discontinued
and ended.

BELIN & KUBISTA



John R. Ryan
Attorney for Plaintiff

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

FILED 3cc & cert.
of Disc. to Amy Ryan
JUN 3 0 2004
Copy of Disc. to ~~████████~~ CIA
by ~~████████~~ CIA
pro bono work of ~~████████~~ CIA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA



CIVIL DIVISION

Walter Hopkins & Company, LLP

Vs. **No. 2003-01704-CD**
Kephart Trucking Company

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on June 30, 2004, marked:

Settled, Discontinued and Ended

Record costs in the sum of \$85.00 have been paid in full by John R. Ryan.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 30th day of June A.D. 2004.

William A. Shaw, Prothonotary