

04-221-CD
JOHN T. GALLAHER TIMBER TRANSFER vs. ROBERT D. HAMILTON, et al.

JOHN T. GALLAHER TIMBER
TRANSFER,

Appellee

v.

ROBERT HAMILTON, T/A HAMILTON
ENTERPRISES,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

04-221-CD

No. 770 WDA 2006

Appeal from the Judgment entered April 6, 2006
In the Court of Common Pleas of CLEARFIELD County
Civil Division at No 04-221-CD

FILED ^{NO}
^{11:15/07}
OCT 11 2007 ^{6K}

BEFORE: ORIE MELVIN, McCAFFERY, AND JOHNSON, JJ.

OPINION BY McCAFFERY, J.:

FILED: August 29, 2007

William A. Shaw
Prothonotary/Clerk of Courts

¶ 1 Appellant, Robert Hamilton, t/a Hamilton Enterprises (hereinafter "Hamilton"), appeals from the judgment entered in the Clearfield County Court of Common Pleas following the trial court's granting of the motion for judgment on the pleadings of Appellee, John T. Gallaher Timber Transfer (hereinafter "Gallaher"). After careful review, we affirm.

¶ 2 The undisputed relevant facts and procedural history underlying this matter are as follows. Robert D. Cummings suffered an injury on August 13, 1999, while operating a log skidder owned by Hamilton. Mr. Cummings filed a claim petition against Hamilton pursuant to the Workers' Compensation Act.¹ Hamilton filed petitions for joinder of additional defendants, including

¹ 77 P.S. §§ 1-1041.4; 2501-2626.

Gallaher. Workers' Compensation Judge ("WCJ") Michael E. Koll presided over hearings on November 14, 2000, and March 22, 2001. On January 31, 2002, WCJ Koll entered an order which held that Mr. Cummings was entitled to receive workers' compensation benefits for the injuries he had sustained.² WCJ Koll also concluded that Hamilton was Mr. Cumming's primary employer and, accordingly, was responsible for payment of benefits to Mr. Cummings. WCJ Koll determined that Gallaher was a statutory employer of Mr. Cummings, and thus was responsible for payment of the compensation if Hamilton failed to make payment as ordered. Based upon the evidence presented by all of the parties, the WCJ specifically set forth the following findings and conclusions pertinent to the issues raised here:

On August 13, 1999, the Claimant, Robert Cummings, suffered a work injury during the course and scope of his employment with Defendant/Employer, [Hamilton]....

* * *

It is found that, at the time of his work injury, the Claimant was not an employee of ... [Gallaher].

* * *

It is found that, at the time of his work injury, the Claimant's Employer, [Hamilton], was serving in the capacity of a sub-contractor for [Gallaher].

* * *

² WCJ Koll amended his order February 19, 2002, and again February 26, 2002, to allow for deduction of attorney's fees. The relevant findings and legal conclusions remained the same.

It is further found that [Gallaher] is ... a statutory employer under Section 302(d) of the Pennsylvania Workers' Compensation Act.

* * *

[I]n finding the Claimant was an employee of [Hamilton], ... it is noted that 'in determining whether a claimant is an independent contractor or employee, the Pennsylvania Supreme Court has set forth the following factors to consider in determining the type of relationship which exists: control of the manner in which work is to be done; responsibility for result only; terms of agreement between the parties; nature of the work or occupation; skill required for performance; whether one employee is engaged in a distinct occupation or business; which party supplied the tools; whether payment is by time or by the job; whether work is part of the regular business of the alleged employer, and whether the alleged employer has the right to terminate employment at any time. ... [T]he key element is whether the alleged employer has the right to control the work to be done, and the manner in which it is performed.'

* * *

Upon review of the consistent aspects of each of their testimonies, it is found that the relationship is overwhelmingly that of an employee.... [I]n most all aspects of the relationship[,] [the Claimant] was treated as an employee, being paid on an hourly basis, or at the discretion of [Hamilton] as to any bonuses; [the Claimant] only performed work for [Hamilton]; the work which he performed was part of the regular business of [Hamilton]; and [Hamilton] provided all of the tools and equipment.

* * *

The Claimant has sustained his burden of proof, that he suffered a work injury on August 13, 1999, ... entitling him to Workers' Compensation benefits ... together with the payment of medical costs and expenses causally related to same.

[Hamilton] shall be responsible for the payment of such Workers' Compensation benefits, together with the reimbursement of any Public Welfare Lien reimbursement for the payment of any such medical expenses.

* * *

[Hamilton] has failed to sustain its burden of proof, that [Gallaher was an employer] of the Claimant at the time of his August 13, 1999 work injury.

* * *

[I]n the absence of payment of the foregoing by [Hamilton], [Gallaher], as the statutory employer, and/or its Workers' Compensation Insurer, shall be responsible for payment of compensation payable hereunder.

(WCJ's Findings of Fact, Conclusions of Law and Order, dated January 31, 2002, at 8-11).

¶ 3 Hamilton did not take an appeal from WCJ Koll's decision to the Workers' Compensation Appeal Board. Hamilton also did not pay the benefits due to Mr. Cummings. Because of WCJ Koll's ruling and Hamilton's failure to pay, on or about March 22, 2003, Gallaher made payments totaling \$14,181.34 to Mr. Cummings and to settle the public welfare lien.³

¶ 4 On February 17, 2004, Gallaher filed a complaint in the court of common pleas seeking reimbursement from Hamilton for the funds paid pursuant to 77 P.S. § 462. Hamilton filed an answer, new matter and counterclaim denying that (1) Mr. Cummings was an employee of Hamilton

³ Gallaher paid Mr. Cummings \$7,824.28 and settled the public welfare lien for \$6,327.06.

on August 13, 1999; (2) the injury was work related; and (3) the WCJ found Hamilton liable to pay benefits; instead, Hamilton asserted that Gallaher was Mr. Cummings's employer. (Answer, New Matter and Counterclaim to Plaintiff's Complaint, filed April 1, 2004). On January 23, 2006, Gallaher filed a motion for judgment on the pleadings, which the trial court granted on March 28, 2006, following argument and briefing by the parties. The trial court determined that Gallaher was entitled to recover from Hamilton based upon the WCJ's decision, and moreover, that the doctrine of collateral estoppel barred litigation of the issues Hamilton raised regarding the debt owed. Upon praecipe, the prothonotary entered judgment on April 6, 2006. On April 25, 2006, Hamilton filed a timely notice of appeal and now raises the following question for our review:

Whether the [trial] court erred in granting [Gallaher's] motion for judgment on the pleadings and dismissing [Hamilton's] answer and counterclaim in that although originally arising as a result of a workers' compensation matter, the claim of [Gallaher] as statutory employer, versus [Hamilton], as employer, in a court of common pleas civil proceeding must still proceed in accord with the rules of civil procedure which allow the filing of a counterclaim and the raising of defenses of liability and negligence on the part of others for the injury which occurred.

(Hamilton's Brief at v).

¶ 5 Preliminarily, we note that our scope and standard of review are well-settled:

As our Supreme Court has explained, appellate review of a trial court's decision to grant or deny judgment on the

pleadings is limited to determining whether the trial court committed an error of law or whether there were facts presented which warrant a jury trial. In conducting this review, we look only to the pleadings and any documents properly attached thereto. Judgment on the pleadings is proper only where the pleadings evidence that there are no material facts in dispute such that a trial by jury would be unnecessary.

In passing on a challenge to the sustaining of a motion for judgment on the pleadings, our standard of review is limited. We must accept as true all well pleaded statements of fact of the party against whom the motion is granted and consider against him only those facts that he specifically admits. We will affirm the grant of such a motion only when the moving party's right to succeed is certain and the case is so free from doubt that the trial would clearly be a fruitless exercise.

Maryland Casualty Co. v. Odyssey Contracting Corp., 894 A.2d 750, 753-54 (Pa.Super. 2006), *appeal denied*, 589 Pa. 739, 909 A.2d 1290 (2006), *cert. denied*, 127 S.Ct. 1887 (2007) (citations and quotation marks omitted).

¶ 6 Instantly, Hamilton asserts that the Workers' Compensation Act may provide Gallaher with the right to recover from Hamilton the money it paid; however, Gallaher "must still establish liability and damages as one would in any other civil case." (Hamilton's Brief at 2). Claiming to be a case of first impression, presumably as the reason for its failure to cite any supporting law, Hamilton argues that it did not have the opportunity to assert certain defenses against Gallaher at the workers' compensation hearing and, thus, collateral estoppel should not be applicable to this matter. As a specific

example, Hamilton proclaims it is entitled to litigate the issue of negligent supervision or control on the part of Gallaher over the job site and over Mr. Cummings. Whereas Gallaher seeks to enforce a judgment, Hamilton seeks to relitigate the case.

¶ 7 In support of its decision to grant Gallaher's motion, the trial court relied upon the doctrine of collateral estoppel, also known as issue preclusion. (Trial Court Opinion, dated May 15, 2006, at 2).

Collateral estoppel is applicable when the issue decided in a prior adjudication is identical to that presented in the later action; there was a final judgment on the merits; the party against whom the doctrine is asserted was a party to the prior adjudication or was in privity with such a party; and the party against whom it is asserted had a full and fair opportunity to litigate the issue in the prior adjudication.

Krosnowski v. Ward, 836 A.2d 143, 148 (Pa.Super. 2003) (*en banc*) (citing **Murphy v. Duquesne University**, 565 Pa. 571, 599, 777 A.2d 418, 435 (2001)). Hence, collateral estoppel prevents "a question of law or an issue of fact which has once been litigated and adjudicated finally in a court of competent jurisdiction from being relitigated in a subsequent suit." **Capobianchi v. Bic Corporation**, 666 A.2d 344, 348 (Pa.Super. 1995) (quoting **Day v. Volkswagenwerk Aktiengesellschaft**, 464 A.2d 1313, 1318 (Pa.Super. 1983)).

¶ 8 In **Capobianchi, supra**, this Court determined that the doctrine of collateral estoppel precluded relitigation of an issue because it had been

previously litigated in the workers' compensation court. There, our Court stated:

The doctrine of collateral estoppel is not unavailable simply because administrative procedures are involved; where the agency is acting in a judicial capacity and resolves disputed issues of fact which the parties had an opportunity to litigate, the [courts] will not hesitate to apply preclusion principles.

Id. at 349 (citation omitted). The appellant in **Capobianchi** sought to litigate the issue of causation in a subsequent products liability case when the issue had already been litigated as one of the central questions in a previous workers' compensation claim involving the same parties. The Court concluded that the appellant was estopped from pursuing the identical issue in a common law tort action. **Id.**; **see also Rue v. K-Mart Corp.**, 552 Pa. 13, 21 n.4, 713 A.2d 82, 87 n.4 (1998) (recognizing "the body of caselaw concerning the preclusive effect of workers' compensation proceedings" and citing **Capobianchi** with approval).

¶ 9 Similarly, in the case *sub judice*, the WCJ was competent to hear Mr. Cummings's initial claim against Hamilton. **See Capobianchi, supra**. The questions of control over the work and the work site as well as liability were the central issues of Mr. Cummings's claim against Hamilton.⁴ Both parties

⁴ As our sister court has previously explained:

Whether an employer/employee relationship exists, for workers' compensation purposes, is a conclusion of law to be based upon findings of fact. ... There is no set formula for determining the existence of an employer/employee

to the instant case were parties to the workers' compensation claim, and Hamilton was afforded a full and fair opportunity to litigate the issues before WCJ Koll. Following the presentation of evidence by all parties, the WCJ determined that Hamilton, not Gallaher, was Mr. Cummings's employer and that Hamilton bore primary responsibility and liability for payment. The WCJ held that Gallaher was secondarily responsible should Hamilton default on its obligation. Hamilton did not appeal from WCJ Koll's order. Because the workers' compensation judgment is final, Hamilton is estopped from pursuing these identical issues in a common law tort action. **See Capobianchi, supra.**

¶ 10 Based upon the foregoing analysis, we conclude that the trial court correctly applied the doctrine of collateral estoppel to Hamilton's claims and properly granted Gallaher's motion for judgment on the pleadings. Accordingly, we affirm the judgment.

¶ 11 Judgment affirmed.

relationship, but the most important factor is evidence of actual control or the right to control the work to be done and the manner of its performance.

Reflex Systems, Inc. v. W.C.A.B. (Ferrucci), 784 A.2d 217, 221-22 (Pa.Cmwlt. 2001) (quoting **Williams v. W.C.A.B. (Global Van Lines)**, 682 A.2d 23 (Pa.Cmwlt. 1996)).

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 770 WDA 2006

Page 1 of 3

April 28, 2006



04-221-CD

John T. Gallagher Timber Transfer

V.

Robert Hamilton, t/a Hamilton Enterprises, Appellant

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: April 27, 2006

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Assumpsit

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: May 12, 2006

Next Event Type: Original Record Received

Next Event Due Date: June 6, 2006

770 WDA 2006

Record

1 transcript

FILED

m12:41/61

MAY 01 2006

NO CC
GKWilliam A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 770 WDA 2006

Page 2 of 3

April 28, 2006



COUNSEL INFORMATION

Appellant Hamilton, Robert

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Bell III, F. Cortez

Bar No.: 30183

Law Firm: Clearfield County District Attorney's Office

Address: 318 E Locust St

PO Box 1088

Clearfield, PA 16830

Phone No.: (814)765-5537

Fax No.: (814)765-9730

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Gallaher Timber Transfer, John T.

Pro Se: Appoint Counsel Status:

IFP Status:

Appellee Attorney Information:

Attorney: Gailey, Matthew David

Bar No.: 90920

Law Firm: Pietragallo, Bosick & Gordon, LLP

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Pittsburgh, PA 15219

Phone No.: (412)263-2000

Fax No.:

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
4/27/06	Notice of Appeal	60.00	60.00	2006SPRWD000538

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: April 6, 2006

Judicial District: 46

Date Documents Received: April 27, 2006

Date Notice of Appeal Filed: April 25, 2006

Order Type: Judgment

OTN:

Judge: Ammerman, Fredric J.
President Judge

Lower Court Docket No.: No. 04-221-CD

ORIGINAL RECORD CONTENTS

Appeal Docket Sheet

Docket Number: 770 WDA 2006

Superior Court of Pennsylvania

Page 3 of 3

April 28, 2006



Original Record Item

Filed Date

Content/Description

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
April 27, 2006	Notice of Appeal Filed	Appellant	Hamilton, Robert
April 28, 2006	Docketing Statement Exited (Civil)		Western District Filing Office

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

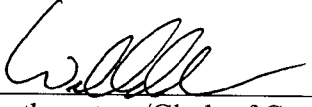
04-221-CD

**John T. Gallaher Timber Transfer
VS.
Robert Hamilton, t/a Hamilton Enterprises**

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to No. 20**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is May 25, 2006.



Prothonotary/Clerk of Courts

(seal)

Date: 05/25/2006

Cl: Field County Court of Common Pleas

User: BHUDSON

Time: 04:05 PM

ROA Report

Page 1 of 2

Case: 2004-00221-CD

Current Judge: Fredric Joseph Ammerman

John T. Gallaher Timber Transfer vs. Robert D. Hamilton, Hamilton Enterprises, Robert D. Cummings

Civil Other

Date		Judge
02/17/2004	Filing: Civil Complaint Paid by: Pietragallo, Boxick & Gordon Receipt number: 1873832 Dated: 02/17/2004 Amount: \$85.00 (Check) 1 CC to Atty. 2 CC to Shff.	No Judge
04/01/2004	Answer, New Matter and Counterclaim to Plaintiff's Complaint. filed by, s/F. Cortez Bell, III, Esquire Verification s/Robert Hamilton Certificate of Service 5 cc to Atty Bell	No Judge
04/16/2004	Praecipe for Writ of Summons to Join Robert D. Cummings as additional Defendant, filed by s/F. Cortez Bell, III, Esq. Three CC Attorney Bell Two CC and two writs to Sheriff	No Judge
05/03/2004	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
05/19/2004	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
06/16/2004	Reply to New Matter and Answer to Counterclaim filed by Atty. Monahan. No CC.	No Judge
01/23/2006	Praecipe Requesting Court Administrator to Assign Case to Judge to Schedule an Argument Date, filed by s/ Robert J. Monahan, Esquire. 1CC Atty Monahan	No Judge
	Motion For Judgment on The Pleadings, filed by s/ Robert J. Monahan, Esquire. 1CC Atty. Monahan	No Judge
01/24/2006	Order, NOW, this 23rd day of Jan., 2006, upon consideration of Plaintiff's Motion for Judgment on the Pleadings, Ordered that argument has been scheduled for the 24th day of Feb., 2006 at 2:00 p.m. in Courtroom No. 1. By The Court: Fredric J. Ammerman, Pres. Judge. 1CC Atty. Monahan, 1CC Atty. Bell 1 CC R. Cummings (on 1/27/06-late due to Full Court being down)	Fredric Joseph Ammerman
02/24/2006	Answer To Motion For Judgment on the Pleadings, filed by s/ F. Cortez Bell, III, Esquire. 5CC Atty. Bell	Fredric Joseph Ammerman
03/01/2006	Order, NOW, this 24th day of Feb., 2006, following argument on plaintiff's Motion for Judgment on the Pleadings, Ordered that counsel for Def. supply the Court with appropriate brief relative the issue of collateral estoppel/stare decisis within no more than 25 days from this date. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty Monahan, 1CC F. Cortez Bell III, 1CC Robert Cummings	Fredric Joseph Ammerman
03/29/2006	Order, NOW, this 28th day of March, 2006, following argument on the Plaintiff's Motion for Judgment on the Pleadings and the Court's review of the parties' briefs, it is the Order of this Court that the said Motion is Granted. The Defendant's Answer and Counterclaim is hereby Dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Atty. Rober Monahan, F. Cortez Bell, and Robert Cummings P.O. Box 77, Wallaceton PA 16876	Fredric Joseph Ammerman
04/06/2006	Filing: Praecipe to Enter Judgment Paid by: Monahan, Robert J. (attorney for John T. Gallaher Timber Transfer) Receipt number: 1913221 Dated: 04/06/2006 Amount: \$20.00 (Check) Judgment in favor of John Gallaher Timber Transfer and against Robert D. Hamilton t/a Hamilton Enterprises in the amount of \$16,640.89. Filed by s/ Matthew D. Gailey, Esquire. 1CC & Notice to F. Cortez Bell, III, Esquire (envelope provided), Statement to Atty. Gailey	Fredric Joseph Ammerman

Date: 05/25/2006

Clerk of Field County Court of Common Pleas

User: BHUDSON

Time: 04:05 PM

ROA Report

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Case: 2004-00221-CD

Current Judge: Fredric Joseph Ammerman

John T. Gallaher Timber Transfer vs. Robert D. Hamilton, Hamilton Enterprises, Robert D. Cummings

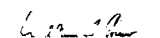
Civil Other

Date		Judge
04/25/2006	Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Hamilton, Robert D.) Receipt number: 1913496 Dated: 04/25/2006 Amount: \$45.00 (Check)	Fredric Joseph Ammerman
	Order, NOW, this 25th day of April, 2006, the Court having been notified of Appeal to the Superior Court of Pa., it is Ordered that Robert Hamilton, Appellant, file a concise statement of the matters complained of on said Appeal no later than 14 days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Monahan, Bell, 1CC Robert Cummings-PO Box 77 Wallaceton, PA 16876	Fredric Joseph Ammerman
	Notice of Appeal, to Superior Court of Pa., filed by s/ F. Cortez Bell, III, Esquire. 7CC Atty. Bell, 1CC Superior Court w/ \$60.00 check	Fredric Joseph Ammerman
05/01/2006	Appeal Docket Sheet, filed. No CC Superior Court Number 770 WDA 2006	Fredric Joseph Ammerman
	Order, NOW, this 1st day of May, 2006, Ordered that the court reporter is directed to transcribe oral argument held in the above-captioned matter on Feb. 24, 2006, with costs of same to be borne by the Def. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: R. Monahan, R. Bell 1CC Robert Cummings, PO Box 77, Wallaceton, PA 16876	Fredric Joseph Ammerman
05/08/2006	Statement of Matters Complained of on Appeal, filed by s/ F. Cortez Bell, III, Esquire. 4CC to Atty	Fredric Joseph Ammerman
05/16/2006	Opinion, By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys.: Monahan, F.Bell, 1CC Def. Cummings, Robert D., PO Box 77, Wallaceton, PA 16876. 1CC to: D. Mikesell, Law Library (without Memo)	Fredric Joseph Ammerman
05/18/2006	Transcript of Argument on Plaintiff's Motion for Judgment on the Pleadings, February 24, 2006, filed.	Fredric Joseph Ammerman
05/25/2006	May 25, 2006, Mailed Appeal to Superior Court, Certified Mail Number 7002 2030 0004 5014 8088. May 25, 2006, Notification of Mailing Appeal letters mailed to F. Cortez Bell, III, Esq., Robert J. Monahan, Esq., and Robert D. Cummings with certified copies of the docket sheet and the summary of docket entries submitted to Superior Court.	Fredric Joseph Ammerman

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

MAY 25 2006

Attest:


Notary Public/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 04-221-CD

John T. Gallaher Timber Transfer

VS.

Robert D. Hamilton t/a Hamilton Enterprises; Robert D. Cummings

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	02/17/04	Civil Complaint	33
02	04/01/04	Answer, New Matter and Counterclaim to Plaintiff's Complaint	16
03	04/16/04	Praecipe for Writ of Summons to Join Robert D. Cummings as Additional Defendant	04
04	05/03/04	Sheriff Return	34
05	05/19/04	Sheriff Return	05
06	06/16/04	Reply to New Matter and Answer to Counterclaim	08
07	01/23/06	Praecipe Requesting Court Administrator to Assign Case to Judge to Schedule an Argument Date	03
08	01/23/06	Motion for Judgment on the Pleadings	100
09	01/24/06	Order, Re: argument scheduled on Plaintiff's Motion for Judgment on the Pleadings	03
10	02/24/06	Answer to Motion for Judgment on the Pleadings	08
11	03/01/06	Order, Re: Following argument on Plaintiff's Motion for Judgment on the Pleadings, counsel for Defendant to supply Court with appropriate brief relative the issue of collateral estoppel/stare decisis	02
12	03/29/06	Order, Re: Plaintiff's Motion for Judgment is Granted. Defendant's Answer and Counterclaim is Dismissed	02
13	04/06/06	Praecipe to Enter Judgment in favor of John Gallagher Timber Transfer and against Robert D. Hamilton t/a Hamilton Enterprises in the amount of \$16,640.89	06
14	04/25/06	Notice of Appeal	07
15	04/25/06	Order, Re: Concise statement to be filed	02
16	05/01/06	Appeal Docket Sheet, 770 WDA 2006	03
17	05/01/06	Order, Re: court reporter directed to transcribe oral argument held February 24, 2006	02
18	05/08/06	Statement of Matters Complained of on Appeal	03
19	05/16/06	Opinion	03
20	05/18/06	Transcript, Argument on Plaintiff's Motion for Judgment on the Pleadings, February 24, 2006	Separate Cover

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

John T. Gallaher Timber Transfer

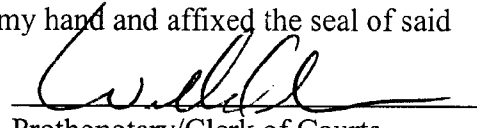
VS.

Robert D. Hamilton, t/a Hamilton Enterprises

04-221-CD

So full and entire as the same remains of record before the said Court, at **No. 04-221-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 25 Day of May, 2006.

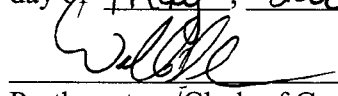

Prothonotary/Clerk of Courts

I, **Fredric J. Ammerman**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.


President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have
hereunto set my hand and affixed
the seal of said Court, this 25th
day of May, 2006


Prothonotary/Clerk of Courts

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

FILED
01/11/00/301
MAY 16 2006
copies-
see
reverse

JOHN T. GALLAHER TIMBER TRANSFER

vs.

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES

NO. 04-221-CD

William A. Shaw
Prothonotary/Clerk of Courts

OPINION

On or about August 13, 1999, Robert Cummings (hereinafter "Cummings") suffered a work-related injury during the scope and course of his employment with Defendant Robert D. Hamilton t/a Hamilton Enterprises (hereinafter "Hamilton"). Cummings sustained a broken leg which resulted in a period of temporary total disability from the date of the incident through March of 2000. Cummings brought a claim for worker's compensation which was handled by Michael E. Koll, Worker's Compensation Judge from the Clearfield District Office. As a result of the worker's compensation action, Judge Koll issued three Orders, copies of the same being attached to the Plaintiff's Motion for Judgment on the Pleadings as Exhibits A, B and C. Hamilton was found to be the principle employer of Cummings at the time of the accident and determined to be primarily liable for Cummings' worker's compensation benefits. Plaintiff John T. Gallaher (hereinafter "Gallaher") was determined to be the statutory employer of Cummings at the time and was found to be secondarily liable for benefits.

It is undisputed that Hamilton has not made any payments as required by Judge Koll's Orders and as a result, Gallaher paid Cummings the amount of \$7,854.28 in benefits. Gallaher also settled a public welfare lien against Cummings in the amount of \$6,327.06.

Section 302 (b) of the Worker's Compensation Act (77 P.S. § 462) states that "any employer or his insurer who shall become liable hereunder for such

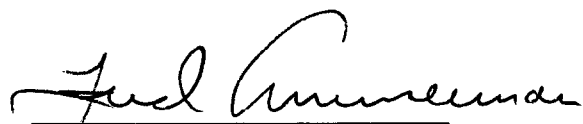
449

compensation may recover the amount thereof paid and any necessary expenses from another person if the latter is primarily liable therefore." Here Judge Koll determined that Hamilton was primarily liable and Gallaher was secondarily liable. There is no question but that the matter has been litigated and Gallaher is entitled to recover from Hamilton. See Kaiser v. Old Republic Insurance Company, 741 A.2d 748 (Pa. Super. 1999).

Hamilton's Answer and New Matter and Counterclaim is inappropriately raising issues that have previously been decided within the Worker's Compensation system. Hamilton is unable to raise these issues due to the principle of collateral estoppel as the same issues raised in the pleadings have been previously been argued in and decided upon through the worker's compensation claim. See Williams v. Workman's Compensation Appeal Board, 628 A.2d 23 (Pa. Cmwlth. 1996).

Gallaher appeared before this Court with a Motion for Judgment on the Pleadings. Entry of Judgment on the Pleadings is permitted under Pa. R.C.P. Rule 1034. In determining if there is any legitimate dispute as to the facts, a court is required to confine its' considerations to the pleadings and relevant documents attached thereto. Cole v. Lawrence, 701 A.2d 987 (Pa. Super. 1997), quoting Vetter v. Fun Footwear Company, 668 A.2d 529 (Pa. Super. 1995). Here there is no factual dispute. Hamilton is principally liable for the benefits which Gallaher has paid. The Court appropriately granted Judgment on the Pleadings through its' Order of March 28, 2006.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

Date: May 15, 2006

FILED

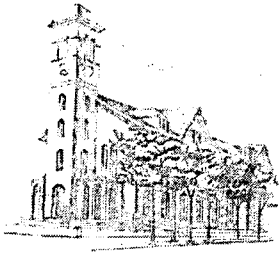
MAY 16 2006

William A. Shaw
Prothonotary/Clerk of Courts

1 cc Atty's: Monahan
F. Bell

1 cc Def. Cummings, Robert D.
PO Box 77
Wallaceton, PA 16876

~~Copies~~ to: D. Mikesell
Law Library
(without memo)



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 5/16/06

_____ You are responsible for serving all appropriate parties.

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

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

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

JOHN T. GALLAGHER TIMBER
TRANSFER

Appellee,

vs.

ROBERT HAMILTON t/a
HAMILTON ENTERPRISES

Appellant,

NO. 04-221-CD

Type of Case: Civil

Type of Pleading:

Statement of Matters

Complained of on Appeal

Filed on Behalf of:

Robert Hamilton

Counsel of Record for

This Party:

F. Cortez Bell, III, Esquire

I.D. #30183

318 East Locust Street

P.O. Box 1088

Clearfield, PA. 16830

Telephone: 814-765-5537

FILED

MAY 08 2006

6/4:35/um Gil

William A. Shaw

Prothonotary/Clerk of Courts

4 Cent to ATT

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

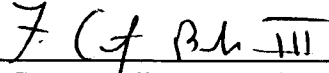
JOHN T. GALLAGHER TIMBER	:	
TRANSFER	:	
Appellee,	:	
	:	
vs.	:	NO. 04-221-CD
	:	
ROBERT HAMILTON t/a	:	
HAMILTON ENTERPRISES	:	
Appellant,	:	

STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

NOW comes the Defendant, Robert Hamilton t/a Hamilton Enterprises, by and through his attorney, F. Cortez Bell, III, Esquire, who for the Appellant's Statement of Matters Complained of on Appeal pursuant to the provisions of the Pennsylvania Rules of Appellate Procedure, Rule 1925(b) respectfully sets forth said statement as follows:

1. That the Trial Court erred in granting the Appellee's Motion for Judgment on the Pleadings and dismissing the Appellant's Answer and Counterclaim in that although originally arising as a result of a Workers' Compensation matter, the claim of the Appellee, as Statutory Employer, versus the Appellant, as Employer, in a Court of Common Pleas civil proceeding must still proceed in accord with the Rules of Civil Procedure which allow the filing of a Counterclaim and the raising of defenses of liability and negligence on the part of others for the injury which occurred.

Respectfully submitted,



F. Cortez Bell, III, Esquire
Counsel for Appellant Hamilton

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

JOHN T. GALLAGHER TIMBER
TRANSFER,

Appellee

vs.

NO. 04-221-CD

ROBERT HAMILTON, t/a
HAMILTON ENTERPRISES,

Appellant

PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Notice of Appeal
upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.

R.A.P. 121:

Service By Personal Service

Honorable Fredric J. Ammerman
President Judge
Court of Common Pleas of
of Clearfield County
Clearfield County Courthouse
Clearfield, PA. 16830

Service by First Class Mail, Postage Pre-paid

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

By

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Appellant Hamilton
Supreme Court No. 30183

Dated: May 8, 2006

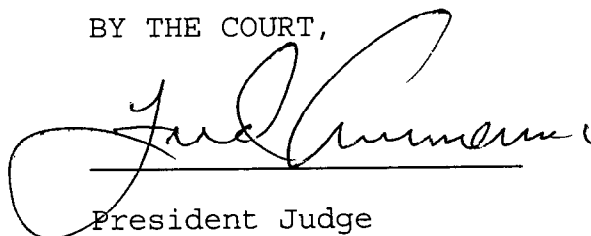
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOHN T. GALLAGHER TIMBER :
TRANSFER :
VS. : NO. 04-221-CD
ROBERT HAMILTON, t/a :
HAMILTON ENTERPRISES :

O R D E R

AND NOW, this 1st day of May, 2006, it is the ORDER
of this Court that the court reporter be and is hereby directed
to transcribe oral argument held in the above-captioned matter
on February 24, 2006, with costs of same to be borne by the
Defendant.

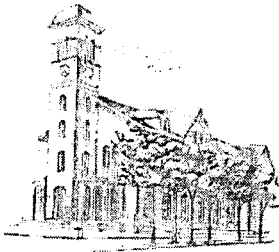
BY THE COURT,


President Judge

FILED
03:1761
MAY 01 2006
William A. Shaw
Prothonotary/Clerk of Courts
cc Atty's
R. Monahan
R. Bell
Robert Cummings
PO Box 77
Wallaceton
PA 16876

(6)

#17



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 5/10/06

_____ You are responsible for serving all appropriate parties.

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

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 770 WDA 2006

Page 1 of 3

April 28, 2006



04-221-CD

John T. Gallagher Timber Transfer

V.

Robert Hamilton, t/a Hamilton Enterprises, Appellant

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: April 27, 2006

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType:

Assumpsit

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: May 12, 2006

Next Event Type: Original Record Received

Next Event Due Date: June 6, 2006

FILED

MAY 01 2006

William A. Shaw
Prothonotary/Clerk of Courts

1st file

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 770 WDA 2006

Page 2 of 3

April 28, 2006



COUNSEL INFORMATION

Appellant Hamilton, Robert
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:
Attorney: Bell III, F. Cortez
Bar No.: 30183 **Law Firm:** Clearfield County District Attorney's Office
Address: 318 E Locust St
 PO Box 1088
 Clearfield, PA 16830
Phone No.: (814)765-5537 **Fax No.:** (814)765-9730
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Gallaher Timber Transfer, John T.
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:
Attorney: Gailey, Matthew David
Bar No.: 90920 **Law Firm:** Pietragallo, Bosick & Gordon, LLP
Address: One Oxford Ctr 38th Fl
 Pittsburgh, PA 15219
Phone No.: (412)263-2000 **Fax No.:**
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
4/27/06	Notice of Appeal	60.00	60.00	2006SPRWD000538

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
County: Clearfield **Division:** Civil
Date of Order Appealed From: April 6, 2006 **Judicial District:** 46
Date Documents Received: April 27, 2006 **Date Notice of Appeal Filed:** April 25, 2006
Order Type: Judgment **OTN:**
Judge: Ammerman, Fredric J. **Lower Court Docket No.:** No. 04-221-CD
 President Judge

ORIGINAL RECORD CONTENTS

Appeal Docket Sheet

Docket Number: 770 WDA 2006

Superior Court of Pennsylvania

Page 3 of 3

April 28, 2006



Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
April 27, 2006	Notice of Appeal Filed	Appellant	Hamilton, Robert
April 28, 2006	Docketing Statement Exited (Civil)		Western District Filing Office


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

JOHN T. GALLAGHER TIMBER TRANSFER	*	
	*	
VS	*	NO. 04-221-C.D.
	*	
ROBERT HAMILTON, t/a	*	
HAMILTON ENTERPRISES,	*	

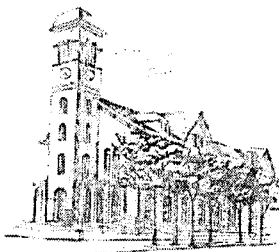
ORDER

NOW, this 25th day of April, 2006, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Robert Hamilton, Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED
04/25/06
APR 25 2006
William A. Shaw
Prothonotary/Clerk of Courts
ICC Anys. Monahan
Bell
Robert Cummings
ICC ~~Box~~ - PO Box 77
Wallaceton, PA
16876
(16876)



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 4/25/00

_____ You are responsible for serving all appropriate parties.

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

X _____ Plaintiff(s)/Attorney(s)

X _____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

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

JOHN T. GALLAGHER TIMBER
TRANSFER,

Appellee

vs.

ROBERT HAMILTON, t/a
HAMILTON ENTERPRISES,
Appellant

NO. 04-221-CD

Type of Case: Civil

Type of Pleading:
Notice of Appeal

Filed on Behalf of:
Robert Hamilton

Counsel of Record for
This Party:
F. Cortez Bell, III, Esquire
I.D. #30183

F. CORTEZ BELL, III, ESQUIRE
318 East Locust Street
P.O. Box 1088
Clearfield, PA. 16830
Telephone: 814-765-5537

FILED

0/8:30 am

APR 25 2006

pd \$45.00

TCL Atty Bell

1 CC Superior Court

William A. Shaw
Prothonotary

w/ \$60.00 check

#14

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

JOHN T. GALLAGHER TIMBER	:	
TRANSFER,	:	
Appellee	:	
	:	
vs.	:	NO. 04-221-CD
	:	
ROBERT HAMILTON, t/a	:	
HAMILTON ENTERPRISES,	:	
Appellant	:	

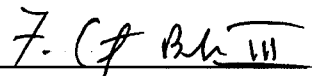
NOTICE OF APPEAL

Notice is hereby given that Robert Hamilton, Appellant in the above captioned matter, hereby appeals to the Superior Court of Pennsylvania from the entry of Judgment dated April 6, 2006. Said Judgment was entered pursuant to a Praecipe For Entry of Judgment filed April 6, 2006, a copy of which is attached hereto, as well as is evidenced by the entry of said Judgment upon the docket in this matter as evidenced by the attached copy of the docket entries. Said Judgment was further entered pursuant and as a result of that court Order dated March 28, 2006 whereby the Plaintiff's Motion for Judgment on the Pleadings was granted as evidenced by the attached copy of said court Order.

Respectfully submitted,

F. CORTEZ BELL, III, ESQUIRE

By:


F. Cortez Bell, III, Esquire
Counsel for Appellant Hamilton
Supreme Court No. 30183

F. Cortez Bell, III, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA. 16830
Telephone: 814-765-5537

Dated: April 25, 2006

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

VS

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

PRAECIPE TO ENTER JUDGMENT

TO: Prothonotary

Kindly enter judgment in favor of John Gallagher Timber Transfer in the amount of \$16,640.89,
which is equivalent to the total judgment amount plus pre-judgment interest.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: Matthew D. Gailey
Matthew D. Gailey, Esquire

*Attorneys for Plaintiff,
John T. Gallaher Timber Transfer*

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

John T. Gallaher Timber Transfer

Vs.

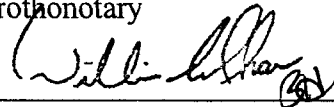
No. 2004-00221-CD

Robert D. Hamilton t/a Hamilton Enterprises

To: Robert D. Hamilton t/a Hamilton Enterprises

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$16,640.89 on April 6, 2006.

William A. Shaw
Prothonotary

A handwritten signature in black ink, appearing to read 'William A. Shaw', is written over a horizontal line.

William A. Shaw

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

JOHN T. GALLAGHER TIMBER
TRANSFER,

Plaintiff

vs.

ROBERT D. HAMILTON, t/a
HAMILTON ENTERPRISES,
Defendant

*
*
*
*
*
*
*
*
*

NO. 04-221-CD

ORDER

NOW, this 28th day of March, 2006, following argument on the Plaintiff's Motion for Judgment on the Pleadings and the Court's review of the parties' briefs, it is the ORDER of this Court that the said Motion be and is hereby GRANTED. The Defendant's Answer and Counterclaim is hereby DISMISSED.

BY THE COURT,

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

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

MAR 29 2006

Attest:

Clerk of Courts

Date: 4/25/2006

Time: 08:09 AM

Page 1 of 1

Clerk of Field County Court of Common Pleas

ROA Report

Case: 2004-00221-CD

Current Judge: Fredric Joseph Ammerman

John T. Gallaher Timber Transfer vs. Robert D. Hamilton, Hamilton Enterprises, Robert D. Cummings

Civil Other

Date		Judge
2/17/2004	Filing: Civil Complaint Paid by: Pietragallo, Boxick & Gordon Receipt number: 1873832 Dated: 02/17/2004 Amount: \$85.00 (Check) 1 CC to Atty. 2 CC to Shff.	No Judge
4/1/2004	Answer, New Matter and Counterclaim to Plaintiff's Complaint. filed by, s/F. Cortez Bell, III, Esquire Verification s/Robert Hamilton Certificate of Service 5 cc to Atty Bell	No Judge
4/16/2004	Praeipce for Writ of Summons to Join Robert D. Cummings as additional Defendant, filed by s/F. Cortez Bell, III, Esq. Three CC Attorney Bell Two CC and two writs to Sheriff	No Judge
5/3/2004	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
5/19/2004	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
6/16/2004	Reply to New Matter and Answer to Counterclaim filed by Atty. Monahan. No CC.	No Judge
1/23/2006	Praeipce Requesting Court Administrator to Assign Case to Judge to Scheduled an Argument Date, filed by s/ Robert J. Monahan, Esquire. 1CC Atty Monahan	No Judge
	Motion For Judgment on The Pleadings, filed by s/ Robert J. Monahan, Esquire. 1CC Atty. Monahan	No Judge
1/24/2006	Order, NOW, this 23rd day of Jan., 2006, upon consideration of Plaintiff's Motion for Judgment on the Pleadings, Ordered that argument has been scheduled for the 24th day of Feb., 2006 at 2:00 p.m. in Courtroom No. 1. By The Court: Fredric J. Ammerman, Pres. Judge. 1CC Atty. Monahan, 1CC Atty. Bell 1 CC R. Cummings (on 1/27/06-late due to Full Court being down)	Fredric Joseph Ammerman
2/24/2006	Answer To Motion For Judgment on the Pleadings, filed by s/ F. Cortez Bell, III, Esquire. 5CC Atty. Bell	Fredric Joseph Ammerman
3/1/2006	Order, NOW, this 24th day of Feb., 2006, following argument on plaintiff's Motion for Judgment on the Pleadings, Ordered that counsel for Def. supply the Court with appropriate brief relative the issue of collateral estoppel/stare decisis within no more than 25 days from this date. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty Monahan, 1CC F. Cortez Bell III, 1CC Robert Cummings	Fredric Joseph Ammerman
3/29/2006	Order, NOW, this 28th day of March, 2006, following argument on the Plaintiff's Motion for Judgment on the Pleadings and the Court's review of the parties' briefs, it is the Order of this Court that the said Motion is Granted. The Defendant's Answer and Counterclaim is hereby Dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Atty. Rober Monahan, F. Cortez Bell, and Robert Cummings P.O. Box 77, Wallaceton PA 16876	Fredric Joseph Ammerman
4/6/2006	Filing: Praeipce to Enter Judgment Paid by: Monahan, Robert J. (attorney for John T. Gallaher Timber Transfer) Receipt number: 1913221 Dated: 04/06/2006 Amount: \$20.00 (Check) Judgment in favor of John Gallgher Timber Transfer and against Robert D. Hamilton t/a Hamilton Enterprises in the amount of \$16,640.89. Filed by s/ Matthew D. Gailey, Esquire. 1CC & Notice to F. Cortez Bell, III, Esquire (envelope provided), Statement to Atty. Gailey	Fredric Joseph Ammerman

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

JOHN T. GALLAGHER TIMBER
TRANSFER,
Appellee

vs.

NO. 04-221-CD

ROBERT HAMILTON, t/a
HAMILTON ENTERPRISES,
Appellant

PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Notice of Appeal
upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.

R.A.P. 121:

Service By Personal Service

David Meholic
Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

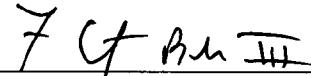
Cathy Warrick
Official Court Reporter
Clearfield County Courthouse
Clearfield, PA 16830

Honorable Fredric J. Ammerman
President Judge
Court of Common Pleas of
of Clearfield County
Clearfield County Courthouse
Clearfield, PA. 16830

Service by First Class Mail

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

By


F. Cortez Bell, III, Esquire
Attorney for Appellant Hamilton
Supreme Court No. 30183

Dated: April 25, 2006

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOHN T. GALLAHER TIMBER
TRANSFER

-VS-

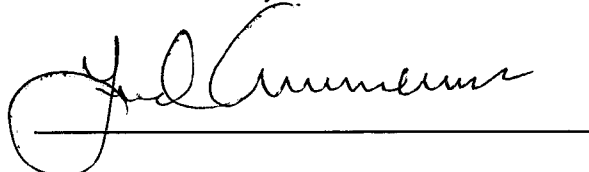
ROBERT D. HAMILTON, t/a
HAMILTON ENTERPRISES

No. 04-221-CD

O R D E R

NOW, this 24th day of February, 2006, following argument on Plaintiff's Motion for Judgment on the Pleadings, it is the ORDER of this Court that counsel for Defendant supply the Court with appropriate brief relative the issue of collateral estoppel/stare decisis within no more than twenty-five (25) days from this date.

BY THE COURT,



President Judge

FILED
MAR 01 2006

William A. Shaw
Prothonotary/Clerk of Courts

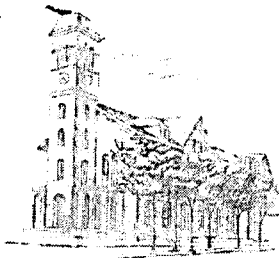
ICC Amy Monahan
ICC F. Cortez Bell III

ICC Robert Cummings
PO Box 77
Wallaceport, PA

60

11

10876



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 3/1/06

_____ You are responsible for serving all appropriate parties.

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

X _____ Plaintiff(s)/Attorney(s)

X _____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

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

JOHN T. GALLAHER TIMBER
TRANSFER,
Plaintiff

vs.

ROBERT HAMILTON, t/a
HAMILTON ENTERPRISES,
Defendant(s)

:
: No. 04-221-CD
:
: Type of Case: Civil
:
: Type of Pleading:
: Answer to Motion For
: Judgment on the Pleadings
:
: Filed on Behalf of:
: Robert Hamilton, t/a
: Hamilton Enterprises
:
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
:
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA 16830
: Telephone: (814) 765-5537
:
:

FILED 5cc
018:4761 Anty Bell
FEB 24 2006 @

William A. Shaw
Prothonotary/Clerk of Courts

#10

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

JOHN T. GALLAHER TIMBER	:	
TRANSFER,	:	
Plaintiff	:	
	:	
vs.	:	No. 04-221-CD
	:	
ROBERT HAMILTON, t/a	:	
HAMILTON ENTERPRISES	:	
Defendant	:	

ANSWER TO MOTION FOR JUDGMENT ON THE PLEADINGS

NOW, comes the Defendant, Robert Hamilton, t/a Hamilton Enterprises, by and through his attorney, F. Cortez Bell, III, Esquire, who for his Answer to Motion for Judgment on the Pleadings would respectfully represent and aver as follows:

ANSWER

1. That Paragraph 1 of Plaintiff's Motion is admitted.
2. That Paragraph 2 of Plaintiff's Motion is admitted.
3. That Paragraph 3 of Plaintiff's Motion is admitted.
4. That Paragraph 4 of Plaintiff's Motion is not a Paragraph to which a response is required. To the extent that a response may be deemed necessary by the Court, the Defendant would deny the averments of Paragraph 4 of the Motion and strict proof of any denied averments contained therein would be demanded at time of trial or hearing in this matter.

5. That Paragraph 5 of Plaintiff's Motion is denied in part and admitted in part. It is specifically denied that Cummings was employed by the Defendant Robert Hamilton and/or Robert Hamilton Enterprises. It is admitted that Cummings did suffer an injury in the nature of a broken leg which resulted in him not being able to be employed for a period of time. It would be averred that the cause of the injury was as a result of Cummings removing the brakes from a log skidder and then driving the same over a side hill such that he was thrown from the skidder causing injury. Strict proof of the denied averments of Paragraph 5 of Plaintiff's Motion would be demanded at time of trial or hearing in this matter.

6. That Paragraph 6 of Plaintiff's Motion is admitted to the extent that the Order was issued as a result of a Workers Compensation proceeding before Michael J. Koll, Workers' Compensation Judge.

7. That Paragraph 7 of Plaintiff's Motion is admitted to the extent that the Order was issued as a result of a Workers' Compensation proceeding before Michael J. Koll, Workers' Compensation Judge.

8. That Paragraph 8 of Plaintiff's Motion is admitted.

9. That Paragraph 9 of Plaintiff's Motion is denied. It is specifically denied that Robert Hamilton or Hamilton Enterprises in any fashion violated Pennsylvania law. As Defendant Hamilton or

Hamilton Enterprises had no employees, there was no need to carry Workers' Compensation Insurance. Strict proof of the denied averments of Paragraph 9 of Plaintiff's Motion would be demanded at time of trial or hearing in this matter.

10. That Paragraph 10 of Plaintiff's Motion would be admitted to the extent that Hamilton has not made payment to Cummings.

11. That Paragraph 11 of Plaintiff's Motion is admitted with some clarification. It would be admitted that the Plaintiff was found liable pursuant to the Orders of the Workers' Compensation Judge.

12. That Paragraph 12 of Plaintiff's Motion is admitted in part and denied in part. It is admitted that the Plaintiff through his insurer has made payment. It is denied that the Defendant failed to honor his obligation or in any manner is responsible to make any payment to the Plaintiff's insurer. Strict proof of the denied averment of Paragraph 12 of the Plaintiff's Motion would be demanded at time of trial or hearing in this matter.

13. That Paragraph 13 of Plaintiff's Motion is admitted in part and denied in part. It is admitted that the Plaintiff through his insurer has made payment. It is denied that the Defendant failed to honor his obligation or in any manner is responsible to make any payment to the Plaintiff's insurer. Strict

proof of the denied averments of Paragraph 13 of the Plaintiff's Motion would be demanded at time of trial or hearing in this matter.

14. That Paragraph 14 of Plaintiff's Complaint would neither be admitted nor denied as it purports to be a statement of law to which no response is necessary. To the extent to which the Court may deem a response necessary the Defendant would deny the averment. Strict proof of the denied averment of Paragraph 14 of the Plaintiff's Motion would be demanded at time of trial or hearing in this matter.

15. That Paragraph 15 of the Plaintiff's Motion is simply a restatement of the averment set forth within Paragraph 14 of the Plaintiff's Motion. Paragraph 15 would neither be admitted nor denied as it purports to be a statement of law to which no response is necessary. To the extent to which the Court may deem a response necessary the Defendant would deny the averment. Strict proof of the denied averment of Paragraph 15 of the Plaintiff's Motion would be demanded at time of trial or hearing in this matter.

16. That Paragraph 16 of the Plaintiff's Motion is denied. It would be averred that collateral estoppel is not applicable to the instant proceeding as defenses are available to the Plaintiff in this proceeding which were not available in the Workers' Compensation proceeding. The averment of Paragraph 16

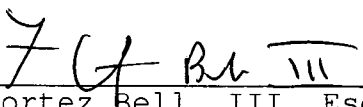
would be denied. Strict proof of the denied averment of Paragraph 16 of the Plaintiff's Motion would be demanded at time of trial or hearing in this matter.

17. Paragraph 17 of the Plaintiff's Motion is a statement of law as to which no responsive pleading is required. To the extent that the Court may require such a response, the Defendant would deny the averment set forth in Paragraph 17. Strict proof of the denied averment would be demanded at time of trial or hearing in this matter.

18. Paragraph 18 of the Plaintiff's Motion is denied. It is specifically denied that every issue raised in the pleadings has previously been denied at a proceeding wherein the Defendant had a full opportunity to raise the same. Strict proof of the denied averments of Paragraph 18 of the Plaintiff's Motion would be demanded at time of trial or hearing in this matter.

WHEREFORE, Defendant Robert Hamilton and/or Hamilton Enterprises respectfully requests that your Honorable Court deny the Motion For Judgment on the Pleadings.

Respectfully submitted,



F. Cortez Bell, III, Esquire
Attorney for Defendant

VERIFICATION

I, Robert Hamilton, verify that the statements made in the foregoing Answer to Motion for Judgment on the Pleadings are true and correct to the best of my knowledge, information and belief.

This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsification to authorities.

Dated: 2-21-2006



Robert Hamilton

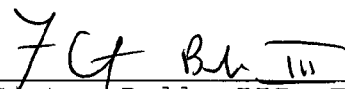
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOHN T. GALLAHER TIMBER	:	
TRANSFER,	:	
Plaintiff	:	
	:	
vs.	:	No. 04-221-CD
	:	
ROBERT HAMILTON, t/a	:	
HAMILTON ENTERPRISES	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer to Motion For Judgment on the Pleadings upon the following persons by personal service addressed as follows

Timothy Smith, Esquire
Robert J. Monahan, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eight Floor
One Oxford Centre
Pittsburgh, PA 15219



F. Cortez Bell, III, Esquire
Attorney for Plaintiff

Date: February 24, 2006

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

JOHN T. GALLAHER TIMBER
TRANSFER

vs.

ROBERT D. HAMILTON, t/a
HAMILTON ENTERPRISES

:
:
:
: No. 04-221-CD
:
:
:

ORDER

AND NOW, this 23 day of January, 2006, upon consideration of Plaintiff's Motion for Judgment on the Pleadings filed in the above matter, it is the Order of the Court that argument has been scheduled for the 24th day of February, 2006, at 2:00 P.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

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


FILED

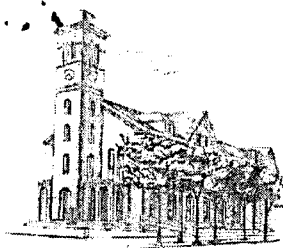
01/11/06
JAN 24 2006

William A. Shaw
Prothonotary/Clerk of Courts

1/27/06 1 cc R. Cummings
(late date due to Full
Court being down)

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 1/24/06

_____ You are responsible for serving all appropriate parties.

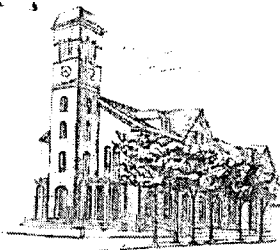
X The Prothonotary's office has provided service to the following parties:

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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Sincerely,

William A. Shaw
Prothonotary

DATE: 1/27/06 (Cummings)

_____ You are responsible for serving all appropriate parties.

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

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Plaintiff,

vs.

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Defendant.

CIVIL ACTION NO.: 04-221-CD

**PRAECIPE REQUESTING COURT
ADMINISTRATOR TO ASSIGN CASE
TO JUDGE TO SCHEDULE AN
ARGUMENT DATE**

Filed on behalf of Plaintiff:
JOHN T. GALLAHER TIMBER TRANSFER

Counsel of Record for
This Party:

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

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

(412) 263-2000

FILED
m 110.51.87
JAN 23 2006

1cc
Atty Monahan

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 15656

Defendant.

**PRAECIPE REQUESTING COURT ADMINISTRATOR TO ASSIGN CASE TO JUDGE
TO SCHEDULE AN ARGUMENT DATE FOR CONSIDERATION**

AND NOW, comes Plaintiff John T. Gallaher Timber Transfer (hereinafter "Gallaher"), by and through its counsel, Robert J. Monahan, Esquire, and the law firm of Pietragallo Bosick & Gordon LLP, and requests the Court Administrator to assign this matter to a Judge to schedule an argument date for consideration of the Motion for Judgment on the Pleadings.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: 

Robert J. Monahan, Esquire

*Attorneys for Plaintiff,
John T. Gallaher Timber Transfer*


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Praecipe Requesting Court Administrator to Assign Case to Judge to Schedule an Argument Date** was served via U.S. First-Class Mail, postage prepaid, this 20 day of January, 2006, upon the following individual(s):

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656
(Defendant)

PIETRAGALLO, BOSICK & GORDON

By:


Robert L. Monahan, Esquire

*Attorneys for Plaintiff,
John T. Gallaher Timber Transfer*

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Defendant.

CIVIL ACTION NO.: 04-221-CD

**REPLY TO NEW MATTER AND ANSWER
TO COUNTERCLAIM**

Filed on behalf of:
Plaintiff, John T. Gallaher Timber Transfer

Counsel of Record for
This Party:

Timothy R. Smith, Esquire
Pa. I.D. #63282

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

PIETRAGALLO, BOSICK & GORDON
Firm #834

38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED

JUN 16 2004

William A. Shaw
Prothonotary/Clerk of Courts

216

○ ○

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, 16656

Defendant.

REPLY TO NEW MATTER AND ANSWER TO COUNTERCLAIM

AND NOW, comes Plaintiff, John T. Gallaher Timber Transfer, by and through its counsel, Timothy R. Smith, Esquire, Robert J. Monahan, Esquire and the law firm of Pietragallo, Bosick & Gordon, and files and serves the following Reply to New Matter and Answer to Counterclaim, setting forth as follows:

REPLY TO DEFENDANT'S NEW MATTER

15. In response to Paragraph 15 of Defendant's New Matter, Plaintiff incorporates herein by reference the allegations of his Complaint as if set forth fully herein.

16. Admitted

17. Admitted.

18. Admitted. (This response pertains to the first paragraph 18 of defendant's New Matter.)

18. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 18, therefore the allegations of Paragraph 18 are denied and strict proof thereof is demanded at time of trial.

19. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 19, therefore the allegations of Paragraph 19 are denied and strict proof thereof is demanded at time of trial.

20. Admitted in part and denied in part. It is admitted that Plaintiff did not mark the timber to be removed in blue. As to the remaining allegations, after a reasonable investigation Plaintiff is

without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 20, therefore the allegations of Paragraph 20 are denied and strict proof thereof is demanded at time of trial.

21. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 21, therefore the allegations of Paragraph 21 are denied and strict proof thereof is demanded at time of trial.

22. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 22, therefore the allegations of Paragraph 22 are denied and strict proof thereof is demanded at time of trial.

23. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 23, therefore the allegations of Paragraph 23 are denied and strict proof thereof is demanded at time of trial.

24. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 24, therefore the allegations of Paragraph 24 are denied and strict proof thereof is demanded at time of trial.

25. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 25, therefore the allegations of Paragraph 25 are denied and strict proof thereof is demanded at time of trial.

26. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 26, therefore the allegations of Paragraph 26 are denied and strict proof thereof is demanded at time of trial.

27. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 27, therefore the allegations of Paragraph 27 are denied and strict proof thereof is demanded at time of trial.

28. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 28, therefore the allegations of Paragraph 28 are denied and strict proof thereof is demanded at time of trial.

29. Admitted.

30. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 30, therefore the allegations of Paragraph 30 are denied and strict proof thereof is demanded at time of trial.

31. Admitted.

32. Denied, and strict proof thereof is required at the time of trial. Plaintiff contacted Defendant to perform tree removal services, and at no time did Plaintiff solicit the employment of Robert Cummings.

33. Admitted.

34. Admitted.

35. It is admitted that Plaintiff was advised by Defendant that Robert Cummings was allegedly an independent contractor. It is further admitted that Plaintiff was advised by Defendant that Defendant had no workers' compensation insurance for Robert Cummings and that it was unnecessary because of a contract entered into between Defendant and Robert Cummings.

36. All of the allegations set forth in Paragraph 36 are denied, and strict proof thereof is required at the time of trial. At no time did Plaintiff advise Defendant of any intent to use Robert Cummings for purpose of removal of timber. Plaintiff contracted with Defendant for the purpose of the removal of timber. It is further denied that Plaintiff ever advised Defendant that Plaintiff's workers' compensation insurance would cover any potential injuries, or that Plaintiff would allege that Robert Cummings worked for Plaintiff, if any injury in fact occurred.

37. Denied, and strict proof thereof is required at the time of trial. The amounts paid to Robert Cummings were paid on behalf of Plaintiff by Court Order of Workers' Compensation Judge Michael E. Koll. Plaintiff's Complaint has been properly plead and Plaintiff's damages are recoverable in this matter.

38. Denied, and strict proof thereof is required at the time of trial. According to the conclusions of law of Workers' Compensation Judge Michael E. Koll in the matter of Cummings v.

Hamilton, et al., which is the case that the instant action arises out of, the court found Defendant Hamilton to be the employer of Robert Cummings at the time of Mr. Cummings' injury.

39. Paragraph 39 contains conclusions of law to which no response is required. However, insofar as a response is deemed required, the allegations contained in Paragraph 39 are denied, and strict proof thereof is demanded at the time of trial.

WHEREFORE, Plaintiff John T. Gallaher Timber Transfer respectfully requests that judgment be entered in its favor on all claims asserted in the Complaint in this action, together with costs.

REPLY TO DEFENDANT'S COUNTERCLAIM

40. Plaintiff incorporates herein by reference the allegations of his Complaint and Paragraph 15 through 39 of its Reply to Defendant's New Matter as if fully set forth at length.

41. Denied, and strict proof thereof is demanded at the time of trial. According to the conclusions of law of Workers' Compensation Judge Michael E. Koll in the matter of Cummings v. Hamilton, et al., which is the case that the instant action arises out of, the court found Defendant Hamilton to be the employer of Robert Cummings at the time of Mr. Cummings' injury.

42. Denied, and strict proof thereof is demanded at the time of trial. According to the conclusions of law of Workers' Compensation Judge Michael E. Koll in the matter of Cummings v. Hamilton, et al., which is the case that the instant action arises out of, the court found Defendant Hamilton to be the employer of Robert Cummings at the time of Mr. Cummings' injury.

43. Admitted in part and denied in part. It is admitted that Plaintiff was aware that Defendant did not have workers' compensation insurance covering Robert Cummings, but was informed by Defendant that such insurance was unnecessary due to the contract entered into between Defendant and Robert Cummings. The remainder of the allegations contained with Paragraph 43 are denied, and strict proof thereof is demanded at the time of trial. It is denied that Plaintiff was made aware that Defendant allegedly did not have any employees. It is further denied that Plaintiff solicited, permitted and/or used the services of Robert Cummings in order to remove timber. Plaintiff solicited Defendant for the removal of timber.

44. Admitted in part and denied in part. It is admitted that Gallaher had a conversation with Hamilton concerning the status of Hamilton's workers' compensation insurance. The remainder of the allegations contained in Paragraph 44 are denied and strict proof thereof is demanded at the time of trial. Plaintiff contracted with Defendant to perform tree removal services.

45. Denied, and strict proof thereof is demanded at the time of trial. The amounts paid to Robert Cummings were paid on behalf of Plaintiff by the Court Order of the Workers' Compensation Judge Michael E. Koll. Plaintiff's Complaint has been properly plead and Plaintiff's damages are recoverable in this matter.

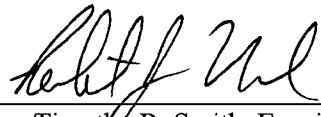
46. Paragraph 46 contains conclusions of law to which no response is required. However, insofar as a response is deemed required, the allegations contained in Paragraph 46 are denied, and strict proof thereof is demanded at the time of trial.

47. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 47, therefore the allegations of Paragraph 47 are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Plaintiff John T. Gallaher Timber Transfer respectfully requests that judgment be entered in its favor on all claims asserted in the Complaint in this action, together with costs.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: 

Timothy R. Smith, Esquire
Robert J. Monahan, Esquire

*Attorneys for Plaintiffs,
John T. Gallaher Timber Transfer*

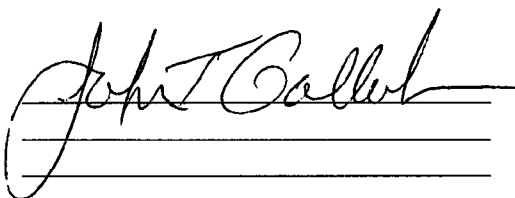
VERIFICATION

I, John T. Gallaher, verify that the statements contained in the foregoing **Reply to New Matter and Answer to Counterclaim** is true and correct to the best of my knowledge, information and belief.

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

John T. Gallaher Timber Transfer

Date: 6/14/04

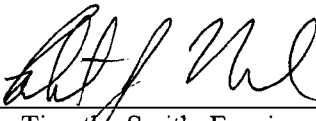
By: 

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Reply to New Matter and Answer to Counterclaim, was served via U.S. First-Class Mail, postage prepaid, this 15 day of June, 2004, upon the following individual(s):

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656

PIETRAGALLO, BOSICK & GORDON

By: 

Timothy Smith, Esquire
Robert J. Monahan, Esquire

The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

In The Court of Common Pleas of Clearfield County, Pennsylvania

JOHN T. GALLAHER TIMBER TRANSFER

VS.

Sheriff Docket #

15456

04-221-CD

HAMILTON, ROBERT D. t/a HAMILTON ENTERPRISES -VS-

PRAECIPE & WRIT TO JOIN ADDITIONAL DEFENDANT

SHERIFF RETURNS

NOW MAY 11, 2004 AT 11:48 AM SERVED THE WITHIN PRAECIPE & WRIT TO JOIN ADDITIONAL DEFENDANT ON ROBERT D. CUMMINGS, DEFENDANT AT RESIDENCE, RUSNAK LANE, TROY HILL TR. CT., PHILPSBURG, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ROBERT D. CUMMINGS TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & WRIT TO JOIN ADDITIONAL DEFENDANT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: NEVLING/HUNTER

Return Costs

Cost	Description
38.24	SHERIFF HAWKINS PAID BY: ATTY CK# 1012
10.00	SURCHARGE PAID BY: ATTY CK# 1013

Sworn to Before Me This

19 Day Of May 2004
William A. Shaw

So Answers,

Chester A. Hawkins
Cy Marilyn Harris
Chester A. Hawkins
Sheriff

FILED

0 2:00 PM

MAY 19 2004

EO
KOS

William A. Shaw
Prothonotary

82

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WRIT TO JOIN ADDITIONAL DEFENDANT

John T. Gallaher Timber Transfer
Plaintiff(s)

Vs.

Robert D. Hamilton, t/a
Hamilton Enterprises

2004-00221-CD

Defendant(s)

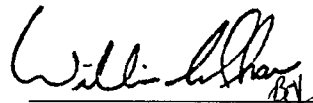
Vs.

Robert D. Cummings
Additional Defendant(s)

To: Robert D. Cummings

You are notified that Robert D. Hamilton, t/a Hamilton Enterprises, has joined you as an additional defendant in this action, which you are required to defend.

Dated: April 16, 2004



Prothonotary

Filing Attorney: F. Cortez Bell, III, Esq.
318 E. Locust St.
Clearfield, PA 16830

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


JOHN T. GALLAHER TIMBER
TRANSFER,
 Plaintiff
 vs.
ROBERT D. HAMILTON, t/a
HAMILTON ENTERPRISES,
 Defendant(s)

:
: No. 04-221-CD
:
: Type of Case: Civil
:
: Type of Pleading:
: Praecipe for Writ of Summons
:
: Filed on Behalf of:
: Robert D. Hamilton, t/a
: Hamilton Enterprises
:
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
:
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA 16830
: Telephone: (814)765-5537
:
:

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

APR 16 2004

Attest.


Prototary,
Clerk of Courts

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

JOHN T. GALLAHER TIMBER	:	
TRANSFER,	:	
Plaintiff	:	
vs.	:	No. 04-221-CD
ROBERT D. HAMILTON, t/a	:	
HAMILTON ENTERPRISES	:	
Defendant	:	

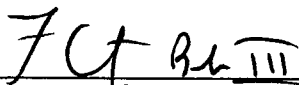
PRAECIPE FOR WRIT OF SUMMONS

TO CLEARFIELD COUNTY PROTHONOTARY:

Please issue a Writ of Summons to join the below listed party
as an additional Defendant in the above captioned matter:

Robert D. Cummings
P.O. Box 77
Wallaceton, PA 16876

By



F. Cortez Bell, III, Esquire
318 East Locust Street
P. O. Box 1088
Clearfield, PA 16830
Telephone: (814) 765-5537
I.D. #30183

DATED: April 16, 2004

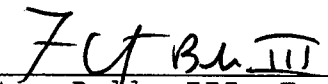
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOHN T. GALLAHER TIMBER	:	
TRANSFER,	:	
Plaintiff	:	
vs.	:	No. 04-221-CD
ROBERT D. HAMILTON, t/a	:	
HAMILTON ENTERPRISES	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Praecipe for Writ of Summons upon the following persons by mailing such copy first class mail, postage prepaid to:

Timothy Smith, Esquire
Robert J. Monahan, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eight Floor
One Oxford Centre
Pittsburgh, PA 15219



F. Cortez Bell, III, Esquire
Attorney for Plaintiff

Date: April 16, 2004

In The Court of Common Pleas of Clearfield County, Pennsylvania

JOHN T. GALLAHER TIMBER TRANSFER

VS.

HAMILTON, ROBERT D. t/a HAMILTON ENTERPRISES

COMPLAINT

Sheriff Docket # 15191

04-221-CD

SHERIFF RETURNS

NOW FEBRUARY 18, 2004 AT 1:00 PM SERVED THE WITHIN COMPLAINT ON ROBERT D. HAMILTON T/A HAMILTON ENTERPRISES, DEFENDANT AT RESIDENCE/EMPLOYMENT, ROAD 1 BOX 16, IRVONA, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ANNIE HAMILTON, WIFE/PIC A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: NEVLING/MCCLEARY

Return Costs

Cost	Description
38.62	SHERIFF HAWKINS PAID BY: ATTY CK# 4779
10.00	SURCHARGE PAID BY: ATTY CK# 4780

Sworn to Before Me This

3rd Day Of May 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 Manlyr Hamr
Chester A. Hawkins
Sheriff

FILED
012:12511 KB
MAY 03 2004

William A. Shaw
Prothonotary/Clerk of Courts

(4)

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Defendant.

CIVIL ACTION NO.: AR-

04-221-0

COMPLAINT IN CIVIL ACTION

Code: _____

Filed on behalf of:

Plaintiff, John T. Gallaher Timber Transfer

Counsel of Record for

This Party:

Timothy R. Smith, Esquire
Pa. I.D. #63282

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

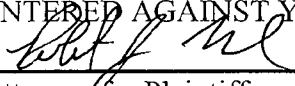
PIETRAGALLO, BOSICK & GORDON
Firm #834

38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

NOTICE TO DEFENDANTS:

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

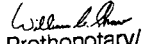


Attorney for Plaintiff

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

FEB 17 2004

Attest.


Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Civil Action No.: AR-

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, 16656

Defendant.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney, and filing in writing with the Court your defenses or objections to the claims as 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 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 OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
Telephone: (814) 765-2641 Extension 50-51

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Civil Action No.: AR-

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, 16656

Defendant.

COMPLAINT IN CIVIL ACTION

AND NOW comes Plaintiff, John T. Gallaher Timber Transfer (“Gallaher”) by and through their attorneys, Pietragallo, Bosick & Gordon, Timothy R. Smith, Esquire, and Robert J. Monahan, Esquire against defendant Robert Hamilton doing business as Hamilton Enterprises (“Hamilton”), asserts as follows:

1. Gallaher is a Pennsylvania company with its principal place of business in Irvona, Pennsylvania.
2. Robert Hamilton is an individual who resides in Pennsylvania and conducts business as Hamilton Enterprises, a Pennsylvania company with its principal place of business in Irvona, Pennsylvania. Hereinafter, Robert Hamilton individually and doing business as Hamilton Enterprises will be collectively referred to as “Hamilton”.
3. Hamilton, at all times relevant hereto, did business in Pennsylvania.
4. Hamilton regularly conducts business in Clearfield County.

5. On or about August 13, 1999, Robert Cummings ("Cummings") was an employee of Hamilton.

6. On or about August 13, 1999, Cummings suffered a work-related injury during the course and scope of his employment with Hamilton, in the nature of a broken leg resulting in a period of temporary total disability from August 13, 1999 through March, 2000.

7. Gallaher was deemed to be the statutory employer of Robert Cummings under the Pennsylvania Workers' Compensation Act.

8. It was ordered on January 31, 2002, amended on February 19, 2002 and again amended on February 26, 2002 by Michael E. Koll, Workers' Compensation Judge of Clearfield District Office, that Cummings was entitled to receive workers' compensation payments from the time he missed work from August 13, 1999 through March of 2000. Pursuant to the Amended Order of the Workers' Compensation Judge dated February 19, 2002 and the Amended Order dated February 26, 2002, Hamilton was held primarily liable to pay Cummings his workers' compensation benefits. (Exhibit "A" and "B" attached hereto.)

9. Evidently, contrary to Pennsylvania law, Hamilton did not carry Workers' Compensation Insurance at the time of Cumming's injury.

10. Hamilton failed to pay Cummings the amount owed pursuant to the order dated January 31, 2002 and amended on February 19, 2002.

11. Pursuant to the Order of the Workers' Compensation Judge dated January 31, 2002, the Amended Order dated February 19, 2002, and the Amended Order dated February 26, 2002, Gallaher was found secondarily liable. (Exhibit "A", "B" and "C" attached hereto.)

12. Due to the failure of defendant to honor its obligation, on or about March 22, 2003, Gallaher, through its insurer, paid Cummings the amount of \$7,854.28 pursuant to the

Order of the Workers' Compensation Judge dated January 31, 2002, the Amended Order dated February 19, 2002 and the Amended Order dated February 26, 2002.

13. On or about October 31, 2003, Gallaher, through its insurers, paid and settled the Public Welfare Lien in the amount of \$6,327.06 pursuant to the Order of the Worker's Compensation Judge dated January 31, 2003, the Amended Order dated February 19, 2002, and the Amended Order dated February 26, 2002 (Exhibit "D" attached hereto).

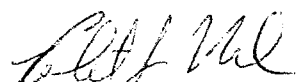
14. Hamilton's failure to follow the Order of Workers' Compensation Judge Koll and pay Cummings forced Gallaher to pay Cummings. Therefore, Gallaher is entitled to recovery from Hamilton, who was primarily liable, in the amount that was paid to Cummings as well as any expenses Gallaher incurred in defense of workers' compensation suit as allowed under the Pennsylvania Workers' Compensation Act Article III §302b (77 P.S. §462).

WHEREFORE, Plaintiff Gallaher demands a judgment in an amount not to exceed \$20,000.00.

Date: 2/11/04

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: 
Timothy R. Smith, Esquire
Robert J. Monahan, Esquire

*Attorneys for Plaintiffs,
John T. Gallaher Timber Transfer*

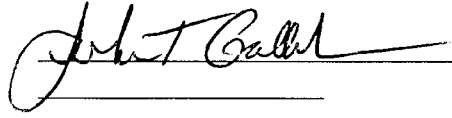
VERIFICATION

I John T. Gallaher verify that the statements contained in the foregoing **Complaint** is true and correct to the best of my knowledge, information and belief.

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

John T. Gallaher Timber Transfer

Date: Jan 09-2004

By: 



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

Circulation Date: 02/26/2002

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

AMENDED/CORRECTED DECISION COVER LETTER

Bureau Claim Number: 2150691

Insurer Claim Number:

Petitions:

Claim-Pet

Joinder-Pet

ROBERT D. CUMMINGS
P.O. BOX 77
WALLACETON, PA 16876-0000

DAVID C MASON ESQ
PO BOX 28
PHILLIPSBURG, PA 16866

Vs

ROBERT HAMILTON
T/A RE HAMILTON ENTERPRISES
RD 1 BOX 16
IRVONA, PA 16656-0000

BELL SILBERBLATT & WOOD
318 E LOCUST ST
CLEARFIELD, PA 16830

JOHN T GALLAHER TIMBER TRANSFERS
P O BOX 304
IRVONA, PA 16656

AMERICAN INTERSTATE INSURANCE COMPANY
PO BOX 768
INDIANA, PA 15701

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH, PA 15219

HARDWOODS OF MICHIGAN, INC.
430 DIVISION STREET
P. O. BOX 334
CLINTON, MI 49236

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

The attached Decision of the Judge is final unless an appeal is taken to the Workers' Compensation Appeal Board as provided by law.

If you do not agree with this Decision, an appeal must be filed with the Workers' Compensation Appeal Board within 20 days of the date of this notice.

Forms for an appeal may be obtained from the Workers' Compensation Appeal Board, Capital Associates Building
901 North Seventh Street
Third Floor South
Harrisburg, PA 17102

EXHIBIT

tabbies

A

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

WALKER LUMBER, INC.
P O BOX 60
WOODLAND, PA 16881

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

FAMOUS & ASSOCIATES
29 BALA AVE STE 122
BALA CYNWYD, PA 19004

AMERICAN INTERSTATE INSURANCE COMPANY
2301 HWY 190 WEST
DERIDDER, LA 70634

LUMBER MUTUAL INSURANCE CO
POINT WEST OFFICE CTR
ONE SPEEN ST
FRAMINGHAM, MA 01701

NORTH AMERICAN LUMBER INS CO
P O BOX 835
FRAMINGHAM, MA 01701

Employee Witnesses & Exhibits:

Robert Cummings, claimant (11-14-00; 03-22-01)

- 1- Logger Liability and Hold Harmless Agreement
- 2- 02-20-01 DPW Medical Lien and Expenses
- 3- 11-22-00 Correspondence from Kathleen Gillie (Mancing and Assoc) to Atty Mason
- 4- Winber Medical Center Accounting Print-out

Employer Witnesses & Exhibits:

None

Employer Counsel Witnesses & Exhibits:

John Gallagher (03-22-01)

Robert Hamilton (03-22-01)

George Caladonna (03-22-01)

Hamilton/Insurer Witnesses & Exhibits:

- A- Copy of 1996 Form 1099-MISC for Robert Cummings
- B- Copy of Note to Walter Hopkins and Company to prepare Form 1099 for George Caldana, Robert Cummings and Ronald queen
- C- Copy of 1998 Form 1099-MISC for Robert Cummings

Insurer Counsel-Michigan Hwd. Witnesses

Steve English (03-22-01)

Walker/Insurer Witnesses & Exhibits:

- A- Certificate of Liability Insurance for John Gallaher Logging

Hearings:

3/22/2001 13:00:00	Held
1/30/2001 13:00:00	Postponed by Employer Counsel on 01/29/01
11/14/2000 09:00:00	Held
8/8/2000 09:00:00	Canceled by Employee Counsel on 08/04/00
4/11/2000 09:45:00	Held

AMENDED DECISION

1. By Decision and Order of January 31, 2002, the Claim Petition filed by Claimant/Employee, Robert D. Cummings, against Defendant/Employer, Robert Hamilton, was granted. Pursuant to such Decision and Order it was noted that Counsel for Claimant had asserted the existence of a twenty percent (20%) Fee Agreement; but, as no Agreement had been submitted, such was not addressed within the Order.
2. Subsequently, by correspondence of February 15, 2002, Counsel for John T. Gallagher Timber Transfers, a Defendant who has been found to be a statutory Employer of the Claimant, being required to make payment of compensation benefits, in the event such are not paid directly by Defendant/Hamilton, requested clarification of the Order with respect to the attorney fee issue. Counsel for John T. Gallagher Timber Transfers requested clarification as to whether twenty percent (20%) attorney's fees should be paid directly to Claimant's Counsel, or one hundred percent (100%) of the funds paid directly to Mr. Cummings, without deducting for attorney's fees.
3. By Revised Order of February 19, 2002, Counsel for Claimant was to submit a Fee Agreement within ten (10) days. Thereafter, by correspondence of February 22, 2002, Counsel for Claimant, David C. Mason, Esquire, submitted a Contingent Fee Agreement executed by the Claimant and dated October 6, 1999. Such Agreement provides for an attorney's fee of twenty percent (20%) of all gross sums recovered.
4. Defendant/Employer shall likewise be granted an additional ten (10) day extension for making payment of such amounts, with the accrual of any additional interest, pending confirmation as to whether Counsel for Claimant intends to submit such Fee Agreement.

Accordingly, the following Amended Order is entered. The balance of the January 31, 2002 Decision and Order is otherwise incorporated herein by reference, in full.

Robert D. Cummings vs. Robert Hamilton t/a Hamilton Enterprises, et al
Claim/Joinder Petitions
Bureau Claim No. 2150691
Page 2 of 1

AMENDED ORDER

AND NOW, this 26th day of February, 2002, it is hereby Ordered that Defendant/ Insurer shall deduct a twenty percent (20%) attorney's fee from all compensation payable pursuant to the Decision and Order of January 31, 2002, making such payable directly to Counsel for Claimant, David C. Mason, Esquire.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office

MEK:lfb



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

Circulation Date: 02/19/2002

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

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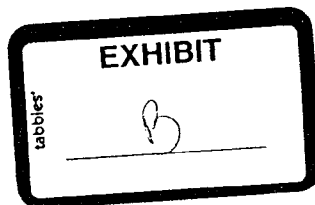
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Clearfield, PA 16830-2445

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Third Floor South
Harrisburg, PA 17102



DIARY 3/4
Deadline 3/11

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

WALKER LUMBER, INC.
P O BOX 60
WOODLAND, PA 16881

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FAMOUS & ASSOCIATES
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None

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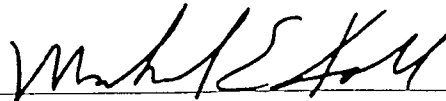
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Accordingly, the following Revised Order is entered. The balance of the January 31, 2002 Decision and Order is otherwise incorporated herein by reference, in full.

AMENDED ORDER

AND NOW, this 19th day of February, 2002, in the absence of Counsel for Claimant's submission of a Fee Agreement within ten (10) days of this Amended Order, Defendant/Employer shall be entitled to make payment of one hundred percent (100%) of the amounts ordered to be paid pursuant to the January 31, 2002 Order, directly the Claimant, without deduction of attorney's fees. Defendant/Employer shall likewise be granted an additional ten (10) day extension for making payment of such amounts, with the accrual of any additional interest, pending confirmation as to whether Counsel for Claimant intends to submit such Fee Agreement.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office

A: 42935



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

Circulation Date: 01/31/2002

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

FEB 05 2002

DECISION RENDERED COVER LETTER

Bureau Claim Number: 2150691

Insurer Claim Number:

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Joinder-Pet

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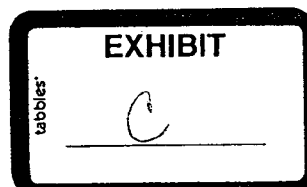
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Robert Hamilton (03-22-01)

George Caladonna (03-22-01)

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FINDINGS OF FACT

1. The Claimant, Robert D. Cummings, filed a Claim Petition on or about February 14, 2000, asserting that he suffered a work injury on May 3, 1997, in the nature of a concussion from being struck on the head by a tree, during the course and scope of his employment with Defendant/Employer, Robert Hamilton, t/a Hamilton Enterprises. At or about such time, the Claimant additionally filed a Claim Petition asserting that, on August 13, 1999, he suffered a work injury during the course and scope of his employment with Robert Hamilton, t/a Hamilton Enterprises, in the nature of a severely comminuted fracture of the tibia/fibula - left leg, lacerations of the scalp, bruise, contusion injury to his left shoulder. The Claimant's Petitions were assigned to this Workers' Compensation Judge on March 14, and March 20, 2000, respectively. Defendant/Employer has filed Answers, denying the material averments of each Petition.
2. An initial pretrial conference was held in this matter on April 11, 2000. At such time, the parties were granted extensions for the completion of discovery, due to the possibility of the joinder of other potential employers, including statutory employers.
3. Subsequently, Defendant/Employer, Robert Hamilton, t/a Hamilton Enterprises, filed Petitions for Joinder of Additional Defendants, joining as additional defendants, John T. Gallagher Timber Transfers, Michigan Hardwoods and C.A. Walker Lumber, Inc. Each Defendant has filed responsive Answers denying the material averments of such Petition[s].
4. A hearing on all Petitions was held on November 14, 2000. At such time, in support of his Claim Petitions, the testimony of the Claimant was presented, in pertinent part, as follows:
 - a. The Claimant testified that, as of the time of the hearing, he was forty-seven (47) years of age and had worked in the woods and timber business all of his life. He testified that, on August 13, 1999, he was working cutting timber for Robert Hamilton, with a coworker, George Caldana, in Windber, Pennsylvania. The Claimant testified that this was the second time he had been on such property to cut timber, the first time cutting timber for Robert Hamilton, for a period of approximately three (3) months. He indicated that, on the most recent occasion, he had been on the property for only a few weeks. The Claimant testified that, in the interim between the two (2) periods of cutting timber in Windber, he continued working cutting timber for Robert Hamilton. (11/14/2000 Hearing N.T., pp. 6-10)
 - b. The Claimant testified that his duties entailed cutting down trees with a chain saw, owned by Robert Hamilton; that he would use a log skidder to haul the logs to where Mr. Caldana was working; and that Mr. Caldana would cut up the trees and skid them to the log landing area, using skidders owned by Robert Hamilton. The Claimant testified that, other than a cable cutter and a three-quarter (3/4) socket set, the tools and equipment which he used were owned by Robert Hamilton and maintained at Robert Hamilton's expense. The Claimant indicated that Robert Hamilton also paid for fuel for the equipment. (11/14/2000 Hearing N.T., pp. 6-15)

- c. The Claimant testified that, at the Windber property, it was his understanding he was cutting "Walker's timber". The Claimant testified that he did not know who was the owner of the property. The Claimant indicated that Mr. Caldana would advise him what to do and, Robert Hamilton and John Gallagher showed Mr. Caldana where the timber was to be cut. The Claimant testified that after the logs were taken to the log landing, such would be loaded onto a log truck, owned by John Gallagher, who would haul such timber to Michigan Hardwood. (11/14/2000 Hearing N.T., pp. 10-16)
- d. The Claimant testified that he started working for Robert Hamilton in October or November of 1996 and continued working for Mr. Hamilton up through August 13, 1999. He indicated he did not work for anyone else during such time period. The Claimant indicated that he was paid at the rate of \$7.00 per hour, working approximately ten (10) hours per day, seven (7) days per week. He indicated that, when he and George Caldana were finished with one work site, he would be directed to the next work site by Robert Hamilton. The Claimant indicated that, although Robert Hamilton was not in the woods very often due to a disability, he would advise George Caldana and himself as to the size or type of trees to be cut. (11/14/2000 Hearing N.T., pp. 15-21)
- e. The Claimant testified that, on August 13, 1999, while operating a log skidder owned by Robert Hamilton, the brakes went out while he was on the side of a mountain; that the skidder rolled over, crushing his left leg against a tree. The Claimant testified that he was subsequently taken to Conemaugh Hospital by Mr. Caldana, where he received treatment for a broken leg, including the insertion of surgical pins. The Claimant indicated that he still has problems with the leg, especially in cold and wet weather. (11/14/2000 Hearing N.T., pp. 22-25)
- f. The Claimant acknowledged that, in October of 1996, he signed a contract between he and Mr. Hamilton. The Claimant denied reading or looking at such document before signing, or ever being asked for proof of Workers' Compensation or liability insurance, that he was required to have. The Claimant indicated that he believes everyone who worked for Robert Hamilton signed such a contract. The Claimant testified that he never employed anyone to help him on the job; and that either Robert Hamilton or George Caldana were the individuals to hire any additional people for the different jobs. The Claimant indicated he did not sign one of the contracts each time he went to a different job site. He indicated that, to the best of his knowledge, either Robert Hamilton or George Caldana would be the individuals to fire people from jobs. The Claimant, when further questioned about reading the contract, indicated that he cannot read very well and did not have much time to sign it. (11/14/2000 Hearing N.T., pp. 26-28)
- g. The Claimant testified that he was no longer receiving medical treatment as a result of his August 13, 1999 injury. (11/14/2000 Hearing N.T., pp. 28-29)
- h. Upon cross examination, the Claimant acknowledged that Mr. Caldana was present at the time that he signed the "Logger Liability and Hold Harmless Agreement", Claimant's Exhibit 1. The Claimant denies that Mr. Hamilton went

point-by-point through the Agreement with him. He denies that Mr. Hamilton explained "independent contractor" responsibilities with him. The Claimant acknowledged that Mr. Hamilton had provided the Agreement to him a couple of days ahead of time. The Claimant indicated it was his understanding that he had to sign such by the time he returned to start work, in order to work for Mr. Hamilton. He indicated that he did not raise any questions about the Agreement. The Claimant acknowledged receiving a 1099 Tax Form in 1996, from Mr. Hamilton, as well as receiving such form in 1997 and 1998. He acknowledged that he had been responsible for payment of his own taxes from his paychecks, that none were taken out of the same. (11/14/2000 Hearing N.T., pp. 44-55)

- i. The Claimant testified that, with respect to the Windber property, he was shown the property lines by a gentleman from "Walker's". He acknowledged that Mr. Hamilton did not show him the property lines. The Claimant indicated that Mr. Hamilton would advise him how many days per week to work and sometimes tell him how many hours a day to work; but, such was kind of left up to him, if it was raining, thundering or lightening. The Claimant indicated that they worked everyday, as he was told by Mr. Hamilton that they had to work everyday. The Claimant indicated that Mr. Hamilton would advise them to cut "the log trees"; and that he would know from his prior experience as to which trees were to be cut. How he cut the trees and how many trees he cut being left up to him. The Claimant acknowledged that an accurate characterization of his relationship with Mr. Hamilton would be that Mr. Hamilton would find the properties or jobs for timber cutting and then he, Mr. Caldana and other individuals would go in and do the actual cutting, skid out the logs to the log landing, with someone else picking up the logs and taking them to the sawmills. The Claimant denied ever attempting to find logs on his own to cut; and pretty much relied upon Mr. Hamilton coming up with the leases for the sites for him to cut. (11/14/2000 Hearing N.T., pp. 55-58)
- j. The Claimant acknowledged that he has returned to work full-time, cutting timber for an alternative employer, beginning approximately May of 2000. He acknowledged that, subsequent to having the brace taken off of his leg in March of 2000, he began performing odds and ends cutting work for other individuals as well. (11/14/2000 Hearing N.T., pp. 58-62)
- k. Upon cross examination by Counsel for John T. Gallagher Timber Transfer, the Claimant acknowledged he was never advised by Mr. Gallagher as to where to cut, never received any money from Mr. Gallagher, never signed any contracts with Mr. Gallagher and, otherwise, did not consider himself working for Mr. Gallagher. The Claimant acknowledged that, upon his return to work for an alternative employer, Mr. Dotts, he was earning as much or more as he was at the time of his August 13, 1999 work injury. (11/14/2000 Hearing N.T., pp. 63-66)
- l. Upon cross examination by Counsel for Additional Defendant, Michigan Hardwood, Inc. and C.A. Walker Lumber, Inc., which the parties stipulated are one in the same for purposes of this litigation, the Claimant acknowledged he had not signed any contract with anyone from C.A. Walker Lumber, did not receive any

paychecks from such, nor was he supplied with any materials and had minimal interaction with anyone from such companies. (11/14/2000 Hearing N.T., pp. 67-68)

- m. Upon redirect examination, the Claimant testified that, prior to his signing of the "Logger Liability and Hold Harmless Agreement", he had already worked for a period of several weeks for Mr. Hamilton, including receiving paychecks from the same. The Claimant indicated he always was paid \$7.00 an hour for his labor, whether it be cutting timber or doing maintenance work on Mr. Hamilton's equipment. The Claimant indicated that Mr. Caldana would keep track of his hours. (11/14/2000 Hearing N.T., pp. 68-71)
5. An additional hearing was held in this matter on March 22, 2001. At such time, in opposition to Claimant's Petition, Defendant, Robert Hamilton, presented the testimony of George Caldana. Mr. Caldana testified, in pertinent part, as follows:
- a. Mr. Caldana indicated that he had been employed by Robert Hamilton, as a log cutter, since 1996, under a comparable "Logger Liability and Hold Harmless Agreement" (Claimant's Exhibit 1), as that signed by the Claimant. Mr. Caldana described his understanding of such Agreement as that he had to pay his own taxes and did not have insurance. Mr. Caldana testified he was aware the Claimant signed the same Agreement; that the Claimant was advised by Mr. Hamilton he had to pay his own taxes and did not have insurance. Mr. Caldana indicated the Claimant said he understood such and that the two (2) of them actually had discussions about obtaining insurance. Mr. Caldana testified that he was present when the Claimant read the Agreement and indicated he understood such. (03/22/2001 Hearing N.T., pp. 8-17)
 - b. Mr. Caldana testified that, as of August 13, 1999, he and the Claimant were performing log cutting, using Robert Hamilton's equipment. Mr. Caldana testified that the two (2) were cutting timber on land leased by Walker Lumber. He indicated they had been cutting timber at such site for several months previously, had left that site, going to a different site identified by Mr. Hamilton, but ultimately came back; and they were cutting timber as of the time of the Claimant's injury. (03/22/2001 Hearing N.T., pp. 17-24)
 - c. Mr. Caldana, when questioned with respect to the other Defendants in this matter, indicated he had limited direct contact with Mr. Gallagher, other than contacts with Mr. Gallagher or his drivers, regarding picking up logs from the log landing. Mr. Caldana indicated that the landing site for the timber would be determined by himself and the Claimant. Mr. Caldana testified that, with respect to the trees to be cut, he was shown the property lines for the leased property by Steve English, the forester for Walker Lumber, and advised to cut the pre-marked trees. Mr. Caldana testified that he and the Claimant were advised to cut all of the trees marked in blue. (03/22/2001 Hearing N.T., pp. 24-26)

- d. Mr. Caldana testified that Robert Hamilton would not be present at the job site; and that he and the Claimant would decide for themselves as to which days to cut. Mr. Caldana indicated that he and the Claimant would not be required to report to Mr. Hamilton. He denied that he was the boss of the Claimant, with the two (2) working on their own. Mr. Caldana testified that he and the Claimant were each paid for the hours they worked per week, on a flat hourly rate. He testified that the two (2) could negotiate the hourly rate for each job. He further testified that the Claimant can read, as he has seen him reading a classified ads newspaper, called the "Ad Bargain", as well as some maintenance or repair manuals. Mr. Caldana further testified that, from 1996 until the Claimant's injury, he worked with the Claimant most everyday. When questioned as to relatively significant differences in his yearly income from that of the Claimant, Mr. Caldana testified he would be paid extra or "extra bonuses", for cutting up timber or cutting extra loads of timber, by Mr. Hamilton. Mr. Caldana testified that these bonuses were not negotiated, but determined by Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 26-47)
 - e. Mr. Caldana acknowledged that, although he indicated the flat hourly rate which he or the Claimant would be paid could be negotiated, the subject never came up at anytime and was never re-negotiated; and he would be paid \$7.00 per hour, as was the Claimant. Mr. Caldana acknowledged that Robert Hamilton would advise him and the Claimant as to the sites for other jobs where cutting was to be performed. Mr. Caldana acknowledged that, within the last two (2) years prior to the time of hearing, he had become a partner with Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 47-58)
6. In opposition to the Claimant's Petition, the testimony of Robert E. Hamilton was presented during the March 22, 2001 hearing. Mr. Hamilton testified, in pertinent part, as follows:
- a. Mr. Hamilton testified that he has maintained a sole proprietorship since 1988, of R. E. Hamilton Enterprises. He testified that the nature of such business is basically his obtaining of timber rights or properties, or leasing timbering rights, as well as the performance of contract cutting services for others. (03/22/2001 Hearing N.T., pp. 59-60)
 - b. Mr. Hamilton testified that, prior to George Caldana or the Claimant cutting timber for him, they each entered into the "Logger Liability and Hold Harmless Agreement". He indicated such Agreement was discussed with each individual, with each being advised there would be no federal taxes withheld, each was reasonable for his own insurance, and they were in charge of their cutting responsibilities. Mr. Hamilton indicated that neither individual was placed in a position of authority. Mr. Hamilton indicated that prior to retaining the Claimant, the Claimant had represented to him that he had his own skidder and had owned his own logging business on a prior occasion.

- c. Mr. Hamilton testified that he never received any indication the Claimant had difficulty reading, with the Claimant being able to follow notes and directions which he wrote out for him, as well as writing back notes to Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 61-64)
- d. Mr. Hamilton testified as to the cutting services which were being performed on the Windber property in August of 1999. He testified that, through his brother-in-law, Additional Defendant John Gallagher, he became aware that Additional Defendants, Michigan Hardwood/Walker Lumber, had some timber to be cut. Mr. Hamilton testified he had no direct contact with Michigan Hardwoods, nor did he enter into any written agreement with Michigan Hardwoods or Walker Lumber. Mr. Hamilton testified that John Gallagher would pay him \$250.00 to \$300.00 per load of logs delivered to the log landing. He testified that he would be paid by Mr. Gallagher at the end of the week, for the number of loads so delivered. He testified that he would then pay his crew, George Caldana and Mr. Cummings, as well as occasionally other individuals, a paycheck at the end of the week, for their services. Mr. Hamilton testified that he supplied the materials and equipment, which Mr. Caldana and the Claimant would use. (03/22/2001 Hearing N.T., pp. 64-77)
- e. Mr. Hamilton testified that, at the end of each week, Mr. Caldana and the Claimant would advise him as to what they had accomplished. He testified he did generally pay Mr. Caldana and the Claimant on an hourly basis, but would pay extra amounts for extra production. He acknowledged he would essentially decide how much per week each would be paid for any extra production. (03/22/2001 Hearing N.T., pp. 78, 107)
- f. Mr. Hamilton acknowledged he had no direct contact with Michigan Hardwoods/Walker Lumber, with his dealings primarily being limited to contacts with Mr. Gallagher. Mr. Hamilton indicated he assumed someone else would be supervising Mr. Caldana and the Claimant, but he did not know. He acknowledged he did not know if anyone else was working on the property. (03/22/2001 Hearing N.T., pp. 78-80)
- g. Mr. Hamilton acknowledged, on cross examination, that there were no provisions in the Agreements with Mr. Caldana and the Claimant with respect to his determination of amounts for extra production, or the specific hourly rate. Mr. Hamilton acknowledged that neither Mr. Gallagher nor anyone from his Company would do any cutting, with such companies responsibilities being limited to hauling the timber from the landing site to the mills or Walker Lumber. Mr. Hamilton acknowledged he did not have any manner of written agreement with either of the Additional Defendants. Mr. Hamilton acknowledged that Mr. Caldana and the Claimant would rely upon him to line up work. He acknowledged that the overall role of his business was to get timber-cutting jobs and bring in his crew or cutters to perform the cutting and hauling to the landing site. (03/22/2001 Hearing N.T., pp. 92-108)

7. In opposition to the Joinder Petition, the testimony of John Thomas Gallagher was presented at the time of the March 22, 2001 hearing. Mr. Gallagher testified as to his business of contract cutting timber, where larger companies will purchase the timber, and his company was to produce the timber from the wood site to the mills, including cutting, skidding and hauling timber. Mr. Gallagher testified that he was contacted by the forester, Steve English, regarding Walker Lumber's purchasing of timber rights and needing such timber cut. Mr. Gallagher testified that, at such time, as his crews were already busy cutting timber for another company, he advised his brother-in-law, Robert Hamilton, of the timber job at the Windber site. Accordingly, the subsequent financial arrangement between Mr. Gallagher and Robert Hamilton involved Robert Hamilton's provision of the cutting crew, who would cut and skid the timber to the landing site where Mr. Gallagher's company and employees would pick up the timber and haul such to Walker Lumber. Mr. Gallagher would then be paid by Walker Lumber based upon the number of board-feet of scaled timber delivered, as well as by the ton for pulpwood. Mr. Gallagher would then pay Mr. Hamilton a set price per load of wood delivered to the log landing. Mr. Gallagher testified he was not responsible for supervising Mr. Hamilton's crew, nor determining the timber to be cut. Mr. Gallagher acknowledged being advised by Mr. Hamilton that he had his no insurance. Mr. Gallagher indicated that, when he discussed such with Mr. Hamilton, Mr. Hamilton provided copies of the "Hold Harmless Agreements", indicating such were sufficient. Mr. Gallagher testified he does maintain Workers' Compensation insurance for his employees. (03/22/2001 Hearing N.T., pp. 108-138)
8. In opposition to the Joinder Petition, the testimony of Steve English, forester for Walker Lumber, was presented. Mr. English testified that Walker Lumber retained Mr. Gallagher's Company to perform the cutting and hauling of timber, for which Mr. Gallagher would be paid directly, based upon the amount of timber delivered. He testified that, other than identifying the property to be cut and parameters of cutting, neither he nor Walker Lumber provided any supervision over such responsibilities. Mr. English testified that Mr. Gallagher provided Walker Lumber with an insurance certificate; and Gallagher was at leave to sub-contract out work at his discretion. (03/22/2001 Hearing N.T., pp. 142-151)
9. At the conclusion of the March 22, 2001 hearing, it was confirmed that, based upon the Claimant's testimony and stipulations that he had returned to work with no loss of earnings; that the primary issue in question was with respect to a employer-employee relationship; and the parties would not be required to proceed with the completion of medical depositions or evidence in support of the causal relationship between the Claimant's August 13, 1999 injury and such closed period of disability.
10. Defendant/Employer, Robert Hamilton, has submitted a Statement of Wages setting forth that Claimant had a pre-injury average weekly wage of \$361.39, with a resultant compensation rate of \$240.93 per week. For the first time, in his Proposed Findings of Fact, Counsel for Claimant has raised objections as to the accuracy of the same. Such objections are found to be untimely and are overruled.
11. Pursuant to acknowledgments of the Claimant, he acknowledged that, as of March, 2000, he returned to full, unrestricted duties, consistent with those he had been performing prior to August 13, 1999, without loss of wages associated with the work injury.

12. Based upon the foregoing, and review of the record in its entirety, it is further found as follows:

- a. On August 13, 1999, the Claimant, Robert Cummings, suffered a work injury during the course and scope of his employment with Defendant/Employer, Robert Hamilton, in the nature of a broken left leg, resulting in a period of temporary total disability from August 13, 1999 through March, 2000.
- b. Effective March, 2000, the Claimant had sufficiently recovered from his August 13, 1999 work injury to return to his pre-injury capacity of employment and, in fact, obtained alternative employment performing the same manner, scope and duties as he had at the time of his work injury, such as to no longer suffer any loss of earnings associated with his work injury.
- c. It is found that, at the time of his work injury, the Claimant was not an employee of either additional Defendants, John T. Gallagher Timber Transfers or Michigan Hardwoods/Walker Lumber Company.
- d. It is found that, at the time of his work injury, the Claimant's Employer, Robert Hamilton, was serving in the capacity of a sub-contractor for Additional Defendant, John T. Gallagher Timber Transfers.
- e. It is found that, at the time of Claimant's work injury, the Claimant's Employer, Robert Hamilton, was uninsured for Workers' Compensation purposes. It is further found that Additional Defendant, John T. Gallagher Timber Transfers, is found to be a statutory employer under Section 302 (d) of the Pennsylvania Workers' Compensation Act.
- f. It is found that the Claimant has failed to submit any evidence whatsoever, with respect to his asserted May 31, 1997 injury.
- g. In reaching these findings and, specifically, in finding the Claimant was an employee of Defendant, Robert Hamilton, and not an Independent Contractor, it is noted that "[I]n determining whether a claimant is an independent contractor or employee, the Pennsylvania Supreme Court has set forth the following factors to consider in determining the type of relationship which exists: control of the manner in which work is to be done; responsibility for result only; terms of agreement between the parties; nature of the work or occupation; skill required for performance; whether one employee is engaged in a distinct occupation or business; which party supplies the tools; whether payment is by time or by the job; whether work is part of the regular business of the alleged employer, and whether the alleged employer has the right to terminate employment at any time. Because each case is fact specific, all of these factors need to be present to determine the type of relationship which exists. Moreover, while all of these factors are important indicators, the key element is whether the alleged employer has the right to control the work to be done, and the manner in which it is performed." *Johnson v. W.C.A.B. (DuBois Courier)*, 631 A.2d 693 (Pa. Cmwlth., 1993), citing

Hammermill Paper Company v. Rust Engineering Co., 430 Pa. 365, 370, 240 A.2d 389, 392 (1968).

- h. In finding the Claimant is an employee, as opposed to an Independent Contractor, the testimony of Mr. Cummings, Mr. Hamilton and Mr. Caldana are each found to be credible, in part, and rejected, in part. Overall, in reviewing the testimony of each of these individuals in their entirety, other than each of their ultimate conclusions as to the nature of the relationship, the testimony of each as to the practical implications of their relationships are fairly consistent. Upon review of the consistent aspects of each of their testimonies, it is found that the relationship is overwhelmingly that of an employee, as opposed to Independent Contractor. As noted in Johnson, Supra, the key element is whether the alleged employer has the right to control the work to be done and the manner in which it is performed. Under the present circumstances, although the Claimant signed an Agreement indicating he is an Independent Contractor, in most all aspects of the relationship he was treated as an employee, being paid on an hourly basis, or at the discretion of Mr. Hamilton as to any bonuses; he only performed work for Mr. Hamilton; the work which he performed was part of the regular business of Mr. Hamilton; and Mr. Hamilton provided all of the tools and equipment.
- i. In reaching these findings, that John T. Gallagher Transfers was a statutory employer of the Claimant, the testimony of Mr. Gallagher is found to be credible. Mr. Gallagher testified in a very honest and direct manner. However, as Mr. Gallagher candidly admitted, he naively accepted Mr. Hamilton's representations, that the "Hold Harmless Agreement" was sufficient to insulate him from any potential liability. For Workers' Compensation purposes, although such an Agreement is a consideration, such does not preclude the finding of an employer-employee relationship. Moreover, such does not insulate a contractor from Workers' Compensation liability in the event of an uninsured subcontractor. To define the existence of a statutory employer, five (5) elements must be confirmed; (1) contract with owner of land or one in the position of an owner, (2) premises occupied or under the control of the subcontractor seeking statutory employer status, (3) subcontract made by contractor, (4) part of the contractor's regular business must be entrusted to the subcontractor in the contract, and (5) an employee of the subcontractor is injured on the premises. Under the present circumstances, it is fairly undisputed by Mr. Gallagher, that he contracted with Walker Lumber to cut and haul timber. Mr. Gallagher acknowledged he would have utilized his normal crew, insured for Workers' Compensation purposes, to perform such duties, but they were preoccupied with other businesses. Accordingly, in good faith, he retained the services of his brother-in-law as effectively a subcontractor, to perform such duties.
- j. In reaching these findings, the testimony of Mr. English is found to be credible and generally unrefuted.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the entirety of the record and the respective Law on this matter, this Adjudicator concludes as follows:

1. At all times relevant hereto, the parties were bound by the applicable terms and provisions of the Pennsylvania Workers' Compensation Act, as Amended.
2. The Claimant has sustained his burden of proof, that he suffered a work injury on August 13, 1999, in the nature of a broken left leg, entitling him to Workers' Compensation benefits for the period of August 13, 1999 through March of 2000, together with the payment of medical costs and expenses causally related to the same.
3. Defendant/Employer, Robert Hamilton, shall be responsible for the payment of such Workers' Compensation benefits, together with the reimbursement of any Public Welfare Lien reimbursement for the payment of any such medical expenses.
4. The Claimant has failed to sustain his burden of proof, that he suffered a work injury on May 31, 1997.
5. Original Defendant/Employer has failed to sustain its burden of proof, that Additional Defendants, John T. Gallagher Timber Transfers, or Michigan Hardwoods/C.A. Walker Lumber/Walker Lumber, were employers of the Claimant at the time of his August 13, 1999 work injury. However, it is concluded that Additional Defendant, John T. Gallagher Timber Transfers, was a statutory employer for purposes of the Pennsylvania Workers' Compensation Act, as Amended.
6. Defendant/Employers have sustained their burden of proof, that their contest of these matter were, at all times, reasonable. Accordingly, no award of attorney's fees is made hereunder.
7. As the Claimant has prevailed in this matter, Claimant shall be entitled to reimbursement of his costs of litigation; however, no formal request has been made by Claimant's Counsel, nor has an itemized Bill of Costs been submitted.
8. Counsel for Claimant has asserted the existence of a twenty percent (20%) Fee Agreement; however, no Agreement has been submitted. According, such is not addressed herein.

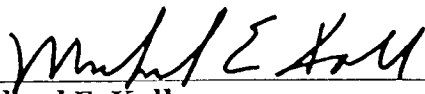
ORDER

AND NOW, this 31st day of January, 2002, it is hereby Ordered that the Claim Petition filed by Claimant/Employee, Robert D. Cummings, against Defendant/Employer, Robert Hamilton t/a R. E. Hamilton Enterprises, alleging a work injury on August 13, 1999, is GRANTED, consistent with Conclusions of Law No. 2 and 3.

In accordance with Conclusion of Law No. 5, in the absence of payment of the foregoing by original Defendant/Employer, Robert Hamilton, t/a R. E. Hamilton Enterprises, John T. Gallagher Timber Transfers, as the statutory employer, and/or its Workers' Compensation Insurer, shall be responsible for payment of compensation payable hereunder.

Defendants are entitled to a Suspension of Claimant's benefits effective March, 2000.

The Claim Petition filed by Claimant alleging a work injury on May 3, 1997 is DENIED and DISMISSED, consistent with Conclusion of Law No. 4.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office

lfb



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
BUREAU OF FINANCIAL OPERATIONS
DIVISION OF THIRD PARTY LIABILITY
CASUALTY UNIT
P.O. BOX 8486
HARRISBURG PA 17105-8486

November 5, 2003

AMERICAN INTERSTATE INSURANCE CO
KRISTEN JONES
CLAIM DEPARTMENT
PO BOX 1099
MECHANICSBURG PA 17055

Re: ROBERT CUMMINGS
CIS #: 300119139
Incident Date: 08/13/1999
Claim #: 2000-01572PA

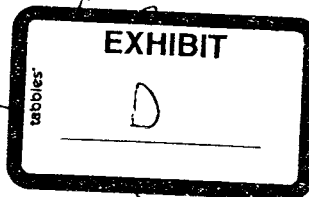
Dear Ms. Jones:

This is to acknowledge receipt of payment in the amount of \$6,327.06 regarding the above-referenced individual.

Your cooperation in this matter is appreciated.

Sincerely,

Nicole L. Early
TPL Program Investigator
717-772-6606
717-772-6553 FAX



Received
NOV 10 2003
AIIC - PA

Payments West 1

Payments

Vendor Information

Vendor ID: 0000656847

Tax ID: 230003113

DEPARTMENT OF PUBLIC WELFARE
TIPS SECTION-CASUALTY UNIT BOX
B486
HARRISBURG PA 17105 (ACTIVE)

Payment Detail

PA LAE Miscellaneous

Claimant: ROBERT D CUMMINGS

Claim Number	Pay Code	Amount	Gross Amt	Begin Date	End Date
200001572	73 Miscellaneous Let	6327.06	0.00	08/13/1999	10/31/2003

West 1

Check Total 6327.06

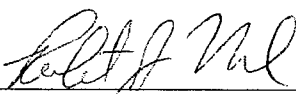
Payments		West 1	
Automatic Payment		Valid Type	
Vendor Information			
Vendor ID	0000656847		
Tax ID	1235003119		
DEPARTMENT OF PUBLIC WELFARE DIVISION CASUALTY UNIT BOX 8486 HARRISBURG, PA 17105 (ACTIVE)			
Payment Detail		Miscellaneous	
Comments			
Section Number	0002741699	Date Requested	10/30/2003
Requested By	KRJONES	Date Cleared	11
Check Register Date	10/31/2003	On Register	Y
Check No	0011283279	Issue Date	10/31/2003
Phase	On Check Register	Team	West 1
Check Total	5327.06		

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Complaint, was served via U.S. First-Class Mail, postage prepaid, this 11 day of February, 2004, upon the following individual(s):

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656

PIETRAGALLO, BOSICK & GORDON

By: 
Timothy Smith, Esquire
Robert J. Monahan, Esquire

The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

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

JOHN T. GALLAHER TIMBER
TRANSFER,
Plaintiff

vs.

ROBERT D. HAMILTON, t/a
HAMILTON ENTERPRISES,
Defendant(s)

:
: No. 04-221-CD
:
: Type of Case: Civil
:
: Type of Pleading:
: Praecipe for Writ of Summons
:
: Filed on Behalf of:
: Robert D. Hamilton, t/a
: Hamilton Enterprises
:
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
:
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA 16830
: Telephone: (814)765-5537
:
:

FILED

APR 16 2004

Walter A. Shaw
Prothonotary Clerk of Courts

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

JOHN T. GALLAHER TIMBER	:	
TRANSFER,	:	
Plaintiff	:	
vs.	:	No. 04-221-CD
ROBERT D. HAMILTON, t/a	:	
HAMILTON ENTERPRISES	:	
Defendant	:	

PRAECIPE FOR WRIT OF SUMMONS

TO CLEARFIELD COUNTY PROTHONOTARY:

Please issue a Writ of Summons to join the below listed party
as an additional Defendant in the above captioned matter:

Robert D. Cummings
P.O. Box 77
Wallaceton, PA 16876

By

FC Bell III
F. Cortez Bell, III, Esquire
318 East Locust Street
P. O. Box 1088
Clearfield, PA 16830
Telephone: (814) 765-5537
I.D. #30183

DATED: April 16, 2004


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

JOHN T. GALLAHER TIMBER	:	
TRANSFER,	:	
Plaintiff	:	
vs.	:	No. 04-221-CD
ROBERT D. HAMILTON, t/a	:	
HAMILTON ENTERPRISES	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Praecipe for Writ of Summons upon the following persons by mailing such copy first class mail, postage prepaid to:

Timothy Smith, Esquire
Robert J. Monahan, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eight Floor
One Oxford Centre
Pittsburgh, PA 15219



F. Cortez Bell, III, Esquire
Attorney for Plaintiff

Date: April 16, 2004

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 04-221-CD

JOHN T. GALLAHER TIMBER TRANSFER,
Plaintiff

VS.

ROBERT D. HAMILTON, t/a HAMILTON
ENTERPRISES,
Defendant(s)

PRAECIPE FOR WRIT OF SUMMONS

FILED 3:37 PM APR 16 2004
FEB 13 3 37 PM
William A. Shaw
Prothonotary, Clerk of Courts
to Shff
2cc of writs

F. CORTEZ BELL, III
ATTORNEY AT LAW
318 EAST LOCUST STREET
P.O. BOX 1088
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WRIT TO JOIN ADDITIONAL DEFENDANT

John T. Gallaher Timber Transfer
Plaintiff(s)

Vs.

Robert D. Hamilton, t/a
Hamilton Enterprises

2004-00221-CD

Defendant(s)

Vs.

Robert D. Cummings
Additional Defendant(s)

To: Robert D. Cummings

You are notified that Robert D. Hamilton, t/a Hamilton Enterprises, has joined you as an additional defendant in this action, which you are required to defend.

Dated: April 16, 2004

Prothonotary

Filing Attorney: F. Cortez Bell, III, Esq.
318 E. Locust St.
Clearfield, PA 16830

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

JOHN T. GALLAHER TIMBER	:	
TRANSFER,	:	No. 04-221-CD
Plaintiff	:	
	:	Type of Case: Civil
vs.	:	
	:	Type of Pleading:
	:	Answer, New Matter and
	:	Counterclaim to Plaintiff's
	:	Complaint
ROBERT HAMILTON, t/a	:	
HAMILTON ENTERPRISES,	:	Filed on Behalf of:
Defendant(s)	:	Robert Hamilton, t/a
	:	Hamilton Enterprises
	:	
	:	Counsel of Record for this Party:
	:	F. Cortez Bell, III, Esquire
	:	I.D. #30183
	:	
	:	318 East Locust Street
	:	P.O. Box 1088
	:	Clearfield, PA 16830
	:	Telephone: (814)765-5537
	:	
	:	

FILED

APR 01 2004

William A. Shaw
Prothonotary/Clerk of Courts

#2

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

JOHN T. GALLAHER TIMBER	:	
TRANSFER,	:	
Plaintiff	:	
vs.	:	No. 04-221-CD
ROBERT HAMILTON, t/a	:	
HAMILTON ENTERPRISES	:	
Defendant	:	

NOTICE TO PLEAD

TO THE WITHIN Plaintiff JOHN T. GALLAHER TIMBER TRANSFER:

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim filed on behalf of Defendant, Robert Hamilton, t/a Hamilton Enterprises, within twenty (20) days from service hereof or a judgment may be entered against you.

By,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

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

JOHN T. GALLAHER TIMBER :
TRANSFER, :
Plaintiff :
vs. : No. 04-221-CD
ROBERT HAMILTON, t/a :
HAMILTON ENTERPRISES :
Defendant :

**ANSWER, NEW MATTER AND COUNTERCLAIM TO
PLAINTIFF'S COMPLAINT**

NOW, comes the Defendant, Robert Hamilton, t/a Hamilton Enterprises, by and through his attorney, F. Cortez Bell, III, Esquire, who for his Answer to Plaintiff's Complaint would respectfully represent and aver as follows:

ANSWER

1. That Paragraph 1 of Plaintiff's Complaint is admitted.
2. That Paragraph 2 of Plaintiff's Complaint is admitted.
3. That Paragraph 3 of Plaintiff's Complaint is admitted.
4. That Paragraph 4 of Plaintiff's Complaint is admitted.
5. That Paragraph 5 of Plaintiff's Complaint is denied.

It would be specifically denied that on or about August 13, 1999 that Robert Cummings was an employee of Robert Hamilton or Hamilton Enterprises. Strict proof of the denied averments of Paragraph 5 of Plaintiff's Complaint would be demanded at time of trial or

hearing in this matter.

6. That Paragraph 6 of Plaintiff's Complaint is admitted in part and denied in part. It would be admitted that on or about August 13, 1999, Robert Cummings suffered a broken leg. It would be specifically denied that said broken leg was a work related injury, as well as that any such injury occurred during the course and scope of any employment with Robert Hamilton and/or Hamilton Enterprises. In addition it would be specifically denied that any such injury led to a period of temporary total disability from August 13, 1999 through March, 2000. Strict proof of the denied averments of Paragraph 6 of Plaintiff's Complaint would be demanded at time of trial or hearing in this matter.

7. That Paragraph 7 of Plaintiff's Complaint is admitted. It would be further averred that not only was Gallaher the statutory employer of Cummings but in fact he was the employer of Cummings.

8. That Paragraph 8 of Plaintiff's Complaint is admitted in part and denied in part. It is admitted that pursuant to various Orders, dated January 31, 2002 amended on February 19, 2002 and again amended on February 26, 2002 by Michael E. Koll, Workers' Compensation Judge, that Robert Cummings was entitled to receive Workers' Compensation payments from August 13, 1999 through March of 2000. It is denied that the Orders dated February 19, 2002 and the amended Order dated February 26, 2002 (Plaintiff's Exhibits A

and B) in any fashion found the Defendant Robert Hamilton or Hamilton Enterprises primarily liable to pay Cummings his Worker Compensation benefits. Strict proof of the denied averments of Paragraph 8 of Plaintiff's Complaint would be demanded at time of trial or hearing in this matter.

9. That Paragraph 9 of Plaintiff's Complaint is denied. It is specifically denied that Robert Hamilton or Hamilton Enterprises in any fashion violated Pennsylvania law. As Defendant Hamilton or Hamilton Enterprises had no employees, there was no need to carry Workers' Compensation Insurance. Strict proof of the denied averments of Paragraph 9 of Plaintiff's Complaint would be demanded at time of trial or hearing in this matter.

10. That Paragraph 10 of Plaintiff's Complaint is admitted to the extent that Robert Hamilton and/or Hamilton Enterprises has not paid any sums of money to Robert Cummings.

11. That Paragraph 11 of Plaintiff's Complaint is admitted with some clarification. It would be averred that only the Order dated January 31, 2002 in any fashion found an obligation to Robert Cummings by John T. Gallaher on the basis that John T. Gallaher was a statutory employer/employee of Robert Cummings.

12. That Paragraph 12 of Plaintiff's Complaint can neither be admitted nor denied. The Defendant, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth of the averment. It would be denied

that Robert Hamilton and/or Hamilton Enterprises failed to honor any obligation. Strict proof of the denied averment of Paragraph 12 of the Plaintiff's Complaint would be demanded at time of trial or hearing in this matter.

13. That Paragraph 13 of Plaintiff's Complaint can neither be admitted nor denied. The Defendant, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth of the averment.

14. That Paragraph 14 of Plaintiff's Complaint is denied. It would be specifically denied that Robert Hamilton and/or Hamilton Enterprises is an employer of Robert Cummings such that any amounts were due to said Robert Cummings. It would be further specifically denied that the Plaintiff Gallaher is entitled to any recovery from Robert Hamilton and/or Hamilton Enterprises in any amounts for either sums paid by Gallaher or any expenses occurred in the defense of any matter by Gallaher. Strict proof of the denied averment of Paragraph 14 of the Plaintiff's Complaint would be demanded at time of trial or hearing in this matter.

WHEREFORE, Defendant Robert Hamilton and/or Hamilton Enterprises respectfully requests that your Honorable Court deny judgment to the Plaintiff and award the Defendant all counsel fees, costs and expenses associated with regard to the defense of the instant Complaint.

NEW MATTER

NOW comes the Defendant, Robert Hamilton, t/a Hamilton Enterprises by and through his attorney, F. Cortez Bell, III, Esquire, who for his New Matter to Plaintiff's Complaint would respectfully set forth and aver as follows:

15. That Paragraphs 1 through 14 of the Answer to Plaintiff's Complaint would be incorporated herein by reference as part of the Defendants New Matter as if the same were set forth herein at length.

16. That John T. Gallaher is an adult individual who resides within the Commonwealth of Pennsylvania and carries out or conducts business under the name of John T. Gallaher Timber Transfer with a mailing address of P.O. Box 304, Irvona, PA 16656.

17. That at all times relevant to this proceeding, John T. Gallaher individually and t/d/b/a John T. Gallaher Timber Transfer conducted business within Clearfield County.

18. That the Plaintiff John T. Gallaher Timber Transfer contracted with Walker Lumber to remove certain timber from a tract of land upon which Robert Cummings was located at the time he broke his leg.

18. That the Defendant, Robert Hamilton, and/or Hamilton Enterprises had not contracted with Walker Lumber to remove any timber from that tract of land upon which Robert Cummings was located at the time he broke his leg.

19. That the Defendant Robert Hamilton and/or Hamilton Enterprises did not take any part in the designation of which timber was to be cut pursuant to the contract between the Plaintiff, John T. Gallaher Timber Transfer and Walker Lumber.

20. That the timber to be removed from the tract was marked in blue with said markings not having been made by either the Plaintiff, John T. Gallaher Timber Transfer or the Defendant, Robert Hamilton and/or Hamilton Enterprises.

21. That the property lines of the property to be timbered pursuant to the contract between the Plaintiff, John T. Gallaher Timber Transfer and Walker Lumber was located, designated and shown to the individuals cutting timber on the tract by a representative of Walker Lumber Company.

22. That the Defendant Robert Hamilton and/or Hamilton Enterprises took no part in the location of property lines, the designation of property lines or the showing of any individuals to cut timber thereon the location of said property lines.

23. That all equipment and skidders used to cut timber on the property in question and used by Robert Cummings were transported to the property by the Plaintiff, John T. Gallaher Timber Transfer and/or its agents or representatives.

24. That the Defendant Robert Hamilton and/or Hamilton Enterprises never directed nor supervised any of the cutting of the timber on the property in accord with or pursuant to the contract

between the Plaintiff, John T. Gallaher Timber Transfer and Walker Lumber.

25. That the Defendant, Robert Hamilton and/or Hamilton Enterprises, never directed any activities at the site from which the timber was being removed by Robert Cummings pursuant to the agreement between John T. Gallaher Timber Transfer and Walker Lumber.

26. That Robert Hamilton and/or Hamilton Enterprises did not control or direct the number of days work was performed at the site or the hours to be worked during the course of any day.

27. That the Defendant Robert Hamilton and/or Hamilton Enterprises did not direct or control the production of timber from the site.

28. That the Defendant, Robert Hamilton and/or Hamilton Enterprises, did not direct or control the activities or work performed by Robert Cummings in the course of the production of timber from the property which was the subject of the contract between John T. Gallaher Timber Transfer and Walker Lumber.

29. That the Plaintiff, John T. Gallaher Timber Transfer, controlled the pick up of timber and the delivery/sale of the timber in accord with the agreement between John T. Gallaher Timber Transfer and Walker Lumber.

30. That the Defendant, Robert Hamilton and/or Hamilton Enterprises had no involvement or control in the pickup of timber

and the delivery or sale of the same.

31. That the Plaintiff, John T. Gallaher Timber Transfer solicited the use of the equipment of Robert Hamilton and/or Hamilton Enterprises in order to complete the timber cutting in compliance with the agreement that John T. Gallaher Timber Transfer had with Walker Lumber.

32. That the Plaintiff John T. Gallaher Timber Transfer solicited the employment of Robert Cummings in order to complete the timber cutting in compliance with the agreement between John T. Gallaher Timber Transfer and Walker Lumber.

33. That it was a common practice of the Plaintiff John T. Gallaher Timber Transfer to hire independent contractors to complete various timbering contracts that the Plaintiff, John T. Gallaher Timber Transfer was unable to do himself or through his own employees.

34. That the Plaintiff, John T. Gallaher Timber Transfer was specifically advised by the Defendant Robert Hamilton and/or Hamilton Enterprises that Robert Cummings was an independent contractor who had done work for Hamilton in the past.

35. That the Plaintiff, John T. Gallaher Timber Transfer was specifically advised by the Defendant Robert Hamilton and/or Hamilton Enterprises that as Robert Cummings had been employed as an independent contractor in the past by the Defendant Hamilton and/or Hamilton Enterprises that Hamilton did not have any

compensation insurance covering said Robert Cummings.

36. That the Plaintiff John T. Gallaher Timber Transfer by and through John T. Gallaher specifically advised the Defendant Robert Hamilton that he was going to use Robert Cummings for purpose of the removal of timber pursuant to the agreement by and between John T. Gallaher Timber Transfer and Walker Lumber and that the lack of compensation insurance was not a problem because he had coverage and if anyone got hurt on a job that he would indicate that they had just started to work for him such that there would be compensation coverage.

37. That the Plaintiff John T. Gallaher Timber Transfer and specifically John T. Gallaher has not personally or individually suffered any monetary loss as a result of any sums alleged to have been paid within Paragraphs 12 and 13 of the Plaintiff's Complaint.

38. That the Defendant Robert Hamilton and/or Hamilton Enterprises was not the employer of Robert Cummings at the time that his leg was broken.

39. That any injury that occurred to said Robert Cummings was as a result of his own negligence or intentional act in removing the brakes from the log skidder that he was using and then intentionally continuing to operate and use said skidder in such a fashion that the skidder was unable to stop and thereby tipped over from which it is alleged that said Robert Cummings

suffered a broken leg.

WHEREFORE, Defendant Robert Hamilton and/or Hamilton Enterprises respectfully requests that your Honorable Court deny judgment to the Plaintiff and award the Defendant all counsel fees, costs and expenses associated with regard to the defense of the instant Complaint.

COUNTERCLAIM

NOW comes the Defendant, Robert Hamilton, t/a Hamilton Enterprises by and through his attorney, F. Cortez Bell, III, Esquire, who for his Counterclaim to Plaintiff's Complaint would respectfully set forth and aver as follows:

40. That Paragraphs 1 through 39 of the Answer and New Matter to Plaintiff's Complaint would be incorporated herein by reference as part of the Defendants Counterclaim as if the same were set forth herein at length.

41. That the Defendant Robert Hamilton and/or Hamilton Enterprises was not the employer of Robert Cummings.

42. That the Plaintiff John T. Gallaher Timber Transfer was the employer of Robert Cummings.

43. That the Plaintiff, John T. Gallaher Timber Transfer was fully aware that the Defendant Robert Hamilton and/or Hamilton Enterprises had no employees and had no workers' compensation insurance at the time that said Plaintiff, John T. Gallaher Timber

Transfer solicited, permitted and used the services of Robert Cummings in order to complete the timbering pursuant to the agreement between John T. Gallaher Timber Transfer and Walker Lumber.

44. That the Plaintiff John T. Gallaher Timber Transfer, specifically John T. Gallaher discussed with the Defendant the workers compensation issue and specifically indicated that such was not a problem, that coverage was available through John T. Gallaher Timber Transfer and it was on that basis that apparently Robert Cummings began working to complete the performance of the Walker Lumber agreement on behalf of John T. Gallaher Timber Transfer.

45. That the Plaintiff John T. Gallaher Timber Transfer and/or John T. Gallaher has not personally made any payments to anyone such that there has been a monetary loss for which recovery can be sought.

46. That should the Defendant Robert Hamilton and/or Hamilton Enterprises be found liable to the Plaintiff for any amount, the Defendant would assert that it is only through the contact of the Plaintiff that said liability occurred such that any recovery made by the Plaintiff would be fully recoverable by the Defendant as a claim against the Plaintiff because of the Plaintiff, John T. Gallaher Timber Transfer's use of Robert Cummings in order to complete the contract between the Plaintiff John T. Gallaher Timber Transfer and Walker Lumber.

47. That the Defendant Robert Hamilton and/or Hamilton Enterprises would assert a claim against the Plaintiff John T. Gallaher Timber Transfer in the amount of \$14,181.34 plus any costs or expenses incurred by the Defendant Robert Hamilton t/a Hamilton Enterprises in the defense or litigation of the instant matter.

Respectfully submitted,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

VERIFICATION

I, Robert Hamilton, verify that the statements made within the foregoing Answer, New Matter and Counterclaim to Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.

This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: March 29, 2004


Robert Hamilton

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

JOHN T. GALLAHER TIMBER	:	
TRANSFER,	:	
Plaintiff	:	
	:	
vs.	:	No. 04-221-CD
	:	
ROBERT HAMILTON, t/a	:	
HAMILTON ENTERPRISES	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer, New Matter and Counterclaim to Plaintiff's Complaint upon the following persons by mailing such copy first class mail, postage prepaid to:

Timothy Smith, Esquire
Robert J. Monahan, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eight Floor
One Oxford Centre
Pittsburgh, PA 15219

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Plaintiff

Date: 4-1-04

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 04-221-CD

JOHN T. GALLAHER TIMBER TRANSFER,
Plaintiff

vs.

ROBERT HAMILTON, t/a HAMILTON
ENTERPRISES,
Defendant

ANSWER, NEW MATTER AND
COUNTERCLAIM TO PLAINTIFF'S
COMPLAINT

FILED

APR 11 2004

William A. Shaw
Prothonotary/Clerk of Courts

F. CORTEZ BELL, III
ATTORNEY AT LAW
318 EAST LOCUST STREET
P.O. BOX 1088
CLEARFIELD, PA 16830

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

JOHN T. GALLAGHER TIMBER
TRANSFER,

Plaintiff

vs.

ROBERT D. HAMILTON, t/a
HAMILTON ENTERPRISES,

Defendant

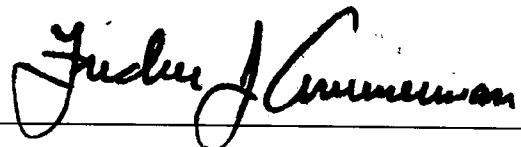
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NO. 04-221-CD

ORDER

NOW, this 28th day of March, 2006, following argument on the Plaintiff's Motion for Judgment on the Pleadings and the Court's review of the parties' briefs, it is the ORDER of this Court that the said Motion be and is hereby GRANTED. The Defendant's Answer and Counterclaim is hereby DISMISSED.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

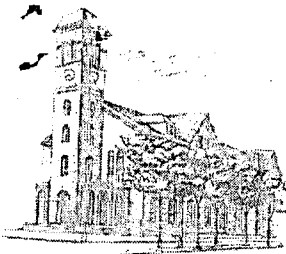
FILED
MAR 29 2006
0/8:45/w
William A. Shaw
Prothonotary/Clerk of Courts

CEN to AMM
ROBERT MONTAGNA

F. CONNOR BEN

ROBERT CUMMINGS
P.O. Box 77
WALLINGFORD, PA
16826

812



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 3-29-06

 You are responsible for serving all appropriate parties.

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

 X Plaintiff(s)/Attorney(s)

 X Defendant(s)/Attorney(s)

 X Other ROBEN CUMMINGS

 Special Instructions:

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Plaintiff,

vs.

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Defendant.

CIVIL ACTION NO.: 04-221-CD

PRAECIPE TO ENTER JUDGMENT

Filed on behalf of Plaintiff:
JOHN T. GALLAHER TIMBER TRANSFER

Counsel of Record for
This Party:

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

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

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

(412) 263-2000

FILED Atty. pd. 20.00
APR 06 2006 11:01 AM
Notice to F. Cortez
Bell, III, Esq.
(envelope provided)
William A. Shaw
Prothonotary/Clerk of Courts
Statement to
Amy Gailey
ck

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

PRAECIPE TO ENTER JUDGMENT

TO: Prothonotary

Kindly enter judgment in favor of John Gallagher Timber Transfer in the amount of \$16,640.89,
which is equivalent to the total judgment amount plus pre-judgment interest.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: Matthew D. Gailey
Matthew D. Gailey, Esquire

*Attorneys for Plaintiff,
John T. Gallagher Timber Transfer*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Praecipe to Enter Judgment** was served via U.S. First-Class Mail, postage prepaid, this 4 day of April, 2006, upon the following individual(s):

F. Cortez Bell, III, Esq.
Bell, Silberblatt & Wood
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830
(*Counsel for Defendant*)

By: Matthew D. Gailey
Matthew D. Gailey

PIETRAGALLO
BOSICK &
GORDON LLP

ATTORNEYS AT LAW

THE THIRTY-EIGHTH FLOOR
ONE OXFORD CENTRE
PITTSBURGH, PA 15219
(412) 263-2000 (412) 261-5295 FAX

WILLIAM PIETRAGALLO, II	ROBERT J. D'ANNIBALLE (OH & WV)	LEE ANN RHODES
JOSEPH J. BOSICK (PA, OH & WV)	NANCY DAVIS STEWART	JENNIFER R. RUSSELL
MARK GORDON	GAYLE L. GODFREY	ANDREA M. BARTKO
FRANCIS E. PIPAK, JR.	JEANETTE H. HO (PA & WV)	ALBERT N. PETERLIN (PA & MD)
PAUL K. VEY (PA, WV & OH)	BRYAN K. SHRECKENGOST	PATRICK J. DOHENY (PA & WV)
NORA BARRY FISCHER (PA, IL & WV)	TIMOTHY R. SMITH (PA & WV)	GREGORY J. FISCHER
DAVID H. DILLE	BENJAMIN T. QUEEN, II (PA & USPTO)	JAMES F. MARRION (PA & WV)
HARRY J. KLUCHER (PA & NJ)	SEAN B. EPSTEIN	MICHAEL E. BARRETT (PA & IL)
ERIC P. REIF (PA & MI)	MARTIN T. DURKIN, JR.	BRIAN S. GREEN (PA & WV)
CLEM C. TRISCHLER (PA & WV)	GAVIN M. O'CONNOR (PA & WV)	ELIZABETH M. YANELLI
PAMELA G. COCHENOUR	MICHAEL MAGEE (PA & WV)	LARA A. NORTHROP (PA & USPTO)
JOHN B. WISE	TYLER J. SMITH	CHRISTOPHER M. ELZWICK
GEORGE R. FOX, III	ROCHELLE L. BRIGHTWELL (PA & WV)	AMY N. WILLIAMSON
P. BRENNAN HART	ANTHONY J. BASINSKI	ROBERT J. MONAHAN (PA & WV)
ERIC G. SOLLER	MARTHA S. HELMREICH	HEATHER A. TROSTLE (PA & WV)
WILLIAM W. SCHRIMPF, SR.	JULIE F. SWEENEY	MATTHEW D. GAILEY (PA, OH & WV)
ROBERT R. LEIGHT (PA & WV)	ERIC A. FISCHER	W. BEN STEWART (FL)
CHRISTOPHER L. WILDFIRE	B.J. O'NEILL	SUSAN S. SHIN
ALAN G. TOWNER (PA, MD & USPTO)	MARK T. CALOYER	DAVID W. TURNER
LOUIS C. LONG (PA & WV)	MARY MARGARET HILL (PA, OH & CA)	
KENNETH T. NEWMAN (PA, NJ & OH)	BRYAN S. NEFT (PA, OH, WV & CA)	COUNSEL TO THE FIRM
ROBERT P. LENART (PA & USPTO)	TIMOTHY J. GREEN (PA & OH)	ALFRED S. PELAEZ
RICHARD A. POLLARD	MICHELLE L. GORMAN (OH & WV)	THOMAS J. WARD

DIRECT DIAL NO.: 412-263-1819
FILE NO.: AH 42935
E-MAIL: MDG@PBandG.com

April 4, 2006

Prothonotary of Clearfield County
Court of Common Pleas
P.O. Box 549
Clearfield, PA 16803-0549

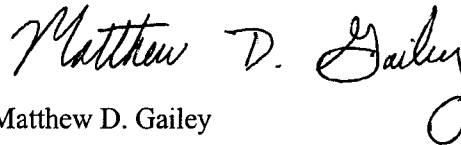
**Re: John T. Gallagher Timber Transfer vs. Robert Dr. Hamilton
t/a Hamilton Enterprises
In the Court of Common Pleas of Clearfield County, Pennsylvania
Case No. AR-**

Dear Sir:

Enclosed for filing please find our Praecipe to Enter Judgment in the above-captioned case. I have enclosed a check payable to you in the amount of \$20.00. A copy of the Judge's Order granting our Motion for Judgment on the Pleadings is also enclosed. In addition, I have enclosed two self-addressed stamped envelopes for both parties in this matter.

Thank you for your time and consideration in this matter. If you have any questions, please feel free to call me.

Very truly yours,



Matthew D. Gailey

MDG:mjm
Enclosures

cc: F. Cortez Bell, III, Esq. (w/enc.)

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

John T. Gallaher Timber Transfer

Vs.

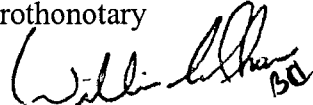
No. 2004-00221-CD

Robert D. Hamilton t/a Hamilton Enterprises

To: Robert D. Hamilton t/a Hamilton Enterprises

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$16,640.89 on April 6, 2006.

William A. Shaw
Prothonotary



William A. Shaw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

John T. Gallaher Timber Transfer
Plaintiff(s)

No.: 2004-00221-CD

Real Debt: \$16,640.89

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Robert D. Hamilton
Hamilton Enterprises
Defendant(s)

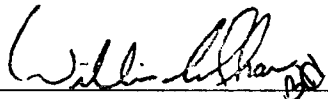
Entry: \$20.00

Instrument: Court Ordered Judgment

Date of Entry: April 6, 2006

Expires: April 6, 2011

Certified from the record this 6th day of April, 2006.



William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Defendant.

CIVIL ACTION NO.: AR-

04-221-CD

COMPLAINT IN CIVIL ACTION

Code: _____

Filed on behalf of:

Plaintiff, John T. Gallaher Timber Transfer

Counsel of Record for
This Party:

Timothy R. Smith, Esquire
Pa. I.D. #63282

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

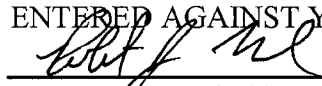
PIETRAGALLO, BOSICK & GORDON
Firm #834

38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

NOTICE TO DEFENDANTS:

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



Attorney for Plaintiff

FILED

FEB 17 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Civil Action No.: AR-

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, 16656

Defendant.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney, and filing in writing with the Court your defenses or objections to the claims as 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 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 OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
Telephone: (814) 765-2641 Extension 50-51

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Civil Action No.: AR-

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, 16656

Defendant.

COMPLAINT IN CIVIL ACTION

AND NOW comes Plaintiff, John T. Gallaher Timber Transfer (“Gallaher”) by and through their attorneys, Pietragallo, Bosick & Gordon, Timothy R. Smith, Esquire, and Robert J. Monahan, Esquire against defendant Robert Hamilton doing business as Hamilton Enterprises (“Hamilton”), asserts as follows:

1. Gallaher is a Pennsylvania company with its principal place of business in Irvona, Pennsylvania.
2. Robert Hamilton is an individual who resides in Pennsylvania and conducts business as Hamilton Enterprises, a Pennsylvania company with its principal place of business in Irvona, Pennsylvania. Hereinafter, Robert Hamilton individually and doing business as Hamilton Enterprises will be collectively referred to as “Hamilton”.
3. Hamilton, at all times relevant hereto, did business in Pennsylvania.
4. Hamilton regularly conducts business in Clearfield County.

5. On or about August 13, 1999, Robert Cummings ("Cummings") was an employee of Hamilton.

6. On or about August 13, 1999, Cummings suffered a work-related injury during the course and scope of his employment with Hamilton, in the nature of a broken leg resulting in a period of temporary total disability from August 13, 1999 through March, 2000.

7. Gallaher was deemed to be the statutory employer of Robert Cummings under the Pennsylvania Workers' Compensation Act.

8. It was ordered on January 31, 2002, amended on February 19, 2002 and again amended on February 26, 2002 by Michael E. Koll, Workers' Compensation Judge of Clearfield District Office, that Cummings was entitled to receive workers' compensation payments from the time he missed work from August 13, 1999 through March of 2000. Pursuant to the Amended Order of the Workers' Compensation Judge dated February 19, 2002 and the Amended Order dated February 26, 2002, Hamilton was held primarily liable to pay Cummings his workers' compensation benefits. (Exhibit "A" and "B" attached hereto.)

9. Evidently, contrary to Pennsylvania law, Hamilton did not carry Workers' Compensation Insurance at the time of Cumming's injury.

10. Hamilton failed to pay Cummings the amount owed pursuant to the order dated January 31, 2002 and amended on February 19, 2002.

11. Pursuant to the Order of the Workers' Compensation Judge dated January 31, 2002, the Amended Order dated February 19, 2002, and the Amended Order dated February 26, 2002, Gallaher was found secondarily liable. (Exhibit "A", "B" and "C" attached hereto.)

12. Due to the failure of defendant to honor its obligation, on or about March 22, 2003, Gallaher, through its insurer, paid Cummings the amount of \$7,854.28 pursuant to the

Order of the Workers' Compensation Judge dated January 31, 2002, the Amended Order dated February 19, 2002 and the Amended Order dated February 26, 2002.

13. On or about October 31, 2003, Gallaher, through its insurers, paid and settled the Public Welfare Lien in the amount of \$6,327.06 pursuant to the Order of the Worker's Compensation Judge dated January 31, 2003, the Amended Order dated February 19, 2002, and the Amended Order dated February 26, 2002 (Exhibit "D" attached hereto).

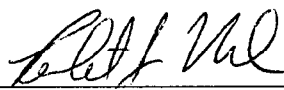
14. Hamilton's failure to follow the Order of Workers' Compensation Judge Koll and pay Cummings forced Gallaher to pay Cummings. Therefore, Gallaher is entitled to recovery from Hamilton, who was primarily liable, in the amount that was paid to Cummings as well as any expenses Gallaher incurred in defense of workers' compensation suit as allowed under the Pennsylvania Workers' Compensation Act Article III §302b (77 P.S. §462).

WHEREFORE, Plaintiff Gallaher demands a judgment in an amount not to exceed \$20,000.00.

Date: 2/11/04

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: 
Timothy R. Smith, Esquire
Robert J. Monahan, Esquire

*Attorneys for Plaintiffs,
John T. Gallaher Timber Transfer*


VERIFICATION

I, John Gallaher, verify that the statements contained in the foregoing **Complaint** is true and correct to the best of my knowledge, information and belief.

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

John T. Gallaher Timber Transfer

Date: Jan 09-2004

By: 



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

Circulation Date: 02/26/2002

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

AMENDED/CORRECTED DECISION COVER LETTER

Bureau Claim Number: 2150691

Insurer Claim Number:

Petitions:

Claim-Pet

Joinder-Pet

ROBERT D. CUMMINGS
P.O. BOX 77
WALLACETON, PA 16876-0000

DAVID C MASON ESQ
PO BOX 28
PHILLIPSBURG, PA 16866

Vs

ROBERT HAMILTON
T/A RE HAMILTON ENTERPRISES
RD 1 BOX 16
IRVONA, PA 16656-0000

BELL SILBERBLATT & WOOD
318 E LOCUST ST
CLEARFIELD, PA 16830

JOHN T GALLAHER TIMBER TRANSFERS
P O BOX 304
IRVONA, PA 16656

AMERICAN INTERSTATE INSURANCE COMPANY
PO BOX 768
INDIANA, PA 15701

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH, PA 15219

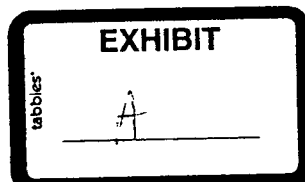
HARDWOODS OF MICHIGAN, INC.
430 DIVISION STREET
P. O. BOX 334
CLINTON, MI 49236

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

The attached Decision of the Judge is final unless an appeal is taken to the Workers' Compensation Appeal Board as provided by law.

If you do not agree with this Decision, an appeal must be filed with the Workers' Compensation Appeal Board within 20 days of the date of this notice.

Forms for an appeal may be obtained from the Workers' Compensation Appeal Board, Capital Associates Building
901 North Seventh Street
Third Floor South
Harrisburg, PA 17102



COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

WALKER LUMBER, INC.
P O BOX 60
WOODLAND, PA 16881

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

FAMOUS & ASSOCIATES
29 BALA AVE STE 122
BALA CYNWYD, PA 19004

AMERICAN INTERSTATE INSURANCE COMPANY
2301 HWY 190 WEST
DERIDDER, LA 70634

LUMBER MUTUAL INSURANCE CO
POINT WEST OFFICE CTR
ONE SPEEN ST
FRAMINGHAM, MA 01701

NORTH AMERICAN LUMBER INS CO
P O BOX 835
FRAMINGHAM, MA 01701

Employee Witnesses & Exhibits:

Robert Cummings, claimant (11-14-00; 03-22-01)

- 1- Logger Liability and Hold Harmless Agreement
- 2- 02-20-01 DPW Medical Lien and Expenses
- 3- 11-22-00 Correspondence from Kathleen Gillie (Mancing and Assoc) to Atty Mason
- 4- Winber Medical Center Accounting Print-out

Employer Witnesses & Exhibits:

None

Employer Counsel Witnesses & Exhibits:

John Gallagher (03-22-01)

Robert Hamilton (03-22-01)

George Caladonna (03-22-01)

Hamilton/Insurer Witnesses & Exhibits:

- A- Copy of 1996 Form 1099-MISC for Robert Cummings
- B- Copy of Note to Walter Hopkins and Company to prepare Form 1099 for George Caldana, Robert Cummings and Ronald queen
- C- Copy of 1998 Form 1099-MISC for Robert Cummings

Insurer Counsel-Michigan Hwd. Witnesses

Steve English (03-22-01)

Walker/Insurer Witnesses & Exhibits:

- A- Certificate of Liability Insurance for John Gallaher Logging

Hearings:

3/22/2001 13:00:00	Held
1/30/2001 13:00:00	Postponed by Employer Counsel on 01/29/01
11/14/2000 09:00:00	Held
8/8/2000 09:00:00	Canceled by Employee Counsel on 08/04/00
4/11/2000 09:45:00	Held

AMENDED DECISION

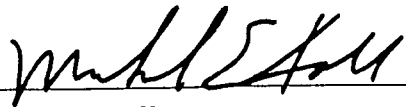
1. By Decision and Order of January 31, 2002, the Claim Petition filed by Claimant/Employee, Robert D. Cummings, against Defendant/Employer, Robert Hamilton, was granted. Pursuant to such Decision and Order it was noted that Counsel for Claimant had asserted the existence of a twenty percent (20%) Fee Agreement; but, as no Agreement had been submitted, such was not addressed within the Order.
2. Subsequently, by correspondence of February 15, 2002, Counsel for John T. Gallagher Timber Transfers, a Defendant who has been found to be a statutory Employer of the Claimant, being required to make payment of compensation benefits, in the event such are not paid directly by Defendant/Hamilton, requested clarification of the Order with respect to the attorney fee issue. Counsel for John T. Gallagher Timber Transfers requested clarification as to whether twenty percent (20%) attorney's fees should be paid directly to Claimant's Counsel, or one hundred percent (100%) of the funds paid directly to Mr. Cummings, without deducting for attorney's fees.
3. By Revised Order of February 19, 2002, Counsel for Claimant was to submit a Fee Agreement within ten (10) days. Thereafter, by correspondence of February 22, 2002, Counsel for Claimant, David C. Mason, Esquire, submitted a Contingent Fee Agreement executed by the Claimant and dated October 6, 1999. Such Agreement provides for an attorney's fee of twenty percent (20%) of all gross sums recovered.
4. Defendant/Employer shall likewise be granted an additional ten (10) day extension for making payment of such amounts, with the accrual of any additional interest, pending confirmation as to whether Counsel for Claimant intends to submit such Fee Agreement.

Accordingly, the following Amended Order is entered. The balance of the January 31, 2002 Decision and Order is otherwise incorporated herein by reference, in full.

Robert D. Cummings vs. Robert Hamilton t/a Hamilton Enterprises, et al
Claim/Joinder Petitions
Bureau Claim No. 2150691
Page 2 of 1

AMENDED ORDER

AND NOW, this 26th day of February, 2002, it is hereby Ordered that Defendant/ Insurer shall deduct a twenty percent (20%) attorney's fee from all compensation payable pursuant to the Decision and Order of January 31, 2002, making such payable directly to Counsel for Claimant, David C. Mason, Esquire.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office

MEK:lfb



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

Circulation Date: 02/19/2002

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

AMENDED/CORRECTED DECISION COVER LETTER

Bureau Claim Number: 2150691

Insurer Claim Number:

Petitions:

Claim-Pet
Joinder-Pet

ROBERT D. CUMMINGS
P.O. BOX 77
WALLACETON, PA 16876-0000

DAVID C MASON ESQ
PO BOX 28
PHILLIPSBURG, PA 16866

Vs

ROBERT HAMILTON
T/A RE HAMILTON ENTERPRISES
RD 1 BOX 16
IRVONA, PA 16656-0000

BELL SILBERBLATT & WOOD
318 E LOCUST ST
CLEARFIELD, PA 16830

JOHN T GALLAHER TIMBER TRANSFERS
P O BOX 304
IRVONA, PA 16656

AMERICAN INTERSTATE INSURANCE COMPANY
PO BOX 768
INDIANA, PA 15701

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH, PA 15219

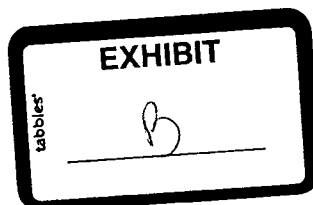
HARDWOODS OF MICHIGAN, INC.
430 DIVISION STREET
P. O. BOX 334
CLINTON, MI 49236

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

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901 North Seventh Street
Third Floor South
Harrisburg, PA 17102



DIARY 3/4
Deadline 3/11

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

WALKER LUMBER, INC.
P O BOX 60
WOODLAND, PA 16881

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

FAMOUS & ASSOCIATES
29 BALA AVE STE 122
BALA CYNWYD, PA 19004

AMERICAN INTERSTATE INSURANCE COMPANY
2301 HWY 190 WEST
DERIDDER, LA 70634

LUMBER MUTUAL INSURANCE CO
POINT WEST OFFICE CTR
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FRAMINGHAM, MA 01701

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Employee Witnesses & Exhibits:

Robert Cummings, claimant (11-14-00; 03-22-01)

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- 2- 02-20-01 DPW Medical Lien and Expenses
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Employer Witnesses & Exhibits:

None

Employer Counsel Witnesses & Exhibits:

John Gallagher (03-22-01)

Robert Hamilton (03-22-01)

George Caladonna (03-22-01)

Hamilton/Insurer Witnesses & Exhibits:

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Insurer Counsel-Michigan Hwd. Witnesses

Steve English (03-22-01)

Walker/Insurer Witnesses & Exhibits:

- A- Certificate of Liability Insurance for John Gallaher Logging

Hearings:

3/22/2001 13:00:00	Held
1/30/2001 13:00:00	Postponed by Employer Counsel on 01/29/01
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8/8/2000 09:00:00	Canceled by Employee Counsel on 08/04/00
4/11/2000 09:45:00	Held

AMENDED DECISION

1. By Decision and Order of January 31, 2002, the Claim Petition filed by Claimant/Employee, Robert D. Cummings, against Defendant/Employer, Robert Hamilton, was granted. Pursuant to such Decision and Order it was noted that Counsel for Claimant had asserted the existence of a twenty percent (20%) Fee Agreement; but, as no Agreement had been submitted, such was not addressed within the Order.
2. Subsequently, by correspondence of February 15, 2002, Counsel for John T. Gallagher Timber Transfers, a Defendant who has been found to be a statutory Employer of the Claimant, being required to make payment of compensation benefits, in the event such are not paid directly by Defendant/Hamilton, requested clarification of the Order with respect to the attorney fee issue. Counsel for John T. Gallagher Timber Transfers requested clarification as to whether twenty percent (20%) attorney's fees should be paid directly to Claimant's Counsel, or one hundred percent (100%) of the funds paid directly to Mr. Cummings, without deducting for attorney's fees.

Accordingly, the following Revised Order is entered. The balance of the January 31, 2002 Decision and Order is otherwise incorporated herein by reference, in full.

AMENDED ORDER

AND NOW, this 19th day of February, 2002, in the absence of Counsel for Claimant's submission of a Fee Agreement within ten (10) days of this Amended Order, Defendant/Employer shall be entitled to make payment of one hundred percent (100%) of the amounts ordered to be paid pursuant to the January 31, 2002 Order, directly the Claimant, without deduction of attorney's fees. Defendant/Employer shall likewise be granted an additional ten (10) day extension for making payment of such amounts, with the accrual of any additional interest, pending confirmation as to whether Counsel for Claimant intends to submit such Fee Agreement.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

Circulation Date: 01/31/2002

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

FEB 05 2002

DECISION RENDERED COVER LETTER

Bureau Claim Number: 2150691

Insurer Claim Number:

Petitions:

Claim-Pet

Joinder-Pet

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WALLACETON, PA 16876-0000

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Vs

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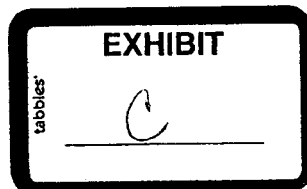
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Deadline 2/20

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Hamilton/Insurer Witnesses & Exhibits:

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Steve English (03-22-01)

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8/8/2000 09:00:00	Canceled by Employee Counsel on 08/04/00
4/11/2000 09:45:00	Held

FINDINGS OF FACT

1. The Claimant, Robert D. Cummings, filed a Claim Petition on or about February 14, 2000, asserting that he suffered a work injury on May 3, 1997, in the nature of a concussion from being struck on the head by a tree, during the course and scope of his employment with Defendant/Employer, Robert Hamilton, t/a Hamilton Enterprises. At or about such time, the Claimant additionally filed a Claim Petition asserting that, on August 13, 1999, he suffered a work injury during the course and scope of his employment with Robert Hamilton, t/a Hamilton Enterprises, in the nature of a severely comminuted fracture of the tibia/fibula - left leg, lacerations of the scalp, bruise, contusion injury to his left shoulder. The Claimant's Petitions were assigned to this Workers' Compensation Judge on March 14, and March 20, 2000, respectively. Defendant/Employer has filed Answers, denying the material averments of each Petition.
2. An initial pretrial conference was held in this matter on April 11, 2000. At such time, the parties were granted extensions for the completion of discovery, due to the possibility of the joinder of other potential employers, including statutory employers.
3. Subsequently, Defendant/Employer, Robert Hamilton, t/a Hamilton Enterprises, filed Petitions for Joinder of Additional Defendants, joining as additional defendants, John T. Gallagher Timber Transfers, Michigan Hardwoods and C.A. Walker Lumber, Inc. Each Defendant has filed responsive Answers denying the material averments of such Petition[s].
4. A hearing on all Petitions was held on November 14, 2000. At such time, in support of his Claim Petitions, the testimony of the Claimant was presented, in pertinent part, as follows:
 - a. The Claimant testified that, as of the time of the hearing, he was forty-seven (47) years of age and had worked in the woods and timber business all of his life. He testified that, on August 13, 1999, he was working cutting timber for Robert Hamilton, with a coworker, George Caldana, in Windber, Pennsylvania. The Claimant testified that this was the second time he had been on such property to cut timber, the first time cutting timber for Robert Hamilton, for a period of approximately three (3) months. He indicated that, on the most recent occasion, he had been on the property for only a few weeks. The Claimant testified that, in the interim between the two (2) periods of cutting timber in Windber, he continued working cutting timber for Robert Hamilton. (11/14/2000 Hearing N.T., pp. 6-10)
 - b. The Claimant testified that his duties entailed cutting down trees with a chain saw, owned by Robert Hamilton; that he would use a log skidder to haul the logs to where Mr. Caldana was working; and that Mr. Caldana would cut up the trees and skid them to the log landing area, using skidders owned by Robert Hamilton. The Claimant testified that, other than a cable cutter and a three-quarter (3/4) socket set, the tools and equipment which he used were owned by Robert Hamilton and maintained at Robert Hamilton's expense. The Claimant indicated that Robert Hamilton also paid for fuel for the equipment. (11/14/2000 Hearing N.T., pp. 6-15)

- c. The Claimant testified that, at the Windber property, it was his understanding he was cutting "Walker's timber". The Claimant testified that he did not know who was the owner of the property. The Claimant indicated that Mr. Caldana would advise him what to do and, Robert Hamilton and John Gallagher showed Mr. Caldana where the timber was to be cut. The Claimant testified that after the logs were taken to the log landing, such would be loaded onto a log truck, owned by John Gallagher, who would haul such timber to Michigan Hardwood. (11/14/2000 Hearing N.T., pp. 10-16)
- d. The Claimant testified that he started working for Robert Hamilton in October or November of 1996 and continued working for Mr. Hamilton up through August 13, 1999. He indicated he did not work for anyone else during such time period. The Claimant indicated that he was paid at the rate of \$7.00 per hour, working approximately ten (10) hours per day, seven (7) days per week. He indicated that, when he and George Caldana were finished with one work site, he would be directed to the next work site by Robert Hamilton. The Claimant indicated that, although Robert Hamilton was not in the woods very often due to a disability, he would advise George Caldana and himself as to the size or type of trees to be cut. (11/14/2000 Hearing N.T., pp. 15-21)
- e. The Claimant testified that, on August 13, 1999, while operating a log skidder owned by Robert Hamilton, the brakes went out while he was on the side of a mountain; that the skidder rolled over, crushing his left leg against a tree. The Claimant testified that he was subsequently taken to Conemaugh Hospital by Mr. Caldana, where he received treatment for a broken leg, including the insertion of surgical pins. The Claimant indicated that he still has problems with the leg, especially in cold and wet weather. (11/14/2000 Hearing N.T., pp. 22-25)
- f. The Claimant acknowledged that, in October of 1996, he signed a contract between he and Mr. Hamilton. The Claimant denied reading or looking at such document before signing, or ever being asked for proof of Workers' Compensation or liability insurance, that he was required to have. The Claimant indicated that he believes everyone who worked for Robert Hamilton signed such a contract. The Claimant testified that he never employed anyone to help him on the job; and that either Robert Hamilton or George Caldana were the individuals to hire any additional people for the different jobs. The Claimant indicated he did not sign one of the contracts each time he went to a different job site. He indicated that, to the best of his knowledge, either Robert Hamilton or George Caldana would be the individuals to fire people from jobs. The Claimant, when further questioned about reading the contract, indicated that he cannot read very well and did not have much time to sign it. (11/14/2000 Hearing N.T., pp. 26-28)
- g. The Claimant testified that he was no longer receiving medical treatment as a result of his August 13, 1999 injury. (11/14/2000 Hearing N.T., pp. 28-29)
- h. Upon cross examination, the Claimant acknowledged that Mr. Caldana was present at the time that he signed the "Logger Liability and Hold Harmless Agreement", Claimant's Exhibit 1. The Claimant denies that Mr. Hamilton went

point-by-point through the Agreement with him. He denies that Mr. Hamilton explained "independent contractor" responsibilities with him. The Claimant acknowledged that Mr. Hamilton had provided the Agreement to him a couple of days ahead of time. The Claimant indicated it was his understanding that he had to sign such by the time he returned to start work, in order to work for Mr. Hamilton. He indicated that he did not raise any questions about the Agreement. The Claimant acknowledged receiving a 1099 Tax Form in 1996, from Mr. Hamilton, as well as receiving such form in 1997 and 1998. He acknowledged that he had been responsible for payment of his own taxes from his paychecks, that none were taken out of the same. (11/14/2000 Hearing N.T., pp. 44-55)

- i. The Claimant testified that, with respect to the Windber property, he was shown the property lines by a gentleman from "Walker's". He acknowledged that Mr. Hamilton did not show him the property lines. The Claimant indicated that Mr. Hamilton would advise him how many days per week to work and sometimes tell him how many hours a day to work; but, such was kind of left up to him, if it was raining, thundering or lightening. The Claimant indicated that they worked everyday, as he was told by Mr. Hamilton that they had to work everyday. The Claimant indicated that Mr. Hamilton would advise them to cut "the log trees"; and that he would know from his prior experience as to which trees were to be cut. How he cut the trees and how many trees he cut being left up to him. The Claimant acknowledged that an accurate characterization of his relationship with Mr. Hamilton would be that Mr. Hamilton would find the properties or jobs for timber cutting and then he, Mr. Caldana and other individuals would go in and do the actual cutting, skid out the logs to the log landing, with someone else picking up the logs and taking them to the sawmills. The Claimant denied ever attempting to find logs on his own to cut; and pretty much relied upon Mr. Hamilton coming up with the leases for the sites for him to cut. (11/14/2000 Hearing N.T., pp. 55-58)
- j. The Claimant acknowledged that he has returned to work full-time, cutting timber for an alternative employer, beginning approximately May of 2000. He acknowledged that, subsequent to having the brace taken off of his leg in March of 2000, he began performing odds and ends cutting work for other individuals as well. (11/14/2000 Hearing N.T., pp. 58-62)
- k. Upon cross examination by Counsel for John T. Gallagher Timber Transfer, the Claimant acknowledged he was never advised by Mr. Gallagher as to where to cut, never received any money from Mr. Gallagher, never signed any contracts with Mr. Gallagher and, otherwise, did not consider himself working for Mr. Gallagher. The Claimant acknowledged that, upon his return to work for an alternative employer, Mr. Dotts, he was earning as much or more as he was at the time of his August 13, 1999 work injury. (11/14/2000 Hearing N.T., pp. 63-66)
- l. Upon cross examination by Counsel for Additional Defendant, Michigan Hardwood, Inc. and C.A. Walker Lumber, Inc., which the parties stipulated are one in the same for purposes of this litigation, the Claimant acknowledged he had not signed any contract with anyone from C.A. Walker Lumber, did not receive any

paychecks from such, nor was he supplied with any materials and had minimal interaction with anyone from such companies. (11/14/2000 Hearing N.T., pp. 67-68)

- m. Upon redirect examination, the Claimant testified that, prior to his signing of the "Logger Liability and Hold Harmless Agreement", he had already worked for a period of several weeks for Mr. Hamilton, including receiving paychecks from the same. The Claimant indicated he always was paid \$7.00 an hour for his labor, whether it be cutting timber or doing maintenance work on Mr. Hamilton's equipment. The Claimant indicated that Mr. Caldana would keep track of his hours. (11/14/2000 Hearing N.T., pp. 68-71)
5. An additional hearing was held in this matter on March 22, 2001. At such time, in opposition to Claimant's Petition, Defendant, Robert Hamilton, presented the testimony of George Caldana. Mr. Caldana testified, in pertinent part, as follows:
- a. Mr. Caldana indicated that he had been employed by Robert Hamilton, as a log cutter, since 1996, under a comparable "Logger Liability and Hold Harmless Agreement" (Claimant's Exhibit 1), as that signed by the Claimant. Mr. Caldana described his understanding of such Agreement as that he had to pay his own taxes and did not have insurance. Mr. Caldana testified he was aware the Claimant signed the same Agreement; that the Claimant was advised by Mr. Hamilton he had to pay his own taxes and did not have insurance. Mr. Caldana indicated the Claimant said he understood such and that the two (2) of them actually had discussions about obtaining insurance. Mr. Caldana testified that he was present when the Claimant read the Agreement and indicated he understood such. (03/22/2001 Hearing N.T., pp. 8-17)
 - b. Mr. Caldana testified that, as of August 13, 1999, he and the Claimant were performing log cutting, using Robert Hamilton's equipment. Mr. Caldana testified that the two (2) were cutting timber on land leased by Walker Lumber. He indicated they had been cutting timber at such site for several months previously, had left that site, going to a different site identified by Mr. Hamilton, but ultimately came back; and they were cutting timber as of the time of the Claimant's injury. (03/22/2001 Hearing N.T., pp. 17-24)
 - c. Mr. Caldana, when questioned with respect to the other Defendants in this matter, indicated he had limited direct contact with Mr. Gallagher, other than contacts with Mr. Gallagher or his drivers, regarding picking up logs from the log landing. Mr. Caldana indicated that the landing site for the timber would be determined by himself and the Claimant. Mr. Caldana testified that, with respect to the trees to be cut, he was shown the property lines for the leased property by Steve English, the forester for Walker Lumber, and advised to cut the pre-marked trees. Mr. Caldana testified that he and the Claimant were advised to cut all of the trees marked in blue. (03/22/2001 Hearing N.T., pp. 24-26)

- d. Mr. Caldana testified that Robert Hamilton would not be present at the job site; and that he and the Claimant would decide for themselves as to which days to cut. Mr. Caldana indicated that he and the Claimant would not be required to report to Mr. Hamilton. He denied that he was the boss of the Claimant, with the two (2) working on their own. Mr. Caldana testified that he and the Claimant were each paid for the hours they worked per week, on a flat hourly rate. He testified that the two (2) could negotiate the hourly rate for each job. He further testified that the Claimant can read, as he has seen him reading a classified ads newspaper, called the "Ad Bargain", as well as some maintenance or repair manuals. Mr. Caldana further testified that, from 1996 until the Claimant's injury, he worked with the Claimant most everyday. When questioned as to relatively significant differences in his yearly income from that of the Claimant, Mr. Caldana testified he would be paid extra or "extra bonuses", for cutting up timber or cutting extra loads of timber, by Mr. Hamilton. Mr. Caldana testified that these bonuses were not negotiated, but determined by Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 26-47)
 - e. Mr. Caldana acknowledged that, although he indicated the flat hourly rate which he or the Claimant would be paid could be negotiated, the subject never came up at anytime and was never re-negotiated; and he would be paid \$7.00 per hour, as was the Claimant. Mr. Caldana acknowledged that Robert Hamilton would advise him and the Claimant as to the sites for other jobs where cutting was to be performed. Mr. Caldana acknowledged that, within the last two (2) years prior to the time of hearing, he had become a partner with Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 47-58)
6. In opposition to the Claimant's Petition, the testimony of Robert E. Hamilton was presented during the March 22, 2001 hearing. Mr. Hamilton testified, in pertinent part, as follows:
- a. Mr. Hamilton testified that he has maintained a sole proprietorship since 1988, of R. E. Hamilton Enterprises. He testified that the nature of such business is basically his obtaining of timber rights or properties, or leasing timbering rights, as well as the performance of contract cutting services for others. (03/22/2001 Hearing N.T., pp. 59-60)
 - b. Mr. Hamilton testified that, prior to George Caldana or the Claimant cutting timber for him, they each entered into the "Logger Liability and Hold Harmless Agreement". He indicated such Agreement was discussed with each individual, with each being advised there would be no federal taxes withheld, each was reasonable for his own insurance, and they were in charge of their cutting responsibilities. Mr. Hamilton indicated that neither individual was placed in a position of authority. Mr. Hamilton indicated that prior to retaining the Claimant, the Claimant had represented to him that he had his own skidder and had owned his own logging business on a prior occasion.

- c. Mr. Hamilton testified that he never received any indication the Claimant had difficulty reading, with the Claimant being able to follow notes and directions which he wrote out for him, as well as writing back notes to Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 61-64)
- d. Mr. Hamilton testified as to the cutting services which were being performed on the Windber property in August of 1999. He testified that, through his brother-in-law, Additional Defendant John Gallagher, he became aware that Additional Defendants, Michigan Hardwood/Walker Lumber, had some timber to be cut. Mr. Hamilton testified he had no direct contact with Michigan Hardwoods, nor did he enter into any written agreement with Michigan Hardwoods or Walker Lumber. Mr. Hamilton testified that John Gallagher would pay him \$250.00 to \$300.00 per load of logs delivered to the log landing. He testified that he would be paid by Mr. Gallagher at the end of the week, for the number of loads so delivered. He testified that he would then pay his crew, George Caldana and Mr. Cummings, as well as occasionally other individuals, a paycheck at the end of the week, for their services. Mr. Hamilton testified that he supplied the materials and equipment, which Mr. Caldana and the Claimant would use. (03/22/2001 Hearing N.T., pp. 64-77)
- e. Mr. Hamilton testified that, at the end of each week, Mr. Caldana and the Claimant would advise him as to what they had accomplished. He testified he did generally pay Mr. Caldana and the Claimant on an hourly basis, but would pay extra amounts for extra production. He acknowledged he would essentially decide how much per week each would be paid for any extra production. (03/22/2001 Hearing N.T., pp. 78, 107)
- f. Mr. Hamilton acknowledged he had no direct contact with Michigan Hardwoods/Walker Lumber, with his dealings primarily being limited to contacts with Mr. Gallagher. Mr. Hamilton indicated he assumed someone else would be supervising Mr. Caldana and the Claimant, but he did not know. He acknowledged he did not know if anyone else was working on the property. (03/22/2001 Hearing N.T., pp. 78-80)
- g. Mr. Hamilton acknowledged, on cross examination, that there were no provisions in the Agreements with Mr. Caldana and the Claimant with respect to his determination of amounts for extra production, or the specific hourly rate. Mr. Hamilton acknowledged that neither Mr. Gallagher nor anyone from his Company would do any cutting, with such companies responsibilities being limited to hauling the timber from the landing site to the mills or Walker Lumber. Mr. Hamilton acknowledged he did not have any manner of written agreement with either of the Additional Defendants. Mr. Hamilton acknowledged that Mr. Caldana and the Claimant would rely upon him to line up work. He acknowledged that the overall role of his business was to get timber-cutting jobs and bring in his crew or cutters to perform the cutting and hauling to the landing site. (03/22/2001 Hearing N.T., pp. 92-108)

12. Based upon the foregoing, and review of the record in its entirety, it is further found as follows:

- a. On August 13, 1999, the Claimant, Robert Cummings, suffered a work injury during the course and scope of his employment with Defendant/Employer, Robert Hamilton, in the nature of a broken left leg, resulting in a period of temporary total disability from August 13, 1999 through March, 2000.
- b. Effective March, 2000, the Claimant had sufficiently recovered from his August 13, 1999 work injury to return to his pre-injury capacity of employment and, in fact, obtained alternative employment performing the same manner, scope and duties as he had at the time of his work injury, such as to no longer suffer any loss of earnings associated with his work injury.
- c. It is found that, at the time of his work injury, the Claimant was not an employee of either additional Defendants, John T. Gallagher Timber Transfers or Michigan Hardwoods/Walker Lumber Company.
- d. It is found that, at the time of his work injury, the Claimant's Employer, Robert Hamilton, was serving in the capacity of a sub-contractor for Additional Defendant, John T. Gallagher Timber Transfers.
- e. It is found that, at the time of Claimant's work injury, the Claimant's Employer, Robert Hamilton, was uninsured for Workers' Compensation purposes. It is further found that Additional Defendant, John T. Gallagher Timber Transfers, is found to be a statutory employer under Section 302 (d) of the Pennsylvania Workers' Compensation Act.
- f. It is found that the Claimant has failed to submit any evidence whatsoever, with respect to his asserted May 31, 1997 injury.
- g. In reaching these findings and, specifically, in finding the Claimant was an employee of Defendant, Robert Hamilton, and not an Independent Contractor, it is noted that "[I]n determining whether a claimant is an independent contractor or employee, the Pennsylvania Supreme Court has set forth the following factors to consider in determining the type of relationship which exists: control of the manner in which work is to be done; responsibility for result only; terms of agreement between the parties; nature of the work or occupation; skill required for performance; whether one employee is engaged in a distinct occupation or business; which party supplies the tools; whether payment is by time or by the job; whether work is part of the regular business of the alleged employer, and whether the alleged employer has the right to terminate employment at any time. Because each case is fact specific, all of these factors need to be present to determine the type of relationship which exists. Moreover, while all of these factors are important indicators, the key element is whether the alleged employer has the right to control the work to be done, and the manner in which it is performed." Johnson v. W.C.A.B. (DuBois Courier), 631 A.2d 693 (Pa. Cmwlth., 1993), citing

Payments

West 1

Payments

Vendor Information

Automatic Payment

Void Type

Vendor ID

0000656947

Tax ID

0036003115

DEPARTMENT OF PUBLIC WELFARE
SECTION-CASUALTY UNIT BOX
8486
HARRISBURG PA 17105 (ACTIVE)

Payment Detail

Miscellaneous

Comments

Transaction Number

0002741699

Date Requested

10/30/2003

Check No

0011283279

Requested By

KRJONES

Date Cleared

11

Issue Date

10/31/2003

Check Register Date

10/31/2003

On Register

Y

Site ID

Phase On Check Register

Team West 1

Team

West 1

Check Total

6327.05

Hammermill Paper Company v. Rust Engineering Co., 430 Pa. 365, 370, 240 A.2d 389, 392 (1968).

- h. In finding the Claimant is an employee, as opposed to an Independent Contractor, the testimony of Mr. Cummings, Mr. Hamilton and Mr. Caldana are each found to be credible, in part, and rejected, in part. Overall, in reviewing the testimony of each of these individuals in their entirety, other than each of their ultimate conclusions as to the nature of the relationship, the testimony of each as to the practical implications of their relationships are fairly consistent. Upon review of the consistent aspects of each of their testimonies, it is found that the relationship is overwhelmingly that of an employee, as opposed to Independent Contractor. As noted in Johnson, Supra, the key element is whether the alleged employer has the right to control the work to be done and the manner in which it is performed. Under the present circumstances, although the Claimant signed an Agreement indicating he is an Independent Contractor, in most all aspects of the relationship he was treated as an employee, being paid on an hourly basis, or at the discretion of Mr. Hamilton as to any bonuses; he only performed work for Mr. Hamilton; the work which he performed was part of the regular business of Mr. Hamilton; and Mr. Hamilton provided all of the tools and equipment.
- i. In reaching these findings, that John T. Gallagher Transfers was a statutory employer of the Claimant, the testimony of Mr. Gallagher is found to be credible. Mr. Gallagher testified in a very honest and direct manner. However, as Mr. Gallagher candidly admitted, he naively accepted Mr. Hamilton's representations, that the "Hold Harmless Agreement" was sufficient to insulate him from any potential liability. For Workers' Compensation purposes, although such an Agreement is a consideration, such does not preclude the finding of an employer-employee relationship. Moreover, such does not insulate a contractor from Workers' Compensation liability in the event of an uninsured subcontractor. To define the existence of a statutory employer, five (5) elements must be confirmed; (1) contract with owner of land or one in the position of an owner, (2) premises occupied or under the control of the subcontractor seeking statutory employer status, (3) subcontract made by contractor, (4) part of the contractor's regular business must be entrusted to the subcontractor in the contract, and (5) an employee of the subcontractor is injured on the premises. Under the present circumstances, it is fairly undisputed by Mr. Gallagher, that he contracted with Walker Lumber to cut and haul timber. Mr. Gallagher acknowledged he would have utilized his normal crew, insured for Workers' Compensation purposes, to perform such duties, but they were preoccupied with other businesses. Accordingly, in good faith, he retained the services of his brother-in-law as effectively a subcontractor, to perform such duties.
- j. In reaching these findings, the testimony of Mr. English is found to be credible and generally unrefuted.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the entirety of the record and the respective Law on this matter, this Adjudicator concludes as follows:

1. At all times relevant hereto, the parties were bound by the applicable terms and provisions of the Pennsylvania Workers' Compensation Act, as Amended.
2. The Claimant has sustained his burden of proof, that he suffered a work injury on August 13, 1999, in the nature of a broken left leg, entitling him to Workers' Compensation benefits for the period of August 13, 1999 through March of 2000, together with the payment of medical costs and expenses causally related to the same.
3. Defendant/Employer, Robert Hamilton, shall be responsible for the payment of such Workers' Compensation benefits, together with the reimbursement of any Public Welfare Lien reimbursement for the payment of any such medical expenses.
4. The Claimant has failed to sustain his burden of proof, that he suffered a work injury on May 31, 1997.
5. Original Defendant/Employer has failed to sustain its burden of proof, that Additional Defendants, John T. Gallagher Timber Transfers, or Michigan Hardwoods/C.A. Walker Lumber/Walker Lumber, were employers of the Claimant at the time of his August 13, 1999 work injury. However, it is concluded that Additional Defendant, John T. Gallagher Timber Transfers, was a statutory employer for purposes of the Pennsylvania Workers' Compensation Act, as Amended.
6. Defendant/Employers have sustained their burden of proof, that their contest of these matter were, at all times, reasonable. Accordingly, no award of attorney's fees is made hereunder.
7. As the Claimant has prevailed in this matter, Claimant shall be entitled to reimbursement of his costs of litigation; however, no formal request has been made by Claimant's Counsel, nor has an itemized Bill of Costs been submitted.
8. Counsel for Claimant has asserted the existence of a twenty percent (20%) Fee Agreement; however, no Agreement has been submitted. According, such is not addressed herein.

ORDER

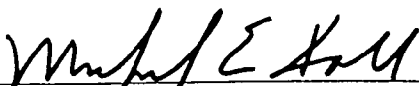
AND NOW, this 31st day of January, 2002, it is hereby Ordered that the Claim Petition filed by Claimant/Employee, Robert D. Cummings, against Defendant/Employer, Robert Hamilton t/a R. E. Hamilton Enterprises, alleging a work injury on August 13, 1999, is GRANTED, consistent with Conclusions of Law No. 2 and 3.

7. In opposition to the Joinder Petition, the testimony of John Thomas Gallagher was presented at the time of the March 22, 2001 hearing. Mr. Gallagher testified as to his business of contract cutting timber, where larger companies will purchase the timber, and his company was to produce the timber from the wood site to the mills, including cutting, skidding and hauling timber. Mr. Gallagher testified that he was contacted by the forester, Steve English, regarding Walker Lumber's purchasing of timber rights and needing such timber cut. Mr. Gallagher testified that, at such time, as his crews were already busy cutting timber for another company, he advised his brother-in-law, Robert Hamilton, of the timber job at the Windber site. Accordingly, the subsequent financial arrangement between Mr. Gallagher and Robert Hamilton involved Robert Hamilton's provision of the cutting crew, who would cut and skid the timber to the landing site where Mr. Gallagher's company and employees would pick up the timber and haul such to Walker Lumber. Mr. Gallagher would then be paid by Walker Lumber based upon the number of board-feet of scaled timber delivered, as well as by the ton for pulpwood. Mr. Gallagher would then pay Mr. Hamilton a set price per load of wood delivered to the log landing. Mr. Gallagher testified he was not responsible for supervising Mr. Hamilton's crew, nor determining the timber to be cut. Mr. Gallagher acknowledged being advised by Mr. Hamilton that he had his no insurance. Mr. Gallagher indicated that, when he discussed such with Mr. Hamilton, Mr. Hamilton provided copies of the "Hold Harmless Agreements", indicating such were sufficient. Mr. Gallagher testified he does maintain Workers' Compensation insurance for his employees. (03/22/2001 Hearing N.T., pp. 108-138)
8. In opposition to the Joinder Petition, the testimony of Steve English, forester for Walker Lumber, was presented. Mr. English testified that Walker Lumber retained Mr. Gallagher's Company to perform the cutting and hauling of timber, for which Mr. Gallagher would be paid directly, based upon the amount of timber delivered. He testified that, other than identifying the property to be cut and parameters of cutting, neither he nor Walker Lumber provided any supervision over such responsibilities. Mr. English testified that Mr. Gallagher provided Walker Lumber with an insurance certificate; and Gallagher was at leave to sub-contract out work at his discretion. (03/22/2001 Hearing N.T., pp. 142-151)
9. At the conclusion of the March 22, 2001 hearing, it was confirmed that, based upon the Claimant's testimony and stipulations that he had returned to work with no loss of earnings; that the primary issue in question was with respect to a employer-employee relationship; and the parties would not be required to proceed with the completion of medical depositions or evidence in support of the causal relationship between the Claimant's August 13, 1999 injury and such closed period of disability.
10. Defendant/Employer, Robert Hamilton, has submitted a Statement of Wages setting forth that Claimant had a pre-injury average weekly wage of \$361.39, with a resultant compensation rate of \$240.93 per week. For the first time, in his Proposed Findings of Fact, Counsel for Claimant has raised objections as to the accuracy of the same. Such objections are found to be untimely and are overruled.
11. Pursuant to acknowledgments of the Claimant, he acknowledged that, as of March, 2000, he returned to full, unrestricted duties, consistent with those he had been performing prior to August 13, 1999, without loss of wages associated with the work injury.

In accordance with Conclusion of Law No. 5, in the absence of payment of the foregoing by original Defendant/Employer, Robert Hamilton, t/a R. E. Hamilton Enterprises, John T. Gallagher Timber Transfers, as the statutory employer, and/or its Workers' Compensation Insurer, shall be responsible for payment of compensation payable hereunder.


Defendants are entitled to a Suspension of Claimant's benefits effective March, 2000.

The Claim Petition filed by Claimant alleging a work injury on May 3, 1997 is DENIED and DISMISSED, consistent with Conclusion of Law No. 4.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office

lfb


COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
BUREAU OF FINANCIAL OPERATIONS
DIVISION OF THIRD PARTY LIABILITY
CASUALTY UNIT
P.O. BOX 8486
HARRISBURG, PA 17105-8486

November 5, 2003

AMERICAN INTERSTATE INSURANCE CO
KRISTEN JONES
CLAIM DEPARTMENT
PO BOX 1099
MECHANICSBURG PA 17055

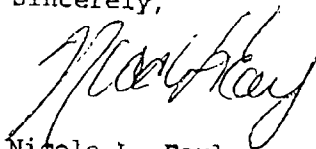
Re: ROBERT CUMMINGS
CIS #: 300119139
Incident Date: 08/13/1999
Claim #: 2000-01572PA

Dear Ms. Jones:

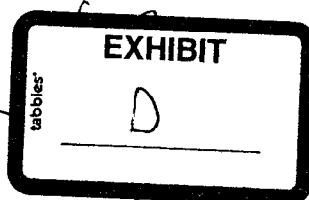
This is to acknowledge receipt of payment in the amount of \$6,327.06 regarding the above-referenced individual.

Your cooperation in this matter is appreciated.

Sincerely,



Nicole L. Early
TPL Program Investigator
717-772-6606
717-772-6553 FAX



Received
NOV 10 2003
AIIC - PA

Payments

West 1

Payments

Vendor Information

Automatic Payment

Void type

Vendor ID 0000656847

Entity 236003113

DEPARTMENT OF PUBLIC WELFARE
TRESPASSION-CASUALTY UNIT BOX
8486
HARRISBURG PA 17105 (ACTIVE)

Payment Detail

Miscellaneous

PA

LAE

Claimant ROBERT D. COMMINGS

Claim Number	Pay Code	Amount	Gross Amt	Begin Date	End Date
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West 1

Check Total

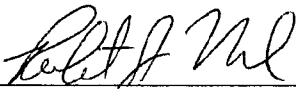
6327.06

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Complaint, was served via U.S. First-Class Mail, postage prepaid, this 11 day of February, 2004, upon the following individual(s):

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656

PIETRAGALLO, BOSICK & GORDON

By: 
Timothy Smith, Esquire
Robert J. Monahan, Esquire

The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

CA

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Plaintiff,

vs.

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Defendant.

CIVIL ACTION NO.: 04-221-CD

MOTION FOR JUDGMENT
ON THE PLEADINGS

Filed on behalf of Plaintiff:
JOHN T. GALLAHER TIMBER TRANSFER

Counsel of Record for
This Party:

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

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

(412) 263-2000

~~RECEIVED~~

mrakalli@wglaw
.com

FILED ¹⁰⁰ *Att. Monahan*
JAN 23 2006 ^{10:50 AM} *610*

William A. Shaw
Prothonotary/Clerk of Courts

28

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

MOTION FOR JUDGMENT ON THE PLEADINGS

AND NOW, comes Plaintiff, John T. Gallaher Timber Transfer (hereinafter "Gallaher"), by and through its counsel, Robert J. Monahan, Esquire, and the law firm of Pietragallo Bosick & Gordon LLP, and files and serves the following Motion for Judgment on the Pleadings, asserts as follows:

1. On or about February 17, 2004, Gallaher filed a complaint in the instant action. (A copy of said complaint is attached hereto as exhibit "F").
2. Robert D. Hamilton t/a Hamilton Enterprises (hereinafter "Defendant" or "Hamilton") filed its Answer, New Matter and Counterclaim. (A copy of said pleading is attached hereto as exhibit "G").
3. Gallaher filed a response to Defendant's New Matter and Counterclaim. (A copy of said pleading is attached hereto as exhibit "H").
4. A summary of the facts are as follows, on or about August 13, 1999, Robert Cummings (hereinafter "Cummings") was an employee of Robert D. Hamilton t/a Hamilton Enterprises (hereinafter "Defendant").

5. On or about August 13, 1999, Cummings suffered a work-related injury during the course and scope of his employment with Hamilton, in the nature of a broken leg resulting in a period of temporary total disability from August 13, 1999 through March 2000.

6. Under Court Order, Gallaher was deemed to be the statutory employer of Cummings under the Pennsylvania Workers' Compensation Act.

7. Under Court Order, Defendant was deemed to be the employer of Cummings.

8. It was ordered on January 31, 2002, amended on February 19, 2002, and again amended on February 26, 2002 by Michael E. Koll, Workers' Compensation Judge of Clearfield District Office, that Cummings was entitled to receive workers' compensation payments from the time he missed work from August 13, 1999 through March of 2000. (Exhibits "A", "B", and "C" are attached hereto.) Pursuant to the Amended Order of the Workers' Compensation Judge dated February 19, 2002 and the Amended Order dated February 26, 2002, Hamilton was held primarily liable to pay Cummings his workers' compensation benefits.

9. Contrary to Pennsylvania law, Hamilton did not carry workers' compensation insurance at the time of Cumming's injury.

10. Hamilton failed to pay Cummings the amount owed pursuant to the Order dated January 31, 2002 and amended on February 19, 2002, a fact admitted by Defendant in Paragraph 10 of its own Answer.

11. Pursuant to the Order of the Workers' Compensation Judge dated January 31, 2002, the Amended Order dated February 19, 2002, and the Amended Order dated February 26, 2002, Gallaher was found secondarily liable.

12. Due to the failure of defendant to honor its obligation, on or about March 22, 2003, Gallaher, through its insurer, paid Cummings the amount of \$7,854.28 pursuant to the Order of the Workers' Compensation Judge dated January 31, 2002, the Amended Order dated February 19, 2002 and the Amended Order dated February 26, 2002 (Exhibit "E" is attached hereto.)

13. On or about October 31, 2003, Gallaher, through its insurers, paid and settled the Public Welfare lien in the amount of \$6,327.06 pursuant to the Order of the Worker's Compensation Judge dated January 31, 2003, the Amended Order dated February 19, 2002, and the Amended Order dated February 26, 2002 (Exhibit "D" is attached hereto).

14. Pursuant to 77 P.S. §462, "any employer or his insurer who shall become liable hereunder for such compensation may recover the amount thereof paid and any necessary expenses from another person if the latter is primarily liable therefore."

15. Hamilton's failure to follow the Order of Workers' Compensation Judge Koll and pay Cummings forced Gallaher to pay Cummings. Therefore, Gallaher is entitled to recover from Defendant Hamilton, who was primarily liable, the amount paid to Cummings as well as any expenses Gallaher incurred in defense of workers' compensation suit as allowed under the Pennsylvania Workers' Compensation Act Article III §302b (77 P.S. §462).

16. Defendant Hamilton is collaterally estopped from asserting defenses previously raised and argued by defendant in the workers' compensation case of Cummings.

17. Collateral estoppel has been held to apply when:

(1) the issue decided in the prior adjudication was identical with the one presented in the later action, (2) there was a final judgment on the merits, (3) the party against whom the plan is asserted was a party or in privity with a party to the prior adjudication, and (4) the party against whom it is asserted has had a full and fair opportunity to litigate the issue in question in a prior action.

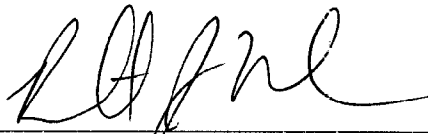
Williams v. Workman's Compensation Appeal Board, 628 A.2d 23, 26 (Pa. Commw. 1996).

18. Each and every issue that Defendant disputes or raises in his pleadings has already been argued and decided upon in the workers' compensation claim of Robert Cummings. Defendant held, and was denied, the same position of denial of the employment of Robert Cummings in the previous hearings as he is attempting to establish here.

WHEREFORE, Plaintiff John T. Gallaher Timber Transfer respectfully requests this Court grant its Motion for Judgment on the Pleadings, enter judgment in its favor on all claims asserted in the Complaint in this action, together with costs, and dismiss Defendant's New Matter and Counterclaim with prejudice.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: 

Robert J. Monahan, Esquire

*Attorneys for Plaintiff,
John T. Gallaher Timber Transfer*

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

Circulation Date: 01/31/2002

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

FEB 05 2002

DECISION RENDERED COVER LETTER

Bureau Claim Number: 2150691

Insurer Claim Number:

Petitions:

Claim-Pet

Joinder-Pet

ROBERT D. CUMMINGS
P.O. BOX 77
WALLACETON, PA 16876-0000

DAVID C MASON ESQ
PO BOX 28
PHILLIPSBURG, PA 16866

Vs

ROBERT HAMILTON
T/A RE HAMILTON ENTERPRISES
RD 1 BOX 16
IRVONA, PA 16656-0000

BELL SILBERBLATT & WOOD
318 E LOCUST ST
CLEARFIELD, PA 16830

JOHN T GALLAHER TIMBER TRANSFERS
P O BOX 304
IRVONA, PA 16656

AMERICAN INTERSTATE INSURANCE COMPANY
PO BOX 768
INDIANA, PA 15701

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH, PA 15219

HARDWOODS OF MICHIGAN, INC.
430 DIVISION STREET
P. O. BOX 334
CLINTON, MI 49236

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

The attached Decision of the Judge is final unless an appeal is taken to the Workers' Compensation Appeal Board as provided by law.

If you do not agree with this Decision, an appeal must be filed with the Workers' Compensation Appeal Board within 20 days from but not including the date of this notice.

Forms for an appeal may be obtained from the Workers' Compensation Appeal Board, Capital Associates Building
901 North Seventh Street
Third Floor South
Harrisburg, PA 17102

DIARY 2/14
Deadline 2/20

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

WALKER LUMBER, INC.
P O BOX 60
WOODLAND, PA 16881

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

FAMOUS & ASSOCIATES
29 BALA AVE STE 122
BALA CYNWYD, PA 19004

AMERICAN INTERSTATE INSURANCE COMPANY
2301 HWY 190 WEST
DERIDDER, LA 70634

LUMBER MUTUAL INSURANCE CO
POINT WEST OFFICE CTR
ONE SPEEN ST
FRAMINGHAM, MA 01701

NORTH AMERICAN LUMBER INS CO
P O BOX 835
FRAMINGHAM, MA 01701

Employee Witnesses & Exhibits:

Robert Cummings, claimant (11-14-00; 03-22-01)

- 1- Logger Liability and Hold Harmless Agreement
- 2- 02-20-01 DPW Medical Lien and Expenses
- 3- 11-22-00 Correspondence from Kathleen Gillie (Mancing and Assoc) to Atty Mason
- 4- Winber Medical Center Accounting Print-out

Employer Witnesses & Exhibits:

None

Employer Counsel Witnesses & Exhibits:

John Gallagher (03-22-01)

Robert Hamilton (03-22-01)

George Caladonna (03-22-01)

Hamilton/Insurer Witnesses & Exhibits:

- A- Copy of 1996 Form 1099-MISC for Robert Cummings
- B- Copy of Note to Walter Hopkins and Company to prepare Form 1099 for George Caldana, Robert Cummings and Ronald queen
- C- Copy of 1998 Form 1099-MISC for Robert Cummings

Insurer Counsel-Michigan Hwd. Witnesses

Steve English (03-22-01)

Walker/Insurer Witnesses & Exhibits:

- A- Certificate of Liability Insurance for John Gallaher Logging

Hearings:

3/22/2001 13:00:00	Held
1/30/2001 13:00:00	Postponed by Employer Counsel on 01/29/01
11/14/2000 09:00:00	Held
8/8/2000 09:00:00	Canceled by Employee Counsel on 08/04/00
4/11/2000 09:45:00	Held

FINDINGS OF FACT

1. The Claimant, Robert D. Cummings, filed a Claim Petition on or about February 14, 2000, asserting that he suffered a work injury on May 3, 1997, in the nature of a concussion from being struck on the head by a tree, during the course and scope of his employment with Defendant/Employer, Robert Hamilton, t/a Hamilton Enterprises. At or about such time, the Claimant additionally filed a Claim Petition asserting that, on August 13, 1999, he suffered a work injury during the course and scope of his employment with Robert Hamilton, t/a Hamilton Enterprises, in the nature of a severely comminuted fracture of the tibia/fibula - left leg, lacerations of the scalp, bruise, contusion injury to his left shoulder. The Claimant's Petitions were assigned to this Workers' Compensation Judge on March 14, and March 20, 2000, respectively. Defendant/Employer has filed Answers, denying the material averments of each Petition.
2. An initial pretrial conference was held in this matter on April 11, 2000. At such time, the parties were granted extensions for the completion of discovery, due to the possibility of the joinder of other potential employers, including statutory employers.
3. Subsequently, Defendant/Employer, Robert Hamilton, t/a Hamilton Enterprises, filed Petitions for Joinder of Additional Defendants, joining as additional defendants, John T. Gallagher Timber Transfers, Michigan Hardwoods and C.A. Walker Lumber, Inc. Each Defendant has filed responsive Answers denying the material averments of such Petition[s].
4. A hearing on all Petitions was held on November 14, 2000. At such time, in support of his Claim Petitions, the testimony of the Claimant was presented, in pertinent part, as follows:
 - a. The Claimant testified that, as of the time of the hearing, he was forty-seven (47) years of age and had worked in the woods and timber business all of his life. He testified that, on August 13, 1999, he was working cutting timber for Robert Hamilton, with a coworker, George Caldana, in Windber, Pennsylvania. The Claimant testified that this was the second time he had been on such property to cut timber, the first time cutting timber for Robert Hamilton, for a period of approximately three (3) months. He indicated that, on the most recent occasion, he had been on the property for only a few weeks. The Claimant testified that, in the interim between the two (2) periods of cutting timber in Windber, he continued working cutting timber for Robert Hamilton. (11/14/2000 Hearing N.T., pp. 6-10)
 - b. The Claimant testified that his duties entailed cutting down trees with a chain saw, owned by Robert Hamilton; that he would use a log skidder to haul the logs to where Mr. Caldana was working; and that Mr. Caldana would cut up the trees and skid them to the log landing area, using skidders owned by Robert Hamilton. The Claimant testified that, other than a cable cutter and a three-quarter (3/4) socket set, the tools and equipment which he used were owned by Robert Hamilton and maintained at Robert Hamilton's expense. The Claimant indicated that Robert Hamilton also paid for fuel for the equipment. (11/14/2000 Hearing N.T., pp. 6-15)

- c. The Claimant testified that, at the Windber property, it was his understanding he was cutting "Walker's timber". The Claimant testified that he did not know who was the owner of the property. The Claimant indicated that Mr. Caldana would advise him what to do and, Robert Hamilton and John Gallagher showed Mr. Caldana where the timber was to be cut. The Claimant testified that after the logs were taken to the log landing, such would be loaded onto a log truck, owned by John Gallagher, who would haul such timber to Michigan Hardwood. (11/14/2000 Hearing N.T., pp. 10-16)
- d. The Claimant testified that he started working for Robert Hamilton in October or November of 1996 and continued working for Mr. Hamilton up through August 13, 1999. He indicated he did not work for anyone else during such time period. The Claimant indicated that he was paid at the rate of \$7.00 per hour, working approximately ten (10) hours per day, seven (7) days per week. He indicated that, when he and George Caldana were finished with one work site, he would be directed to the next work site by Robert Hamilton. The Claimant indicated that, although Robert Hamilton was not in the woods very often due to a disability, he would advise George Caldana and himself as to the size or type of trees to be cut. (11/14/2000 Hearing N.T., pp. 15-21)
- e. The Claimant testified that, on August 13, 1999, while operating a log skidder owned by Robert Hamilton, the brakes went out while he was on the side of a mountain; that the skidder rolled over, crushing his left leg against a tree. The Claimant testified that he was subsequently taken to Conemaugh Hospital by Mr. Caldana, where he received treatment for a broken leg, including the insertion of surgical pins. The Claimant indicated that he still has problems with the leg, especially in cold and wet weather. (11/14/2000 Hearing N.T., pp. 22-25)
- f. The Claimant acknowledged that, in October of 1996, he signed a contract between he and Mr. Hamilton. The Claimant denied reading or looking at such document before signing, or ever being asked for proof of Workers' Compensation or liability insurance, that he was required to have. The Claimant indicated that he believes everyone who worked for Robert Hamilton signed such a contract. The Claimant testified that he never employed anyone to help him on the job; and that either Robert Hamilton or George Caldana were the individuals to hire any additional people for the different jobs. The Claimant indicated he did not sign one of the contracts each time he went to a different job site. He indicated that, to the best of his knowledge, either Robert Hamilton or George Caldana would be the individuals to fire people from jobs. The Claimant, when further questioned about reading the contract, indicated that he cannot read very well and did not have much time to sign it. (11/14/2000 Hearing N.T., pp. 26-28)
- g. The Claimant testified that he was no longer receiving medical treatment as a result of his August 13, 1999 injury. (11/14/2000 Hearing N.T., pp. 28-29)
- h. Upon cross examination, the Claimant acknowledged that Mr. Caldana was present at the time that he signed the "Logger Liability and Hold Harmless Agreement", Claimant's Exhibit 1. The Claimant denies that Mr. Hamilton went

point-by-point through the Agreement with him. He denies that Mr. Hamilton explained "independent contractor" responsibilities with him. The Claimant acknowledged that Mr. Hamilton had provided the Agreement to him a couple of days ahead of time. The Claimant indicated it was his understanding that he had to sign such by the time he returned to start work, in order to work for Mr. Hamilton. He indicated that he did not raise any questions about the Agreement. The Claimant acknowledged receiving a 1099 Tax Form in 1996, from Mr. Hamilton, as well as receiving such form in 1997 and 1998. He acknowledged that he had been responsible for payment of his own taxes from his paychecks, that none were taken out of the same. (11/14/2000 Hearing N.T., pp. 44-55)

- i. The Claimant testified that, with respect to the Windber property, he was shown the property lines by a gentleman from "Walker's". He acknowledged that Mr. Hamilton did not show him the property lines. The Claimant indicated that Mr. Hamilton would advise him how many days per week to work and sometimes tell him how many hours a day to work; but, such was kind of left up to him, if it was raining, thundering or lightening. The Claimant indicated that they worked everyday, as he was told by Mr. Hamilton that they had to work everyday. The Claimant indicated that Mr. Hamilton would advise them to cut "the log trees"; and that he would know from his prior experience as to which trees were to be cut. How he cut the trees and how many trees he cut being left up to him. The Claimant acknowledged that an accurate characterization of his relationship with Mr. Hamilton would be that Mr. Hamilton would find the properties or jobs for timber cutting and then he, Mr. Caldana and other individuals would go in and do the actual cutting, skid out the logs to the log landing, with someone else picking up the logs and taking them to the sawmills. The Claimant denied ever attempting to find logs on his own to cut; and pretty much relied upon Mr. Hamilton coming up with the leases for the sites for him to cut. (11/14/2000 Hearing N.T., pp. 55-58)
- j. The Claimant acknowledged that he has returned to work full-time, cutting timber for an alternative employer, beginning approximately May of 2000. He acknowledged that, subsequent to having the brace taken off of his leg in March of 2000, he began performing odds and ends cutting work for other individuals as well. (11/14/2000 Hearing N.T., pp. 58-62)
- k. Upon cross examination by Counsel for John T. Gallagher Timber Transfer, the Claimant acknowledged he was never advised by Mr. Gallagher as to where to cut, never received any money from Mr. Gallagher, never signed any contracts with Mr. Gallagher and, otherwise, did not consider himself working for Mr. Gallagher. The Claimant acknowledged that, upon his return to work for an alternative employer, Mr. Dotts, he was earning as much or more as he was at the time of his August 13, 1999 work injury. (11/14/2000 Hearing N.T., pp. 63-66)
- l. Upon cross examination by Counsel for Additional Defendant, Michigan Hardwood, Inc. and C.A. Walker Lumber, Inc., which the parties stipulated are one in the same for purposes of this litigation, the Claimant acknowledged he had not signed any contract with anyone from C.A. Walker Lumber, did not receive any

paychecks from such, nor was he supplied with any materials and had minimal interaction with anyone from such companies. (11/14/2000 Hearing N.T., pp. 67-68)

- m. Upon redirect examination, the Claimant testified that, prior to his signing of the "Logger Liability and Hold Harmless Agreement", he had already worked for a period of several weeks for Mr. Hamilton, including receiving paychecks from the same. The Claimant indicated he always was paid \$7.00 an hour for his labor, whether it be cutting timber or doing maintenance work on Mr. Hamilton's equipment. The Claimant indicated that Mr. Caldana would keep track of his hours. (11/14/2000 Hearing N.T., pp. 68-71)
5. An additional hearing was held in this matter on March 22, 2001. At such time, in opposition to Claimant's Petition, Defendant, Robert Hamilton, presented the testimony of George Caldana. Mr. Caldana testified, in pertinent part, as follows:
- a. Mr. Caldana indicated that he had been employed by Robert Hamilton, as a log cutter, since 1996, under a comparable "Logger Liability and Hold Harmless Agreement" (Claimant's Exhibit 1), as that signed by the Claimant. Mr. Caldana described his understanding of such Agreement as that he had to pay his own taxes and did not have insurance. Mr. Caldana testified he was aware the Claimant signed the same Agreement; that the Claimant was advised by Mr. Hamilton he had to pay his own taxes and did not have insurance. Mr. Caldana indicated the Claimant said he understood such and that the two (2) of them actually had discussions about obtaining insurance. Mr. Caldana testified that he was present when the Claimant read the Agreement and indicated he understood such. (03/22/2001 Hearing N.T., pp. 8-17)
 - b. Mr. Caldana testified that, as of August 13, 1999, he and the Claimant were performing log cutting, using Robert Hamilton's equipment. Mr. Caldana testified that the two (2) were cutting timber on land leased by Walker Lumber. He indicated they had been cutting timber at such site for several months previously; had left that site, going to a different site identified by Mr. Hamilton, but ultimately came back; and they were cutting timber as of the time of the Claimant's injury. (03/22/2001 Hearing N.T., pp. 17-24)
 - c. Mr. Caldana, when questioned with respect to the other Defendants in this matter, indicated he had limited direct contact with Mr. Gallagher, other than contacts with Mr. Gallagher or his drivers, regarding picking up logs from the log landing. Mr. Caldana indicated that the landing site for the timber would be determined by himself and the Claimant. Mr. Caldana testified that, with respect to the trees to be cut, he was shown the property lines for the leased property by Steve English, the forester for Walker Lumber, and advised to cut the pre-marked trees. Mr. Caldana testified that he and the Claimant were advised to cut all of the trees marked in blue. (03/22/2001 Hearing N.T., pp. 24-26)

- d. Mr. Caldana testified that Robert Hamilton would not be present at the job site; and that he and the Claimant would decide for themselves as to which days to cut. Mr. Caldana indicated that he and the Claimant would not be required to report to Mr. Hamilton. He denied that he was the boss of the Claimant, with the two (2) working on their own. Mr. Caldana testified that he and the Claimant were each paid for the hours they worked per week, on a flat hourly rate. He testified that the two (2) could negotiate the hourly rate for each job. He further testified that the Claimant can read, as he has seen him reading a classified ads newspaper, called the "Ad Bargain", as well as some maintenance or repair manuals. Mr. Caldana further testified that, from 1996 until the Claimant's injury, he worked with the Claimant most everyday. When questioned as to relatively significant differences in his yearly income from that of the Claimant, Mr. Caldana testified he would be paid extra or "extra bonuses", for cutting up timber or cutting extra loads of timber, by Mr. Hamilton. Mr. Caldana testified that these bonuses were not negotiated, but determined by Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 26-47)
 - e. Mr. Caldana acknowledged that, although he indicated the flat hourly rate which he or the Claimant would be paid could be negotiated, the subject never came up at anytime and was never re-negotiated; and he would be paid \$7.00 per hour, as was the Claimant. Mr. Caldana acknowledged that Robert Hamilton would advise him and the Claimant as to the sites for other jobs where cutting was to be performed. Mr. Caldana acknowledged that, within the last two (2) years prior to the time of hearing, he had become a partner with Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 47-58)
6. In opposition to the Claimant's Petition, the testimony of Robert E. Hamilton was presented during the March 22, 2001 hearing. Mr. Hamilton testified, in pertinent part, as follows:
- a. Mr. Hamilton testified that he has maintained a sole proprietorship since 1988, of R. E. Hamilton Enterprises. He testified that the nature of such business is basically his obtaining of timber rights or properties, or leasing timbering rights, as well as the performance of contract cutting services for others. (03/22/2001 Hearing N.T., pp. 59-60)
 - b. Mr. Hamilton testified that, prior to George Caldana or the Claimant cutting timber for him, they each entered into the "Logger Liability and Hold Harmless Agreement". He indicated such Agreement was discussed with each individual, with each being advised there would be no federal taxes withheld; each was reasonable for his own insurance, and they were in charge of their cutting responsibilities. Mr. Hamilton indicated that neither individual was placed in a position of authority. Mr. Hamilton indicated that prior to retaining the Claimant, the Claimant had represented to him that he had his own skidder and had owned his own logging business on a prior occasion.

- c. Mr. Hamilton testified that he never received any indication the Claimant had difficulty reading, with the Claimant being able to follow notes and directions which he wrote out for him, as well as writing back notes to Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 61-64)
- d. Mr. Hamilton testified as to the cutting services which were being performed on the Windber property in August of 1999. He testified that, through his brother-in-law, Additional Defendant John Gallagher, he became aware that Additional Defendants, Michigan Hardwood/Walker Lumber, had some timber to be cut. Mr. Hamilton testified he had no direct contact with Michigan Hardwoods, nor did he enter into any written agreement with Michigan Hardwoods or Walker Lumber. Mr. Hamilton testified that John Gallagher would pay him \$250.00 to \$300.00 per load of logs delivered to the log landing. He testified that he would be paid by Mr. Gallagher at the end of the week, for the number of loads so delivered. He testified that he would then pay his crew, George Caldana and Mr. Cummings, as well as occasionally other individuals, a paycheck at the end of the week, for their services. Mr. Hamilton testified that he supplied the materials and equipment, which Mr. Caldana and the Claimant would use. (03/22/2001 Hearing N.T., pp. 64-77)
- e. Mr. Hamilton testified that, at the end of each week, Mr. Caldana and the Claimant would advise him as to what they had accomplished. He testified he did generally pay Mr. Caldana and the Claimant on an hourly basis, but would pay extra amounts for extra production. He acknowledged he would essentially decide how much per week each would be paid for any extra production. (03/22/2001 Hearing N.T., pp. 78, 107)
- f. Mr. Hamilton acknowledged he had no direct contact with Michigan Hardwoods/Walker Lumber, with his dealings primarily being limited to contacts with Mr. Gallagher. Mr. Hamilton indicated he assumed someone else would be supervising Mr. Caldana and the Claimant, but he did not know. He acknowledged he did not know if anyone else was working on the property. (03/22/2001 Hearing N.T., pp. 78-80)
- g. Mr. Hamilton acknowledged, on cross examination, that there were no provisions in the Agreements with Mr. Caldana and the Claimant with respect to his determination of amounts for extra production, or the specific hourly rate. Mr. Hamilton acknowledged that neither Mr. Gallagher nor anyone from his Company would do any cutting, with such companies responsibilities being limited to hauling the timber from the landing site to the mills or Walker Lumber. Mr. Hamilton acknowledged he did not have any manner of written agreement with either of the Additional Defendants. Mr. Hamilton acknowledged that Mr. Caldana and the Claimant would rely upon him to line up work. He acknowledged that the overall role of his business was to get timber-cutting jobs and bring in his crew or cutters to perform the cutting and hauling to the landing site. (03/22/2001 Hearing N.T., pp. 92-108)

7. In opposition to the Joinder Petition, the testimony of John Thomas Gallagher was presented at the time of the March 22, 2001 hearing. Mr. Gallagher testified as to his business of contract cutting timber, where larger companies will purchase the timber, and his company was to produce the timber from the wood site to the mills, including cutting, skidding and hauling timber. Mr. Gallagher testified that he was contacted by the forester, Steve English, regarding Walker Lumber's purchasing of timber rights and needing such timber cut. Mr. Gallagher testified that, at such time, as his crews were already busy cutting timber for another company, he advised his brother-in-law, Robert Hamilton, of the timber job at the Windber site. Accordingly, the subsequent financial arrangement between Mr. Gallagher and Robert Hamilton involved Robert Hamilton's provision of the cutting crew, who would cut and skid the timber to the landing site where Mr. Gallagher's company and employees would pick up the timber and haul such to Walker Lumber. Mr. Gallagher would then be paid by Walker Lumber based upon the number of board-feet of scaled timber delivered, as well as by the ton for pulpwood. Mr. Gallagher would then pay Mr. Hamilton a set price per load of wood delivered to the log landing. Mr. Gallagher testified he was not responsible for supervising Mr. Hamilton's crew, nor determining the timber to be cut. Mr. Gallagher acknowledged being advised by Mr. Hamilton that he had his no insurance. Mr. Gallagher indicated that, when he discussed such with Mr. Hamilton, Mr. Hamilton provided copies of the "Hold Harmless Agreements", indicating such were sufficient. Mr. Gallagher testified he does maintain Workers' Compensation insurance for his employees. (03/22/2001 Hearing N.T., pp. 108-138)
8. In opposition to the Joinder Petition, the testimony of Steve English, forester for Walker Lumber, was presented. Mr. English testified that Walker Lumber retained Mr. Gallagher's Company to perform the cutting and hauling of timber, for which Mr. Gallagher would be paid directly, based upon the amount of timber delivered. He testified that, other than identifying the property to be cut and parameters of cutting, neither he nor Walker Lumber provided any supervision over such responsibilities. Mr. English testified that Mr. Gallagher provided Walker Lumber with an insurance certificate; and Gallagher was at leave to sub-contract out work at his discretion. (03/22/2001 Hearing N.T., pp. 142-151)
9. At the conclusion of the March 22, 2001 hearing, it was confirmed that, based upon the Claimant's testimony and stipulations that he had returned to work with no loss of earnings; that the primary issue in question was with respect to a employer-employee relationship; and the parties would not be required to proceed with the completion of medical depositions or evidence in support of the causal relationship between the Claimant's August 13, 1999 injury and such closed period of disability.
10. Defendant/Employer, Robert Hamilton, has submitted a Statement of Wages setting forth that Claimant had a pre-injury average weekly wage of \$361.39, with a resultant compensation rate of \$240.93 per week. For the first time, in his Proposed Findings of Fact, Counsel for Claimant has raised objections as to the accuracy of the same. Such objections are found to be untimely and are overruled.
11. Pursuant to acknowledgments of the Claimant, he acknowledged that, as of March, 2000, he returned to full, unrestricted duties, consistent with those he had been performing prior to August 13, 1999, without loss of wages associated with the work injury.

12. Based upon the foregoing, and review of the record in its entirety, it is further found as follows:

- a. On August 13, 1999, the Claimant, Robert Cummings, suffered a work injury during the course and scope of his employment with Defendant/Employer, Robert Hamilton, in the nature of a broken left leg, resulting in a period of temporary total disability from August 13, 1999 through March, 2000.
- b. Effective March, 2000, the Claimant had sufficiently recovered from his August 13, 1999 work injury to return to his pre-injury capacity of employment and, in fact, obtained alternative employment performing the same manner, scope and duties as he had at the time of his work injury, such as to no longer suffer any loss of earnings associated with his work injury.
- c. It is found that, at the time of his work injury, the Claimant was not an employee of either additional Defendants, John T. Gallagher Timber Transfers or Michigan Hardwoods/Walker Lumber Company.
- d. It is found that, at the time of his work injury, the Claimant's Employer, Robert Hamilton, was serving in the capacity of a sub-contractor for Additional Defendant, John T. Gallagher Timber Transfers.
- e. It is found that, at the time of Claimant's work injury, the Claimant's Employer, Robert Hamilton, was uninsured for Workers' Compensation purposes. It is further found that Additional Defendant, John T. Gallagher Timber Transfers, is found to be a statutory employer under Section 302 (d) of the Pennsylvania Workers' Compensation Act.
- f. It is found that the Claimant has failed to submit any evidence whatsoever, with respect to his asserted May 31, 1997 injury.
- g. In reaching these findings and, specifically, in finding the Claimant was an employee of Defendant, Robert Hamilton, and not an Independent Contractor, it is noted that "[I]n determining whether a claimant is an independent contractor or employee, the Pennsylvania Supreme Court has set forth the following factors to consider in determining the type of relationship which exists: control of the manner in which work is to be done; responsibility for result only; terms of agreement between the parties; nature of the work or occupation; skill required for performance; whether one employee is engaged in a distinct occupation or business; which party supplies the tools; whether payment is by time or by the job; whether work is part of the regular business of the alleged employer, and whether the alleged employer has the right to terminate employment at any time. Because each case is fact specific, all of these factors need to be present to determine the type of relationship which exists. Moreover, while all of these factors are important indicators, the key element is whether the alleged employer has the right to control the work to be done, and the manner in which it is performed." Johnson v. W.C.A.B. (DuBois Courier), 631 A.2d 693 (Pa. Cmwlth., 1993), citing

Hammermill Paper Company v. Rust Engineering Co., 430 Pa. 365, 370, 240 A.2d 389, 392 (1968).

- h. In finding the Claimant is an employee, as opposed to an Independent Contractor, the testimony of Mr. Cummings, Mr. Hamilton and Mr. Caldana are each found to be credible, in part, and rejected, in part. Overall, in reviewing the testimony of each of these individuals in their entirety, other than each of their ultimate conclusions as to the nature of the relationship, the testimony of each as to the practical implications of their relationships are fairly consistent. Upon review of the consistent aspects of each of their testimonies, it is found that the relationship is overwhelmingly that of an employee, as opposed to Independent Contractor. As noted in Johnson, Supra, the key element is whether the alleged employer has the right to control the work to be done and the manner in which it is performed. Under the present circumstances, although the Claimant signed an Agreement indicating he is an Independent Contractor, in most all aspects of the relationship he was treated as an employee, being paid on an hourly basis, or at the discretion of Mr. Hamilton as to any bonuses; he only performed work for Mr. Hamilton; the work which he performed was part of the regular business of Mr. Hamilton; and Mr. Hamilton provided all of the tools and equipment.
- i. In reaching these findings, that John T. Gallagher Transfers was a statutory employer of the Claimant, the testimony of Mr. Gallagher is found to be credible. Mr. Gallagher testified in a very honest and direct manner. However, as Mr. Gallagher candidly admitted, he naively accepted Mr. Hamilton's representations, that the "Hold Harmless Agreement" was sufficient to insulate him from any potential liability. For Workers' Compensation purposes, although such an Agreement is a consideration, such does not preclude the finding of an employer-employee relationship. Moreover, such does not insulate a contractor from Workers' Compensation liability in the event of an uninsured subcontractor. To define the existence of a statutory employer, five (5) elements must be confirmed; (1) contract with owner of land or one in the position of an owner, (2) premises occupied or under the control of the subcontractor seeking statutory employer status, (3) subcontract made by contractor, (4) part of the contractor's regular business must be entrusted to the subcontractor in the contract, and (5) an employee of the subcontractor is injured on the premises. Under the present circumstances, it is fairly undisputed by Mr. Gallagher, that he contracted with Walker Lumber to cut and haul timber. Mr. Gallagher acknowledged he would have utilized his normal crew, insured for Workers' Compensation purposes, to perform such duties, but they were preoccupied with other businesses. Accordingly, in good faith, he retained the services of his brother-in-law as effectively a subcontractor, to perform such duties.
- j. In reaching these findings, the testimony of Mr. English is found to be credible and generally unrefuted.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the entirety of the record and the respective Law on this matter, this Adjudicator concludes as follows:

1. At all times relevant hereto, the parties were bound by the applicable terms and provisions of the Pennsylvania Workers' Compensation Act, as Amended.
2. The Claimant has sustained his burden of proof, that he suffered a work injury on August 13, 1999, in the nature of a broken left leg, entitling him to Workers' Compensation benefits for the period of August 13, 1999 through March of 2000, together with the payment of medical costs and expenses causally related to the same.
3. Defendant/Employer, Robert Hamilton, shall be responsible for the payment of such Workers' Compensation benefits, together with the reimbursement of any Public Welfare Lien reimbursement for the payment of any such medical expenses.
4. The Claimant has failed to sustain his burden of proof, that he suffered a work injury on May 31, 1997.
5. Original Defendant/Employer has failed to sustain its burden of proof, that Additional Defendants, John T. Gallagher Timber Transfers, or Michigan Hardwoods/C.A. Walker Lumber/Walker Lumber, were employers of the Claimant at the time of his August 13, 1999 work injury. However, it is concluded that Additional Defendant, John T. Gallagher Timber Transfers, was a statutory employer for purposes of the Pennsylvania Workers' Compensation Act, as Amended.
6. Defendant/Employers have sustained their burden of proof, that their contest of these matter were, at all times, reasonable. Accordingly, no award of attorney's fees is made hereunder.
7. As the Claimant has prevailed in this matter, Claimant shall be entitled to reimbursement of his costs of litigation; however, no formal request has been made by Claimant's Counsel, nor has an itemized Bill of Costs been submitted.
8. Counsel for Claimant has asserted the existence of a twenty percent (20%) Fee Agreement; however, no Agreement has been submitted. According, such is not addressed herein.

ORDER


AND NOW, this 31st day of January, 2002, it is hereby Ordered that the Claim Petition filed by Claimant/Employee, Robert D. Cummings, against Defendant/Employer, Robert Hamilton t/a R. E. Hamilton Enterprises, alleging a work injury on August 13, 1999, is GRANTED, consistent with Conclusions of Law No. 2 and 3.

Robert D. Cumming vs Robert Hamilton, t/a R.E. Hamilton Enterprises, et al
(2) Claim/Joinder Petitions
PABWC Claim No. 2150691 & 2150662
Page 11 of 11

In accordance with Conclusion of Law No. 5, in the absence of payment of the foregoing by original Defendant/Employer, Robert Hamilton, t/a R. E. Hamilton Enterprises, John T. Gallagher Timber Transfers, as the statutory employer, and/or its Workers' Compensation Insurer, shall be responsible for payment of compensation payable hereunder.

Defendants are entitled to a Suspension of Claimant's benefits effective March, 2000.

The Claim Petition filed by Claimant alleging a work injury on May 3, 1997 is DENIED and DISMISSED, consistent with Conclusion of Law No. 4.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office

lfb

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

Circulation Date: 02/19/2002

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

AMENDED/CORRECTED DECISION COVER LETTER

Bureau Claim Number: 2150691

Insurer Claim Number:

Petitions:

Claim-Pet

Joinder-Pet

ROBERT D. CUMMINGS
P.O. BOX 77
WALLACETON, PA 16876-0000

DAVID C MASON ESQ
PO BOX 28
PHILLIPSBURG, PA 16866

Vs

ROBERT HAMILTON
T/A RE HAMILTON ENTERPRISES
RD.1 BOX 16
IRVONA, PA 16656-0000

BELL SILBERBLATT & WOOD
318 E LOCUST ST
CLEARFIELD, PA 16830

JOHN T GALLAHER TIMBER TRANSFERS
P O BOX 304
IRVONA, PA 16656

AMERICAN INTERSTATE INSURANCE COMPANY
PO BOX 768
INDIANA, PA 15701

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH, PA 15219

HARDWOODS OF MICHIGAN, INC.
430 DIVISION STREET
P. O. BOX 334
CLINTON, MI 49236

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

The attached Decision of the Judge is final unless an appeal is taken to the Workers' Compensation Appeal Board as provided by law.

If you do not agree with this Decision, an appeal must be filed with the Workers' Compensation Appeal Board within 20 days of the date of this notice.

Forms for an appeal may be obtained from the Workers' Compensation Appeal Board, Capital Associates Building
901 North Seventh Street
Third Floor South
Harrisburg, PA 17102

DIARY

3/4

Deadline

3/11

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

WALKER LUMBER, INC.
P O BOX 60
WOODLAND, PA 16881

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

FAMOUS & ASSOCIATES
29 BALA AVE STE 122
BALA CYNWYD, PA 19004

AMERICAN INTERSTATE INSURANCE COMPANY
2301 HWY 190 WEST
DERIDDER, LA 70634

LUMBER MUTUAL INSURANCE CO
POINT WEST OFFICE CTR
ONE SPEEN ST
FRAMINGHAM, MA 01701

NORTH AMERICAN LUMBER INS CO
P O BOX 835
FRAMINGHAM, MA 01701

Employee Witnesses & Exhibits:

Robert Cummings, claimant (11-14-00; 03-22-01)

- 1- Logger Liability and Hold Harmless Agreement
- 2- 02-20-01 DPW Medical Lien and Expenses
- 3- 11-22-00 Correspondence from Kathleen Gillie (Mancing and Assoc) to Atty Mason
- 4- Winber Medical Center Accounting Print-out

Employer Witnesses & Exhibits:

None

Employer Counsel Witnesses & Exhibits:

John Gallagher (03-22-01)

Robert Hamilton (03-22-01)

George Caladonna (03-22-01)

Hamilton/Insurer Witnesses & Exhibits:

- A- Copy of 1996 Form 1099-MISC for Robert Cummings
- B- Copy of Note to Walter Hopkins and Company to prepare Form 1099 for George Caldana, Robert Cummings and Ronald queen
- C- Copy of 1998 Form 1099-MISC for Robert Cummings

Insurer Counsel-Michigan Hwd. Witnesses

Steve English (03-22-01)

Walker/Insurer Witnesses & Exhibits:

- A- Certificate of Liability Insurance for John Gallaher Logging

Hearings:

3/22/2001 13:00:00	Held
1/30/2001 13:00:00	Postponed by Employer Counsel on 01/29/01
11/14/2000 09:00:00	Held
8/8/2000 09:00:00	Canceled by Employee Counsel on 08/04/00
4/11/2000 09:45:00	Held

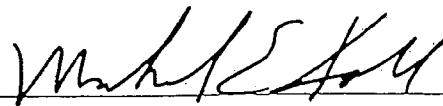
AMENDED DECISION

1. By Decision and Order of January 31, 2002, the Claim Petition filed by Claimant/Employee, Robert D. Cummings, against Defendant/Employer, Robert Hamilton, was granted. Pursuant to such Decision and Order it was noted that Counsel for Claimant had asserted the existence of a twenty percent (20%) Fee Agreement; but, as no Agreement had been submitted, such was not addressed within the Order.
2. Subsequently, by correspondence of February 15, 2002, Counsel for John T. Gallagher Timber Transfers, a Defendant who has been found to be a statutory Employer of the Claimant, being required to make payment of compensation benefits, in the event such are not paid directly by Defendant/Hamilton, requested clarification of the Order with respect to the attorney fee issue. Counsel for John T. Gallagher Timber Transfers requested clarification as to whether twenty percent (20%) attorney's fees should be paid directly to Claimant's Counsel, or one hundred percent (100%) of the funds paid directly to Mr. Cummings, without deducting for attorney's fees.

Accordingly, the following Revised Order is entered. The balance of the January 31, 2002 Decision and Order is otherwise incorporated herein by reference, in full.

AMENDED ORDER

AND NOW, this 19th day of February, 2002, in the absence of Counsel for Claimant's submission of a Fee Agreement within ten (10) days of this Amended Order, Defendant/Employer shall be entitled to make payment of one hundred percent (100%) of the amounts ordered to be paid pursuant to the January 31, 2002 Order, directly the Claimant, without deduction of attorney's fees. Defendant/Employer shall likewise be granted an additional ten (10) day extension for making payment of such amounts, with the accrual of any additional interest, pending confirmation as to whether Counsel for Claimant intends to submit such Fee Agreement.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office

100



C



Circulation Date: 02/26/2002

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

AMENDED/CORRECTED DECISION COVER LETTER

Bureau Claim Number: 2150691

Insurer Claim Number:

Petitions:

Claim-Pet

Joinder-Pet

ROBERT D. CUMMINGS
P.O. BOX 77
WALLACETON, PA 16876-0000

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PO BOX 28
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Vs

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Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

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Third Floor South
Harrisburg, PA 17102

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George Caladonna (03-22-01)

Hamilton/Insurer Witnesses & Exhibits:

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Insurer Counsel-Michigan Hwd. Witnesses

Steve English (03-22-01)

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8/8/2000 09:00:00	Canceled by Employee Counsel on 08/04/00
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AMENDED DECISION


1. By Decision and Order of January 31, 2002, the Claim Petition filed by Claimant/Employee, Robert D. Cummings, against Defendant/Employer, Robert Hamilton, was granted. Pursuant to such Decision and Order it was noted that Counsel for Claimant had asserted the existence of a twenty percent (20%) Fee Agreement; but, as no Agreement had been submitted, such was not addressed within the Order.
2. Subsequently, by correspondence of February 15, 2002, Counsel for John T. Gallagher Timber Transfers, a Defendant who has been found to be a statutory Employer of the Claimant, being required to make payment of compensation benefits, in the event such are not paid directly by Defendant/Hamilton, requested clarification of the Order with respect to the attorney fee issue. Counsel for John T. Gallagher Timber Transfers requested clarification as to whether twenty percent (20%) attorney's fees should be paid directly to Claimant's Counsel, or one hundred percent (100%) of the funds paid directly to Mr. Cummings, without deducting for attorney's fees.
3. By Revised Order of February 19, 2002, Counsel for Claimant was to submit a Fee Agreement within ten (10) days. Thereafter, by correspondence of February 22, 2002, Counsel for Claimant, David C. Mason, Esquire, submitted a Contingent Fee Agreement executed by the Claimant and dated October 6, 1999. Such Agreement provides for an attorney's fee of twenty percent (20%) of all gross sums recovered.
4. Defendant/Employer shall likewise be granted an additional ten (10) day extension for making payment of such amounts, with the accrual of any additional interest, pending confirmation as to whether Counsel for Claimant intends to submit such Fee Agreement.

Accordingly, the following Amended Order is entered. The balance of the January 31, 2002 Decision and Order is otherwise incorporated herein by reference, in full.

Robert D. Cummings vs. Robert Hamilton t/a Hamilton Enterprises, et al
Claim/Joinder Petitions
Bureau Claim No. 2150691
Page 2 of 1

AMENDED ORDER

AND NOW, this 26th day of February, 2002, it is hereby Ordered that Defendant/ Insurer shall deduct a twenty percent (20%) attorney's fee from all compensation payable pursuant to the Decision and Order of January 31, 2002, making such payable directly to Counsel for Claimant, David C. Mason, Esquire.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office

MEK:lfb



D



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
BUREAU OF FINANCIAL OPERATIONS
DIVISION OF THIRD PARTY LIABILITY
CASUALTY UNIT
P.O. BOX 8486
HARRISBURG, PA 17105-8486

November 5, 2003

AMERICAN INTERSTATE INSURANCE CO
KRISTEN JONES
CLAIM DEPARTMENT
PO BOX 1099
MECHANICSBURG PA 17055

Re: ROBERT CUMMINGS
CIS #: 300119139
Incident Date: 08/13/1999
Claim #: 2000-01572PA

Dear Ms. Jones:

This is to acknowledge receipt of payment in the amount of \$6,327.06 regarding the above-referenced individual.

Your cooperation in this matter is appreciated.

Sincerely,

Nicole L. Early
TPL Program Investigator
717-772-6606
717-772-6553 FAX

Received
NOV 10 2003
AIIIC - PA

Payments West 1

Payments

Payment Type: Automatic Payment

Payment Subtype: Void type

Vendor Information

Vendor ID: 0000856847

Tax ID: 238003113

DEPARTMENT OF PUBLIC WELFARE
TRU SECTION-CASUALTY UNIT BOX
8486
HARRISBURG PA 17105 (ACTIVE)

Payment Detail

PA LAE Miscellaneous

Claimant: ROBERT D CUMMINGS

Claim Number	Pay Code	Amount	Gross Amt	Begin Date	End Date
200001572	73 Miscellaneous Leg	6327.06	0.00	08/31/1999	10/31/2003

Process Item West 1

Check Total: 6327.06

Payments

West 1

Payments

Payment Type

Automatic Payment

Valid Type

Payment Subtype

Vendor Information

Vendor ID

0000856847

Tax ID

238003119

DEPARTMENT OF PUBLIC WELFARE
TPI SECTION-CASUALTY UNIT BOX
8485
HARRISBURG, PA 17105 (ACTIVE)

Payment Detail

Miscellaneous

Comments

Transaction Number

0002741699

Date Requested

10/30/2003

Check No

0011283279

Revised By

KRJONES

Date Cleared

11

Issue Date

10/31/2003

Check Register Date

10/31/2003

On Register

Y

Site ID

Phase

On Check Register

Team

West 1

Process Team

West 1

Check Total

6327.06

100



E

File Edit Tools Action Help

Payments

West 1

Payments

Us Vendor Documentation

Payment Type Automatic Payment

Void Type

Payment Subtype

Vendor Information

Vendor ID 0000457900

Tax ID 177482554

ROBERT D CUMMINGS
PO BOX 77
WALLACETON PA 16878 (ACTIVE)

Payment Detail

Miscellaneous

PA

INDEMNITY

Claimant: ROBERT D CUMMINGS

Claim Number	Pay Code	Amount	Gross Amt	Begin Date	End Date
200001572	01 Temporary Total	7854.28	0.00	08/13/1999	03/31/2000

Property West 1

Check Total

7854.28

File Edit Tools Action Help	
Payments West 1	

Payments	
Vendor	Documentation
Payment Type	Automatic Payment
Payment Subtype	
Vendor Information	
Vendor ID	0000467900
Tax ID	117482654
ROBERT D CUMMINGS PO BOX 77 WALLACETON, PA 16876 (ACTIVE)	
Payment Detail	Miscellaneous
Comments	
Transaction Number	0002112103
Date Requested	03/20/2002
Check No	0010642026
Requested By	KRJONES
Date Cleared	04/01/2002
Issue Date	03/22/2002
Check Register Date	03/22/2002
On Register	Y
Site ID	
Phase	On Check Register
Team	West 1
Process Team	West 1
Check Total	7854.28

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.



F

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Defendant.

CIVIL ACTION NO.: AR-

04-221-CD

COMPLAINT IN CIVIL ACTION

Code: _____

Filed on behalf of:

Plaintiff, John T. Gallaher Timber Transfer

Counsel of Record for
This Party:

Timothy R. Smith, Esquire
Pa. I.D. #63282

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

PIETRAGALLO, BOSICK & GORDON
Firm #834

38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

NOTICE TO DEFENDANTS:

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

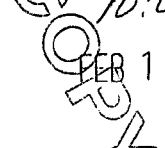


Attorney for Plaintiff

FILED

10:00

FEB 17 2004


William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Civil Action No.: AR-

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, 16656

Defendant.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney, and filing in writing with the Court your defenses or objections to the claims as 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 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 OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
Telephone: (814) 765-2641 Extension 50-51

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Civil Action No.: AR-

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, 16656

Defendant.

COMPLAINT IN CIVIL ACTION

AND NOW comes Plaintiff, John T. Gallaher Timber Transfer (“Gallaher”) by and through their attorneys, Pietragallo, Bosick & Gordon, Timothy R. Smith, Esquire, and Robert J. Monahan, Esquire against defendant Robert Hamilton doing business as Hamilton Enterprises (“Hamilton”), asserts as follows:

1. Gallaher is a Pennsylvania company with its principal place of business in Irvona, Pennsylvania.
2. Robert Hamilton is an individual who resides in Pennsylvania and conducts business as Hamilton Enterprises, a Pennsylvania company with its principal place of business in Irvona, Pennsylvania. Hereinafter, Robert Hamilton individually and doing business as Hamilton Enterprises will be collectively referred to as “Hamilton”.
3. Hamilton, at all times relevant hereto, did business in Pennsylvania.
4. Hamilton regularly conducts business in Clearfield County.

5. On or about August 13, 1999, Robert Cummings ("Cummings") was an employee of Hamilton.

6. On or about August 13, 1999, Cummings suffered a work-related injury during the course and scope of his employment with Hamilton, in the nature of a broken leg resulting in a period of temporary total disability from August 13, 1999 through March, 2000.

7. Gallaher was deemed to be the statutory employer of Robert Cummings under the Pennsylvania Workers' Compensation Act.

8. It was ordered on January 31, 2002, amended on February 19, 2002 and again amended on February 26, 2002 by Michael E. Koll, Workers' Compensation Judge of Clearfield District Office, that Cummings was entitled to receive workers' compensation payments from the time he missed work from August 13, 1999 through March of 2000. Pursuant to the Amended Order of the Workers' Compensation Judge dated February 19, 2002 and the Amended Order dated February 26, 2002, Hamilton was held primarily liable to pay Cummings his workers' compensation benefits. (Exhibit "A" and "B" attached hereto.)

9. Evidently, contrary to Pennsylvania law, Hamilton did not carry Workers' Compensation Insurance at the time of Cumming's injury.

10. Hamilton failed to pay Cummings the amount owed pursuant to the order dated January 31, 2002 and amended on February 19, 2002.

11. Pursuant to the Order of the Workers' Compensation Judge dated January 31, 2002, the Amended Order dated February 19, 2002, and the Amended Order dated February 26, 2002, Gallaher was found secondarily liable. (Exhibit "A", "B" and "C" attached hereto.)

12. Due to the failure of defendant to honor its obligation, on or about March 22, 2003, Gallaher, through its insurer, paid Cummings the amount of \$7,854.28 pursuant to the

Order of the Workers' Compensation Judge dated January 31, 2002, the Amended Order dated February 19, 2002 and the Amended Order dated February 26, 2002.

13. On or about October 31, 2003, Gallaher, through its insurers, paid and settled the Public Welfare Lien in the amount of \$6,327.06 pursuant to the Order of the Worker's Compensation Judge dated January 31, 2003, the Amended Order dated February 19, 2002, and the Amended Order dated February 26, 2002 (Exhibit "D" attached hereto).

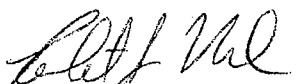
14. Hamilton's failure to follow the Order of Workers' Compensation Judge Koll and pay Cummings forced Gallaher to pay Cummings. Therefore, Gallaher is entitled to recovery from Hamilton, who was primarily liable, in the amount that was paid to Cummings as well as any expenses Gallaher incurred in defense of workers' compensation suit as allowed under the Pennsylvania Workers' Compensation Act Article III §302b (77 P.S. §462).

WHEREFORE, Plaintiff Gallaher demands a judgment in an amount not to exceed \$20,000.00.

Date: 2/11/04

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: 
Timothy R. Smith, Esquire
Robert J. Monahan, Esquire

*Attorneys for Plaintiffs,
John T. Gallaher Timber Transfer*

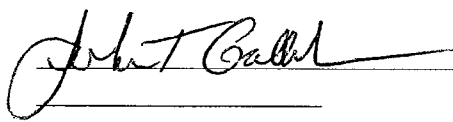
VERIFICATION

I, John Gallaher, verify that the statements contained in the foregoing **Complaint** is true and correct to the best of my knowledge, information and belief.

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

John T. Gallaher Timber Transfer

Date: Jan 09-2004

By: 



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

Circulation Date: 02/26/2002

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

AMENDED/CORRECTED DECISION COVER LETTER

Bureau Claim Number: 2150691

Insurer Claim Number:

Petitions:

Claim-Pet

Joinder-Pet

ROBERT D. CUMMINGS
P.O. BOX 77
WALLACETON, PA 16876-0000

DAVID C MASON ESQ
PO BOX 28
PHILLIPSBURG, PA 16866

Vs

ROBERT HAMILTON
T/A RE HAMILTON ENTERPRISES
RD 1 BOX 16
IRVONA, PA 16656-0000

BELL SILBERBLATT & WOOD
318 E LOCUST ST
CLEARFIELD, PA 16830

JOHN T GALLAHER TIMBER TRANSFERS
P O BOX 304
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AMERICAN INTERSTATE INSURANCE COMPANY
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ONE OXFORD CENTRE 38TH FL
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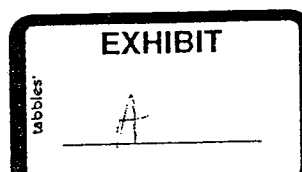
HARDWOODS OF MICHIGAN, INC.
430 DIVISION STREET
P. O. BOX 334
CLINTON, MI 49236

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

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Forms for an appeal may be obtained from the Workers' Compensation Appeal Board, Capital Associates Building
901 North Seventh Street
Third Floor South
Harrisburg, PA 17102



COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

WALKER LUMBER, INC.
P O BOX 60
WOODLAND, PA 16881

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
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FAMOUS & ASSOCIATES
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ERT D. CUMMINGS - 2150691

Employee Witnesses & Exhibits:

Robert Cummings, claimant (11-14-00; 03-22-01)

- 1- Logger Liability and Hold Harmless Agreement
- 2- 02-20-01 DPW Medical Lien and Expenses
- 3- 11-22-00 Correspondence from Kathleen Gillie (Mancing and Assoc) to Atty Mason
- 4- Winber Medical Center Accounting Print-out

Employer Witnesses & Exhibits:

None

Employer Counsel Witnesses & Exhibits:

John Gallagher (03-22-01)

Robert Hamilton (03-22-01)

George Caladonna (03-22-01)

Hamilton/Insurer Witnesses & Exhibits:

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- B- Copy of Note to Walter Hopkins and Company to prepare Form 1099 for George Caldana, Robert Cummings and Ronald queen
- C- Copy of 1998 Form 1099-MISC for Robert Cummings

Insurer Counsel-Michigan Hwd. Witnesses

Steve English (03-22-01)

Walker/Insurer Witnesses & Exhibits:

- A- Certificate of Liability Insurance for John Gallaher Logging

Hearings:

| | |
|---------------------|---|
| 3/22/2001 13:00:00 | Held |
| 1/30/2001 13:00:00 | Postponed by Employer Counsel on 01/29/01 |
| 11/14/2000 09:00:00 | Held |
| 8/8/2000 09:00:00 | Canceled by Employee Counsel on 08/04/00 |
| 4/11/2000 09:45:00 | Held |

AMENDED DECISION

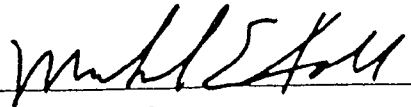
1. By Decision and Order of January 31, 2002, the Claim Petition filed by Claimant/Employee, Robert D. Cummings, against Defendant/Employer, Robert Hamilton, was granted. Pursuant to such Decision and Order it was noted that Counsel for Claimant had asserted the existence of a twenty percent (20%) Fee Agreement; but, as no Agreement had been submitted, such was not addressed within the Order.
2. Subsequently, by correspondence of February 15, 2002, Counsel for John T. Gallagher Timber Transfers, a Defendant who has been found to be a statutory Employer of the Claimant, being required to make payment of compensation benefits, in the event such are not paid directly by Defendant/Hamilton, requested clarification of the Order with respect to the attorney fee issue. Counsel for John T. Gallagher Timber Transfers requested clarification as to whether twenty percent (20%) attorney's fees should be paid directly to Claimant's Counsel, or one hundred percent (100%) of the funds paid directly to Mr. Cummings, without deducting for attorney's fees.
3. By Revised Order of February 19, 2002, Counsel for Claimant was to submit a Fee Agreement within ten (10) days. Thereafter, by correspondence of February 22, 2002, Counsel for Claimant, David C. Mason, Esquire, submitted a Contingent Fee Agreement executed by the Claimant and dated October 6, 1999. Such Agreement provides for an attorney's fee of twenty percent (20%) of all gross sums recovered.
4. Defendant/Employer shall likewise be granted an additional ten (10) day extension for making payment of such amounts, with the accrual of any additional interest, pending confirmation as to whether Counsel for Claimant intends to submit such Fee Agreement.

Accordingly, the following Amended Order is entered. The balance of the January 31, 2002 Decision and Order is otherwise incorporated herein by reference, in full.

Robert D. Cummings vs. Robert Hamilton t/a Hamilton Enterprises, et al
Claim/Joinder Petitions
Bureau Claim No. 2150691
Page 2 of 1

AMENDED ORDER

AND NOW, this 26th day of February, 2002, it is hereby Ordered that Defendant/ Insurer shall deduct a twenty percent (20%) attorney's fee from all compensation payable pursuant to the Decision and Order of January 31, 2002, making such payable directly to Counsel for Claimant, David C. Mason, Esquire.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office

MEK:lfb



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

Circulation Date: 02/19/2002

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

AMENDED/CORRECTED DECISION COVER LETTER

Bureau Claim Number: 2150691

Insurer Claim Number:

Petitions:

Claim-Pet
Joinder-Pet

ROBERT D. CUMMINGS
P.O. BOX 77
WALLACETON, PA 16876-0000

DAVID C MASON ESQ
PO BOX 28
PHILLIPSBURG, PA 16866

Vs

ROBERT HAMILTON
T/A RE HAMILTON ENTERPRISES
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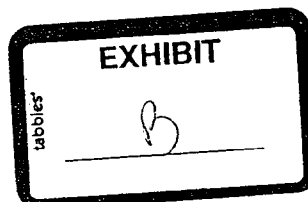
HARDWOODS OF MICHIGAN, INC.
430 DIVISION STREET
P. O. BOX 334
CLINTON, MI 49236

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

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DIARY 3/4
Deadline 3/11

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
BOSTON, MA 02110

WALKER LUMBER, INC.
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WOODLAND, PA 16881

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None

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John Gallagher (03-22-01)

Robert Hamilton (03-22-01)

George Caladonna (03-22-01)

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Hearings:

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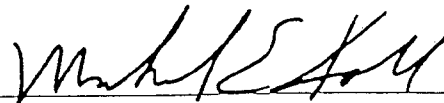
AMENDED DECISION

1. By Decision and Order of January 31, 2002, the Claim Petition filed by Claimant/Employee, Robert D. Cummings, against Defendant/Employer, Robert Hamilton, was granted. Pursuant to such Decision and Order it was noted that Counsel for Claimant had asserted the existence of a twenty percent (20%) Fee Agreement; but, as no Agreement had been submitted, such was not addressed within the Order.
2. Subsequently, by correspondence of February 15, 2002, Counsel for John T. Gallagher Timber Transfers, a Defendant who has been found to be a statutory Employer of the Claimant, being required to make payment of compensation benefits, in the event such are not paid directly by Defendant/Hamilton, requested clarification of the Order with respect to the attorney fee issue. Counsel for John T. Gallagher Timber Transfers requested clarification as to whether twenty percent (20%) attorney's fees should be paid directly to Claimant's Counsel, or one hundred percent (100%) of the funds paid directly to Mr. Cummings, without deducting for attorney's fees.

Accordingly, the following Revised Order is entered. The balance of the January 31, 2002 Decision and Order is otherwise incorporated herein by reference, in full.

AMENDED ORDER

AND NOW, this 19th day of February, 2002, in the absence of Counsel for Claimant's submission of a Fee Agreement within ten (10) days of this Amended Order, Defendant/Employer shall be entitled to make payment of one hundred percent (100%) of the amounts ordered to be paid pursuant to the January 31, 2002 Order, directly the Claimant, without deduction of attorney's fees. Defendant/Employer shall likewise be granted an additional ten (10) day extension for making payment of such amounts, with the accrual of any additional interest, pending confirmation as to whether Counsel for Claimant intends to submit such Fee Agreement.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

Circulation Date: 01/31/2002

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH PA 15219

FEB 05 2002

DECISION RENDERED COVER LETTER

Bureau Claim Number: 2150691

Insurer Claim Number:

Petitions:

Claim-Pet
Joinder-Pet

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

ROBERT D. CUMMINGS
P.O. BOX 77
WALLACETON, PA 16876-0000

DAVID C MASON ESQ
PO BOX 28
PHILLIPSBURG, PA 16866

Vs

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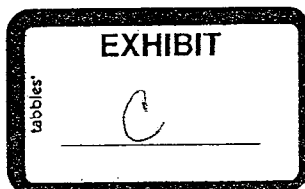
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HARDWOODS OF MICHIGAN, INC.
430 DIVISION STREET
P. O. BOX 334
CLINTON, MI 49236



DIARY 2/14
Deadline 2/20

COMMONWEALTH OF MASSACHUSETTS
ONE SOUTH STATION 5TH FLR
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| 8/8/2000 09:00:00 | Canceled by Employee Counsel on 08/04/00 |
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FINDINGS OF FACT

1. The Claimant, Robert D. Cummings, filed a Claim Petition on or about February 14, 2000, asserting that he suffered a work injury on May 3, 1997, in the nature of a concussion from being struck on the head by a tree, during the course and scope of his employment with Defendant/Employer, Robert Hamilton, t/a Hamilton Enterprises. At or about such time, the Claimant additionally filed a Claim Petition asserting that, on August 13, 1999, he suffered a work injury during the course and scope of his employment with Robert Hamilton, t/a Hamilton Enterprises, in the nature of a severely comminuted fracture of the tibia/fibula - left leg, lacerations of the scalp, bruise, contusion injury to his left shoulder. The Claimant's Petitions were assigned to this Workers' Compensation Judge on March 14, and March 20, 2000, respectively. Defendant/Employer has filed Answers, denying the material averments of each Petition.
2. An initial pretrial conference was held in this matter on April 11, 2000. At such time, the parties were granted extensions for the completion of discovery, due to the possibility of the joinder of other potential employers, including statutory employers.
3. Subsequently, Defendant/Employer, Robert Hamilton, t/a Hamilton Enterprises, filed Petitions for Joinder of Additional Defendants, joining as additional defendants, John T. Gallagher Timber Transfers, Michigan Hardwoods and C.A. Walker Lumber, Inc. Each Defendant has filed responsive Answers denying the material averments of such Petition[s].
4. A hearing on all Petitions was held on November 14, 2000. At such time, in support of his Claim Petitions, the testimony of the Claimant was presented, in pertinent part, as follows:
 - a. The Claimant testified that, as of the time of the hearing, he was forty-seven (47) years of age and had worked in the woods and timber business all of his life. He testified that, on August 13, 1999, he was working cutting timber for Robert Hamilton, with a coworker, George Caldana, in Windber, Pennsylvania. The Claimant testified that this was the second time he had been on such property to cut timber, the first time cutting timber for Robert Hamilton, for a period of approximately three (3) months. He indicated that, on the most recent occasion, he had been on the property for only a few weeks. The Claimant testified that, in the interim between the two (2) periods of cutting timber in Windber, he continued working cutting timber for Robert Hamilton. (11/14/2000 Hearing N.T., pp. 6-10)
 - b. The Claimant testified that his duties entailed cutting down trees with a chain saw, owned by Robert Hamilton; that he would use a log skidder to haul the logs to where Mr. Caldana was working; and that Mr. Caldana would cut up the trees and skid them to the log landing area, using skidders owned by Robert Hamilton. The Claimant testified that, other than a cable cutter and a three-quarter (3/4) socket set, the tools and equipment which he used were owned by Robert Hamilton and maintained at Robert Hamilton's expense. The Claimant indicated that Robert Hamilton also paid for fuel for the equipment. (11/14/2000 Hearing N.T., pp. 6-15)

- c. The Claimant testified that, at the Windber property, it was his understanding he was cutting "Walker's timber". The Claimant testified that he did not know who was the owner of the property. The Claimant indicated that Mr. Caldana would advise him what to do and, Robert Hamilton and John Gallagher showed Mr. Caldana where the timber was to be cut. The Claimant testified that after the logs were taken to the log landing, such would be loaded onto a log truck, owned by John Gallagher, who would haul such timber to Michigan Hardwood. (11/14/2000 Hearing N.T., pp. 10-16)
- d. The Claimant testified that he started working for Robert Hamilton in October or November of 1996 and continued working for Mr. Hamilton up through August 13, 1999. He indicated he did not work for anyone else during such time period. The Claimant indicated that he was paid at the rate of \$7.00 per hour, working approximately ten (10) hours per day, seven (7) days per week. He indicated that, when he and George Caldana were finished with one work site, he would be directed to the next work site by Robert Hamilton. The Claimant indicated that, although Robert Hamilton was not in the woods very often due to a disability, he would advise George Caldana and himself as to the size or type of trees to be cut. (11/14/2000 Hearing N.T., pp. 15-21)
- e. The Claimant testified that, on August 13, 1999, while operating a log skidder owned by Robert Hamilton, the brakes went out while he was on the side of a mountain; that the skidder rolled over, crushing his left leg against a tree. The Claimant testified that he was subsequently taken to Conemaugh Hospital by Mr. Caldana, where he received treatment for a broken leg, including the insertion of surgical pins. The Claimant indicated that he still has problems with the leg, especially in cold and wet weather. (11/14/2000 Hearing N.T., pp. 22-25)
- f. The Claimant acknowledged that, in October of 1996, he signed a contract between he and Mr. Hamilton. The Claimant denied reading or looking at such document before signing, or ever being asked for proof of Workers' Compensation or liability insurance, that he was required to have. The Claimant indicated that he believes everyone who worked for Robert Hamilton signed such a contract. The Claimant testified that he never employed anyone to help him on the job; and that either Robert Hamilton or George Caldana were the individuals to hire any additional people for the different jobs. The Claimant indicated he did not sign one of the contracts each time he went to a different job site. He indicated that, to the best of his knowledge, either Robert Hamilton or George Caldana would be the individuals to fire people from jobs. The Claimant, when further questioned about reading the contract, indicated that he cannot read very well and did not have much time to sign it. (11/14/2000 Hearing N.T., pp. 26-28)
- g. The Claimant testified that he was no longer receiving medical treatment as a result of his August 13, 1999 injury. (11/14/2000 Hearing N.T., pp. 28-29)
- h. Upon cross examination, the Claimant acknowledged that Mr. Caldana was present at the time that he signed the "Logger Liability and Hold Harmless Agreement", Claimant's Exhibit 1. The Claimant denies that Mr. Hamilton went

point-by-point through the Agreement with him. He denies that Mr. Hamilton explained "independent contractor" responsibilities with him. The Claimant acknowledged that Mr. Hamilton had provided the Agreement to him a couple of days ahead of time. The Claimant indicated it was his understanding that he had to sign such by the time he returned to start work, in order to work for Mr. Hamilton. He indicated that he did not raise any questions about the Agreement. The Claimant acknowledged receiving a 1099 Tax Form in 1996, from Mr. Hamilton, as well as receiving such form in 1997 and 1998. He acknowledged that he had been responsible for payment of his own taxes from his paychecks, that none were taken out of the same. (11/14/2000 Hearing N.T., pp. 44-55)

- i. The Claimant testified that, with respect to the Windber property, he was shown the property lines by a gentleman from "Walker's". He acknowledged that Mr. Hamilton did not show him the property lines. The Claimant indicated that Mr. Hamilton would advise him how many days per week to work and sometimes tell him how many hours a day to work; but, such was kind of left up to him, if it was raining, thundering or lightening. The Claimant indicated that they worked everyday, as he was told by Mr. Hamilton that they had to work everyday. The Claimant indicated that Mr. Hamilton would advise them to cut "the log trees"; and that he would know from his prior experience as to which trees were to be cut. How he cut the trees and how many trees he cut being left up to him. The Claimant acknowledged that an accurate characterization of his relationship with Mr. Hamilton would be that Mr. Hamilton would find the properties or jobs for timber cutting and then he, Mr. Caldana and other individuals would go in and do the actual cutting, skid out the logs to the log landing, with someone else picking up the logs and taking them to the sawmills. The Claimant denied ever attempting to find logs on his own to cut; and pretty much relied upon Mr. Hamilton coming up with the leases for the sites for him to cut. (11/14/2000 Hearing N.T., pp. 55-58)
- j. The Claimant acknowledged that he has returned to work full-time, cutting timber for an alternative employer, beginning approximately May of 2000. He acknowledged that, subsequent to having the brace taken off of his leg in March of 2000, he began performing odds and ends cutting work for other individuals as well. (11/14/2000 Hearing N.T., pp. 58-62)
- k. Upon cross examination by Counsel for John T. Gallagher Timber Transfer, the Claimant acknowledged he was never advised by Mr. Gallagher as to where to cut, never received any money from Mr. Gallagher, never signed any contracts with Mr. Gallagher and, otherwise, did not consider himself working for Mr. Gallagher. The Claimant acknowledged that, upon his return to work for an alternative employer, Mr. Dotts, he was earning as much or more as he was at the time of his August 13, 1999 work injury. (11/14/2000 Hearing N.T., pp. 63-66)
- l. Upon cross examination by Counsel for Additional Defendant, Michigan Hardwood, Inc. and C.A. Walker Lumber, Inc., which the parties stipulated are one in the same for purposes of this litigation, the Claimant acknowledged he had not signed any contract with anyone from C.A. Walker Lumber, did not receive any

paychecks from such, nor was he supplied with any materials and had minimal interaction with anyone from such companies. (11/14/2000 Hearing N.T., pp. 67-68)

- m. Upon redirect examination, the Claimant testified that, prior to his signing of the "Logger Liability and Hold Harmless Agreement", he had already worked for a period of several weeks for Mr. Hamilton, including receiving paychecks from the same. The Claimant indicated he always was paid \$7.00 an hour for his labor, whether it be cutting timber or doing maintenance work on Mr. Hamilton's equipment. The Claimant indicated that Mr. Caldana would keep track of his hours. (11/14/2000 Hearing N.T., pp. 68-71)
5. An additional hearing was held in this matter on March 22, 2001. At such time, in opposition to Claimant's Petition, Defendant, Robert Hamilton, presented the testimony of George Caldana. Mr. Caldana testified, in pertinent part, as follows:
- a. Mr. Caldana indicated that he had been employed by Robert Hamilton, as a log cutter, since 1996, under a comparable "Logger Liability and Hold Harmless Agreement" (Claimant's Exhibit 1), as that signed by the Claimant. Mr. Caldana described his understanding of such Agreement as that he had to pay his own taxes and did not have insurance. Mr. Caldana testified he was aware the Claimant signed the same Agreement; that the Claimant was advised by Mr. Hamilton he had to pay his own taxes and did not have insurance. Mr. Caldana indicated the Claimant said he understood such and that the two (2) of them actually had discussions about obtaining insurance. Mr. Caldana testified that he was present when the Claimant read the Agreement and indicated he understood such. (03/22/2001 Hearing N.T., pp. 8-17)
 - b. Mr. Caldana testified that, as of August 13, 1999, he and the Claimant were performing log cutting, using Robert Hamilton's equipment. Mr. Caldana testified that the two (2) were cutting timber on land leased by Walker Lumber. He indicated they had been cutting timber at such site for several months previously; had left that site, going to a different site identified by Mr. Hamilton, but ultimately came back; and they were cutting timber as of the time of the Claimant's injury. (03/22/2001 Hearing N.T., pp. 17-24)
 - c. Mr. Caldana, when questioned with respect to the other Defendants in this matter, indicated he had limited direct contact with Mr. Gallagher, other than contacts with Mr. Gallagher or his drivers, regarding picking up logs from the log landing. Mr. Caldana indicated that the landing site for the timber would be determined by himself and the Claimant. Mr. Caldana testified that, with respect to the trees to be cut, he was shown the property lines for the leased property by Steve English, the forester for Walker Lumber, and advised to cut the pre-marked trees. Mr. Caldana testified that he and the Claimant were advised to cut all of the trees marked in blue. (03/22/2001 Hearing N.T., pp. 24-26)

- d. Mr. Caldana testified that Robert Hamilton would not be present at the job site; and that he and the Claimant would decide for themselves as to which days to cut. Mr. Caldana indicated that he and the Claimant would not be required to report to Mr. Hamilton. He denied that he was the boss of the Claimant, with the two (2) working on their own. Mr. Caldana testified that he and the Claimant were each paid for the hours they worked per week, on a flat hourly rate. He testified that the two (2) could negotiate the hourly rate for each job. He further testified that the Claimant can read, as he has seen him reading a classified ads newspaper, called the "Ad Bargain", as well as some maintenance or repair manuals. Mr. Caldana further testified that, from 1996 until the Claimant's injury, he worked with the Claimant most everyday. When questioned as to relatively significant differences in his yearly income from that of the Claimant, Mr. Caldana testified he would be paid extra or "extra bonuses", for cutting up timber or cutting extra loads of timber, by Mr. Hamilton. Mr. Caldana testified that these bonuses were not negotiated, but determined by Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 26-47)
 - e. Mr. Caldana acknowledged that, although he indicated the flat hourly rate which he or the Claimant would be paid could be negotiated, the subject never came up at anytime and was never re-negotiated; and he would be paid \$7.00 per hour, as was the Claimant. Mr. Caldana acknowledged that Robert Hamilton would advise him and the Claimant as to the sites for other jobs where cutting was to be performed. Mr. Caldana acknowledged that, within the last two (2) years prior to the time of hearing, he had become a partner with Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 47-58)
6. In opposition to the Claimant's Petition, the testimony of Robert E. Hamilton was presented during the March 22, 2001 hearing. Mr. Hamilton testified, in pertinent part, as follows:
- a. Mr. Hamilton testified that he has maintained a sole proprietorship since 1988, of R. E. Hamilton Enterprises. He testified that the nature of such business is basically his obtaining of timber rights or properties, or leasing timbering rights, as well as the performance of contract cutting services for others. (03/22/2001 Hearing N.T., pp. 59-60)
 - b. Mr. Hamilton testified that, prior to George Caldana or the Claimant cutting timber for him, they each entered into the "Logger Liability and Hold Harmless Agreement". He indicated such Agreement was discussed with each individual, with each being advised there would be no federal taxes withheld, each was reasonable for his own insurance, and they were in charge of their cutting responsibilities. Mr. Hamilton indicated that neither individual was placed in a position of authority. Mr. Hamilton indicated that prior to retaining the Claimant, the Claimant had represented to him that he had his own skidder and had owned his own logging business on a prior occasion.

- c. Mr. Hamilton testified that he never received any indication the Claimant had difficulty reading, with the Claimant being able to follow notes and directions which he wrote out for him, as well as writing back notes to Mr. Hamilton. (03/22/2001 Hearing N.T., pp. 61-64)
- d. Mr. Hamilton testified as to the cutting services which were being performed on the Windber property in August of 1999. He testified that, through his brother-in-law, Additional Defendant John Gallagher, he became aware that Additional Defendants, Michigan Hardwood/Walker Lumber, had some timber to be cut. Mr. Hamilton testified he had no direct contact with Michigan Hardwoods, nor did he enter into any written agreement with Michigan Hardwoods or Walker Lumber. Mr. Hamilton testified that John Gallagher would pay him \$250.00 to \$300.00 per load of logs delivered to the log landing. He testified that he would be paid by Mr. Gallagher at the end of the week, for the number of loads so delivered. He testified that he would then pay his crew, George Caldana and Mr. Cummings, as well as occasionally other individuals, a paycheck at the end of the week, for their services. Mr. Hamilton testified that he supplied the materials and equipment, which Mr. Caldana and the Claimant would use. (03/22/2001 Hearing N.T., pp. 64-77)
- e. Mr. Hamilton testified that, at the end of each week, Mr. Caldana and the Claimant would advise him as to what they had accomplished. He testified he did generally pay Mr. Caldana and the Claimant on an hourly basis, but would pay extra amounts for extra production. He acknowledged he would essentially decide how much per week each would be paid for any extra production. (03/22/2001 Hearing N.T., pp. 78, 107)
- f. Mr. Hamilton acknowledged he had no direct contact with Michigan Hardwoods/Walker Lumber, with his dealings primarily being limited to contacts with Mr. Gallagher. Mr. Hamilton indicated he assumed someone else would be supervising Mr. Caldana and the Claimant, but he did not know. He acknowledged he did not know if anyone else was working on the property. (03/22/2001 Hearing N.T., pp. 78-80)
- g. Mr. Hamilton acknowledged, on cross examination, that there were no provisions in the Agreements with Mr. Caldana and the Claimant with respect to his determination of amounts for extra production, or the specific hourly rate. Mr. Hamilton acknowledged that neither Mr. Gallagher nor anyone from his Company would do any cutting, with such companies responsibilities being limited to hauling the timber from the landing site to the mills or Walker Lumber. Mr. Hamilton acknowledged he did not have any manner of written agreement with either of the Additional Defendants. Mr. Hamilton acknowledged that Mr. Caldana and the Claimant would rely upon him to line up work. He acknowledged that the overall role of his business was to get timber-cutting jobs and bring in his crew or cutters to perform the cutting and hauling to the landing site. (03/22/2001 Hearing N.T., pp. 92-108)

7. In opposition to the Joinder Petition, the testimony of John Thomas Gallagher was presented at the time of the March 22, 2001 hearing. Mr. Gallagher testified as to his business of contract cutting timber, where larger companies will purchase the timber, and his company was to produce the timber from the wood site to the mills, including cutting, skidding and hauling timber. Mr. Gallagher testified that he was contacted by the forester, Steve English, regarding Walker Lumber's purchasing of timber rights and needing such timber cut. Mr. Gallagher testified that, at such time, as his crews were already busy cutting timber for another company, he advised his brother-in-law, Robert Hamilton, of the timber job at the Windber site. Accordingly, the subsequent financial arrangement between Mr. Gallagher and Robert Hamilton involved Robert Hamilton's provision of the cutting crew, who would cut and skid the timber to the landing site where Mr. Gallagher's company and employees would pick up the timber and haul such to Walker Lumber. Mr. Gallagher would then be paid by Walker Lumber based upon the number of board-feet of scaled timber delivered, as well as by the ton for pulpwood. Mr. Gallagher would then pay Mr. Hamilton a set price per load of wood delivered to the log landing. Mr. Gallagher testified he was not responsible for supervising Mr. Hamilton's crew, nor determining the timber to be cut. Mr. Gallagher acknowledged being advised by Mr. Hamilton that he had his no insurance. Mr. Gallagher indicated that, when he discussed such with Mr. Hamilton, Mr. Hamilton provided copies of the "Hold Harmless Agreements", indicating such were sufficient. Mr. Gallagher testified he does maintain Workers' Compensation insurance for his employees. (03/22/2001 Hearing N.T., pp. 108-138)
8. In opposition to the Joinder Petition, the testimony of Steve English, forester for Walker Lumber, was presented. Mr. English testified that Walker Lumber retained Mr. Gallagher's Company to perform the cutting and hauling of timber, for which Mr. Gallagher would be paid directly, based upon the amount of timber delivered. He testified that, other than identifying the property to be cut and parameters of cutting, neither he nor Walker Lumber provided any supervision over such responsibilities. Mr. English testified that Mr. Gallagher provided Walker Lumber with an insurance certificate; and Gallagher was at leave to sub-contract out work at his discretion. (03/22/2001 Hearing N.T., pp. 142-151)
9. At the conclusion of the March 22, 2001 hearing, it was confirmed that, based upon the Claimant's testimony and stipulations that he had returned to work with no loss of earnings; that the primary issue in question was with respect to a employer-employee relationship; and the parties would not be required to proceed with the completion of medical depositions or evidence in support of the causal relationship between the Claimant's August 13, 1999 injury and such closed period of disability.
10. Defendant/Employer, Robert Hamilton, has submitted a Statement of Wages setting forth that Claimant had a pre-injury average weekly wage of \$361.39, with a resultant compensation rate of \$240.93 per week. For the first time, in his Proposed Findings of Fact, Counsel for Claimant has raised objections as to the accuracy of the same. Such objections are found to be untimely and are overruled.
11. Pursuant to acknowledgments of the Claimant, he acknowledged that, as of March, 2000, he returned to full, unrestricted duties, consistent with those he had been performing prior to August 13, 1999, without loss of wages associated with the work injury.

12. Based upon the foregoing, and review of the record in its entirety, it is further found as follows:

- a. On August 13, 1999, the Claimant, Robert Cummings, suffered a work injury during the course and scope of his employment with Defendant/Employer, Robert Hamilton, in the nature of a broken left leg, resulting in a period of temporary total disability from August 13, 1999 through March, 2000.
- b. Effective March, 2000, the Claimant had sufficiently recovered from his August 13, 1999 work injury to return to his pre-injury capacity of employment and, in fact, obtained alternative employment performing the same manner, scope and duties as he had at the time of his work injury, such as to no longer suffer any loss of earnings associated with his work injury.
- c. It is found that, at the time of his work injury, the Claimant was not an employee of either additional Defendants, John T. Gallagher Timber Transfers or Michigan Hardwoods/Walker Lumber Company.
- d. It is found that, at the time of his work injury, the Claimant's Employer, Robert Hamilton, was serving in the capacity of a sub-contractor for Additional Defendant, John T. Gallagher Timber Transfers.
- e. It is found that, at the time of Claimant's work injury, the Claimant's Employer, Robert Hamilton, was uninsured for Workers' Compensation purposes. It is further found that Additional Defendant, John T. Gallagher Timber Transfers, is found to be a statutory employer under Section 302 (d) of the Pennsylvania Workers' Compensation Act.
- f. It is found that the Claimant has failed to submit any evidence whatsoever, with respect to his asserted May 31, 1997 injury.
- g. In reaching these findings and, specifically, in finding the Claimant was an employee of Defendant, Robert Hamilton, and not an Independent Contractor, it is noted that "[I]n determining whether a claimant is an independent contractor or employee, the Pennsylvania Supreme Court has set forth the following factors to consider in determining the type of relationship which exists: control of the manner in which work is to be done; responsibility for result only; terms of agreement between the parties; nature of the work or occupation; skill required for performance; whether one employee is engaged in a distinct occupation or business; which party supplies the tools; whether payment is by time or by the job; whether work is part of the regular business of the alleged employer, and whether the alleged employer has the right to terminate employment at any time. Because each case is fact specific, all of these factors need to be present to determine the type of relationship which exists. Moreover, while all of these factors are important indicators, the key element is whether the alleged employer has the right to control the work to be done, and the manner in which it is performed." *Johnson v. W.C.A.B. (DuBois Courier)*, 631 A.2d 693 (Pa. Cmwlth., 1993), citing

Hammermill Paper Company v. Rust Engineering Co., 430 Pa. 365, 370, 240 A.2d 389, 392 (1968).

- h. In finding the Claimant is an employee, as opposed to an Independent Contractor, the testimony of Mr. Cummings, Mr. Hamilton and Mr. Caldana are each found to be credible, in part, and rejected, in part. Overall, in reviewing the testimony of each of these individuals in their entirety, other than each of their ultimate conclusions as to the nature of the relationship, the testimony of each as to the practical implications of their relationships are fairly consistent. Upon review of the consistent aspects of each of their testimonies, it is found that the relationship is overwhelmingly that of an employee, as opposed to Independent Contractor. As noted in Johnson, Supra, the key element is whether the alleged employer has the right to control the work to be done and the manner in which it is performed. Under the present circumstances, although the Claimant signed an Agreement indicating he is an Independent Contractor, in most all aspects of the relationship he was treated as an employee, being paid on an hourly basis, or at the discretion of Mr. Hamilton as to any bonuses; he only performed work for Mr. Hamilton; the work which he performed was part of the regular business of Mr. Hamilton; and Mr. Hamilton provided all of the tools and equipment.
- i. In reaching these findings, that John T. Gallagher Transfers was a statutory employer of the Claimant, the testimony of Mr. Gallagher is found to be credible. Mr. Gallagher testified in a very honest and direct manner. However, as Mr. Gallagher candidly admitted, he naively accepted Mr. Hamilton's representations, that the "Hold Harmless Agreement" was sufficient to insulate him from any potential liability. For Workers' Compensation purposes, although such an Agreement is a consideration, such does not preclude the finding of an employer-employee relationship. Moreover, such does not insulate a contractor from Workers' Compensation liability in the event of an uninsured subcontractor. To define the existence of a statutory employer, five (5) elements must be confirmed; (1) contract with owner of land or one in the position of an owner, (2) premises occupied or under the control of the subcontractor seeking statutory employer status, (3) subcontract made by contractor, (4) part of the contractor's regular business must be entrusted to the subcontractor in the contract, and (5) an employee of the subcontractor is injured on the premises. Under the present circumstances, it is fairly undisputed by Mr. Gallagher, that he contracted with Walker Lumber to cut and haul timber. Mr. Gallagher acknowledged he would have utilized his normal crew, insured for Workers' Compensation purposes, to perform such duties, but they were preoccupied with other businesses. Accordingly, in good faith, he retained the services of his brother-in-law as effectively a subcontractor, to perform such duties.
- j. In reaching these findings, the testimony of Mr. English is found to be credible and generally unrefuted.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the entirety of the record and the respective Law on this matter, this Adjudicator concludes as follows:

1. At all times relevant hereto, the parties were bound by the applicable terms and provisions of the Pennsylvania Workers' Compensation Act, as Amended.
2. The Claimant has sustained his burden of proof, that he suffered a work injury on August 13, 1999, in the nature of a broken left leg, entitling him to Workers' Compensation benefits for the period of August 13, 1999 through March of 2000, together with the payment of medical costs and expenses causally related to the same.
3. Defendant/Employer, Robert Hamilton, shall be responsible for the payment of such Workers' Compensation benefits, together with the reimbursement of any Public Welfare Lien reimbursement for the payment of any such medical expenses.
4. The Claimant has failed to sustain his burden of proof, that he suffered a work injury on May 31, 1997.
5. Original Defendant/Employer has failed to sustain its burden of proof, that Additional Defendants, John T. Gallagher Timber Transfers, or Michigan Hardwoods/C.A. Walker Lumber/Walker Lumber, were employers of the Claimant at the time of his August 13, 1999 work injury. However, it is concluded that Additional Defendant, John T. Gallagher Timber Transfers, was a statutory employer for purposes of the Pennsylvania Workers' Compensation Act, as Amended.
6. Defendant/Employers have sustained their burden of proof, that their contest of these matter were, at all times, reasonable. Accordingly, no award of attorney's fees is made hereunder.
7. As the Claimant has prevailed in this matter, Claimant shall be entitled to reimbursement of his costs of litigation; however, no formal request has been made by Claimant's Counsel, nor has an itemized Bill of Costs been submitted.
8. Counsel for Claimant has asserted the existence of a twenty percent (20%) Fee Agreement; however, no Agreement has been submitted. According, such is not addressed herein.


ORDER

AND NOW, this 31st day of January, 2002, it is hereby Ordered that the Claim Petition filed by Claimant/Employee, Robert D. Cummings, against Defendant/Employer, Robert Hamilton t/a R. E. Hamilton Enterprises, alleging a work injury on August 13, 1999, is GRANTED, consistent with Conclusions of Law No. 2 and 3.

In accordance with Conclusion of Law No. 5, in the absence of payment of the foregoing by original Defendant/Employer, Robert Hamilton, t/a R. E. Hamilton Enterprises, John T. Gallagher Timber Transfers, as the statutory employer, and/or its Workers' Compensation Insurer, shall be responsible for payment of compensation payable hereunder.

Defendants are entitled to a Suspension of Claimant's benefits effective March, 2000.

The Claim Petition filed by Claimant alleging a work injury on May 3, 1997 is DENIED and DISMISSED, consistent with Conclusion of Law No. 4.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office

lfb



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
BUREAU OF FINANCIAL OPERATIONS
DIVISION OF THIRD PARTY LIABILITY
CASUALTY UNIT
P.O. BOX 8486
HARRISBURG, PA 17105-8486

November 5, 2003

AMERICAN INTERSTATE INSURANCE CO
KRISTEN JONES
CLAIM DEPARTMENT
PO BOX 1099
MECHANICSBURG PA 17055

Re: ROBERT CUMMINGS
CIS #: 300119139
Incident Date: 08/13/1999
Claim #: 2000-01572PA

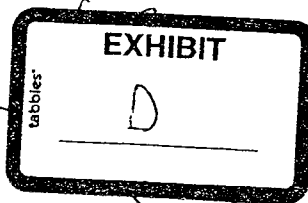
Dear Ms. Jones:

This is to acknowledge receipt of payment in the amount of \$6,327.06
regarding the above-referenced individual.

Your cooperation in this matter is appreciated.

Sincerely,

Nicole L. Early
TPL Program Investigator
717-772-6606
717-772-6553 FAX



Received
NOV 10 2003
AHC - PA

Payments

West 1

Payments

Vendor

Automatic Payment

Void type

Vendor ID: 0000656847

Tax ID:

238003102

DEPARTMENT OF PUBLIC WELFARE
TRU SECTION-CASUALTY UNIT BOX
8486
HARRISBURG PA 17105 (ACTIVE)

Payment Detail

Miscellaneous

PA

LAE

Claimant: ROBERT D CUMMINGS

| Claim Number | Pay Code | Amount | Gross Amt | Begin Date | End Date |
|--------------|----------------------|---------|-----------|------------|------------|
| 200001572 | 73 Miscellaneous Leg | 6327.06 | 0.00 | 08/13/1999 | 10/31/2003 |
| | | | | | |
| | | | | | |
| | | | | | |

West 1

Check Total

6327.06

| | | | |
|----------|--|--------|--|
| Payments | | West 1 | |
|----------|--|--------|--|

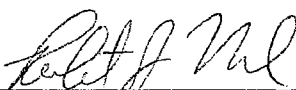
| | |
|---|-------------------|
| Payments | |
| Vendor | Automatic Payment |
| Payment Subtype | Valid Type |
| Vendor Information | |
| Vendor ID | 0000656947 |
| Tax ID | 23800313 |
| DEPARTMENT OF PUBLIC WELFARE
SECTION CASUALTY UNIT BOX
3486
MECHANICSBURG, PA 17105 (ACTIVE) | |
| Payment Detail | |
| Miscellaneous | |
| Comments | |
| Transaction Number | 0002741699 |
| Date Requested | 10/30/2003 |
| Check No | 0011283279 |
| Requested By | KRJONES |
| Date Cleared | 11 |
| Issue Date | 10/31/2003 |
| Check Register Date | 10/31/2003 |
| On Register | Y |
| Site ID | |
| Phase | On Check Register |
| Team | West 1 |
| Check Total | 6327.06 |

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Complaint, was served via U.S. First-Class Mail, postage prepaid, this 11 day of February, 2004, upon the following individual(s):

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656

PIETRAGALLO, BOSICK & GORDON

By: 
Timothy Smith, Esquire
Robert J. Monahan, Esquire

The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

100



G

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

JOHN T. GALLAHER TIMBER
TRANSFER,
Plaintiff

vs.

ROBERT HAMILTON, t/a
HAMILTON ENTERPRISES,
Defendant(s)

:
: No. 04-221-CD
:
: Type of Case: Civil
:
: Type of Pleading:
: Answer, New Matter and
: Counterclaim to Plaintiff's
: Complaint
:
: Filed on Behalf of:
: Robert Hamilton, t/a
: Hamilton Enterprises
:
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
:
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA 16830
: Telephone: (814)765-5537-
:
:

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

APR 01 2004

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

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

JOHN T. GALLAHER TIMBER
TRANSFER,
Plaintiff

vs.

No. 04-221-CD

ROBERT HAMILTON, t/a
HAMILTON ENTERPRISES
Defendant

NOTICE TO PLEAD

TO THE WITHIN Plaintiff JOHN T. GALLAHER TIMBER TRANSFER:

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim filed on behalf of Defendant, Robert Hamilton, t/a Hamilton Enterprises, within twenty (20) days from service hereof or a judgment may be entered against you.

By,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

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

JOHN T. GALLAHER TIMBER
TRANSFER,
Plaintiff

vs.

ROBERT HAMILTON, t/a
HAMILTON ENTERPRISES
Defendant

No. 04-221-CD

**ANSWER, NEW MATTER AND COUNTERCLAIM TO
PLAINTIFF'S COMPLAINT**

NOW, comes the Defendant, Robert Hamilton, t/a Hamilton Enterprises, by and through his attorney, F. Cortez Bell, III, Esquire, who for his Answer to Plaintiff's Complaint would respectfully represent and aver as follows:

ANSWER

1. That Paragraph 1 of Plaintiff's Complaint is admitted.
2. That Paragraph 2 of Plaintiff's Complaint is admitted.
3. That Paragraph 3 of Plaintiff's Complaint is admitted.
4. That Paragraph 4 of Plaintiff's Complaint is admitted.
5. That Paragraph 5 of Plaintiff's Complaint is denied.

It would be specifically denied that on or about August 13, 1999 that Robert Cummings was an employee of Robert Hamilton or Hamilton Enterprises. Strict proof of the denied averments of Paragraph 5 of Plaintiff's Complaint would be demanded at time of trial or

hearing in this matter.

6. That Paragraph 6 of Plaintiff's Complaint is admitted in part and denied in part. It would be admitted that on or about August 13, 1999, Robert Cummings suffered a broken leg. It would be specifically denied that said broken leg was a work related injury, as well as that any such injury occurred during the course and scope of any employment with Robert Hamilton and/or Hamilton Enterprises. In addition it would be specifically denied that any such injury led to a period of temporary total disability from August 13, 1999 through March, 2000. Strict proof of the denied averments of Paragraph 6 of Plaintiff's Complaint would be demanded at time of trial or hearing in this matter.

7. That Paragraph 7 of Plaintiff's Complaint is admitted. It would be further averred that not only was Gallaher the statutory employer of Cummings but in fact he was the employer of Cummings.

8. That Paragraph 8 of Plaintiff's Complaint is admitted in part and denied in part. It is admitted that pursuant to various Orders, dated January 31, 2002 amended on February 19, 2002 and again amended on February 26, 2002 by Michael E. Koll, Workers' Compensation Judge, that Robert Cummings was entitled to receive Workers' Compensation payments from August 13, 1999 through March of 2000. It is denied that the Orders dated February 19, 2002 and the amended Order dated February 26, 2002 (Plaintiff's Exhibits A

and B) in any fashion found the Defendant Robert Hamilton or Hamilton Enterprises primarily liable to pay Cummings his Worker Compensation benefits. Strict proof of the denied averments of Paragraph 8 of Plaintiff's Complaint would be demanded at time of trial or hearing in this matter.

9. That Paragraph 9 of Plaintiff's Complaint is denied. It is specifically denied that Robert Hamilton or Hamilton Enterprises in any fashion violated Pennsylvania law. As Defendant Hamilton or Hamilton Enterprises had no employees, there was no need to carry Workers' Compensation Insurance. Strict proof of the denied averments of Paragraph 9 of Plaintiff's Complaint would be demanded at time of trial or hearing in this matter.

10. That Paragraph 10 of Plaintiff's Complaint is admitted to the extent that Robert Hamilton and/or Hamilton Enterprises has not paid any sums of money to Robert Cummings.

11. That Paragraph 11 of Plaintiff's Complaint is admitted with some clarification. It would be averred that only the Order dated January 31, 2002 in any fashion found an obligation to Robert Cummings by John T. Gallaher on the basis that John T. Gallaher was a statutory employer/employee of Robert Cummings.

12. That Paragraph 12 of Plaintiff's Complaint can neither be admitted nor denied. The Defendant, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth of the averment. It would be denied

that Robert Hamilton and/or Hamilton Enterprises failed to honor any obligation. Strict proof of the denied averment of Paragraph 12 of the Plaintiff's Complaint would be demanded at time of trial or hearing in this matter.

13. That Paragraph 13 of Plaintiff's Complaint can neither be admitted nor denied. The Defendant, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth of the averment.

14. That Paragraph 14 of Plaintiff's Complaint is denied. It would be specifically denied that Robert Hamilton and/or Hamilton Enterprises is an employer of Robert Cummings such that any amounts were due to said Robert Cummings. It would be further specifically denied that the Plaintiff Gallaher is entitled to any recovery from Robert Hamilton and/or Hamilton Enterprises in any amounts for either sums paid by Gallaher or any expenses occurred in the defense of any matter by Gallaher. Strict proof of the denied averment of Paragraph 14 of the Plaintiff's Complaint would be demanded at time of trial or hearing in this matter.

WHEREFORE, Defendant Robert Hamilton and/or Hamilton Enterprises respectfully requests that your Honorable Court deny judgment to the Plaintiff and award the Defendant all counsel fees, costs and expenses associated with regard to the defense of the instant Complaint.

NEW MATTER

NOW comes the Defendant, Robert Hamilton, t/a Hamilton Enterprises by and through his attorney, F. Cortez Bell, III, Esquire, who for his New Matter to Plaintiff's Complaint would respectfully set forth and aver as follows:

15. That Paragraphs 1 through 14 of the Answer to Plaintiff's Complaint would be incorporated herein by reference as part of the Defendants New Matter as if the same were set forth herein at length.

16. That John T. Gallaher is an adult individual who resides within the Commonwealth of Pennsylvania and carries out or conducts business under the name of John T. Gallaher Timber Transfer with a mailing address of P.O. Box 304, Irvona, PA 16656.

17. That at all times relevant to this proceeding, John T. Gallaher individually and t/d/b/a John T. Gallaher Timber Transfer conducted business within Clearfield County.

18. That the Plaintiff John T. Gallaher Timber Transfer contracted with Walker Lumber to remove certain timber from a tract of land upon which Robert Cummings was located at the time he broke his leg.

18. That the Defendant, Robert Hamilton, and/or Hamilton Enterprises had not contracted with Walker Lumber to remove any timber from that tract of land upon which Robert Cummings was located at the time he broke his leg.

19. That the Defendant Robert Hamilton and/or Hamilton Enterprises did not take any part in the designation of which timber was to be cut pursuant to the contract between the Plaintiff, John T. Gallaher Timber Transfer and Walker Lumber.

20. That the timber to be removed from the tract was marked in blue with said markings not having been made by either the Plaintiff, John T. Gallaher Timber Transfer or the Defendant, Robert Hamilton and/or Hamilton Enterprises.

21. That the property lines of the property to be timbered pursuant to the contract between the Plaintiff, John T. Gallaher Timber Transfer and Walker Lumber was located, designated and shown to the individuals cutting timber on the tract by a representative of Walker Lumber Company.

22. That the Defendant Robert Hamilton and/or Hamilton Enterprises took no part in the location of property lines, the designation of property lines or the showing of any individuals to cut timber thereon the location of said property lines.

23. That all equipment and skidders used to cut timber on the property in question and used by Robert Cummings were transported to the property by the Plaintiff, John T. Gallaher Timber Transfer and/or its agents or representatives.

24. That the Defendant Robert Hamilton and/or Hamilton Enterprises never directed nor supervised any of the cutting of the timber on the property in accord with or pursuant to the contract

between the Plaintiff, John T. Gallaher Timber Transfer and Walker Lumber.

25. That the Defendant, Robert Hamilton and/or Hamilton Enterprises, never directed any activities at the site from which the timber was being removed by Robert Cummings pursuant to the agreement between John T. Gallaher Timber Transfer and Walker Lumber.

26. That Robert Hamilton and/or Hamilton Enterprises did not control or direct the number of days work was performed at the site or the hours to be worked during the course of any day.

27. That the Defendant Robert Hamilton and/or Hamilton Enterprises did not direct or control the production of timber from the site.

28. That the Defendant, Robert Hamilton and/or Hamilton Enterprises, did not direct or control the activities or work performed by Robert Cummings in the course of the production of timber from the property which was the subject of the contract between John T. Gallaher Timber Transfer and Walker Lumber.

29. That the Plaintiff, John T. Gallaher Timber Transfer, controlled the pick up of timber and the delivery/sale of the timber in accord with the agreement between John T. Gallaher Timber Transfer and Walker Lumber.

30. That the Defendant, Robert Hamilton and/or Hamilton Enterprises had no involvement or control in the pickup of timber

and the delivery or sale of the same.

31. That the Plaintiff, John T. Gallaher Timber Transfer solicited the use of the equipment of Robert Hamilton and/or Hamilton Enterprises in order to complete the timber cutting in compliance with the agreement that John T. Gallaher Timber Transfer had with Walker Lumber.

32. That the Plaintiff John T. Gallaher Timber Transfer solicited the employment of Robert Cummings in order to complete the timber cutting in compliance with the agreement between John T. Gallaher Timber Transfer and Walker Lumber.

33. That it was a common practice of the Plaintiff John T. Gallaher Timber Transfer to hire independent contractors to complete various timbering contracts that the Plaintiff, John T. Gallaher Timber Transfer was unable to do himself or through his own employees.

34. That the Plaintiff, John T. Gallaher Timber Transfer was specifically advised by the Defendant Robert Hamilton and/or Hamilton Enterprises that Robert Cummings was an independent contractor who had done work for Hamilton in the past.

35. That the Plaintiff, John T. Gallaher Timber Transfer was specifically advised by the Defendant Robert Hamilton and/or Hamilton Enterprises that as Robert Cummings had been employed as an independent contractor in the past by the Defendant Hamilton and/or Hamilton Enterprises that Hamilton did not have any

compensation insurance covering said Robert Cummings.

36. That the Plaintiff John T. Gallaher Timber Transfer by and through John T. Gallaher specifically advised the Defendant Robert Hamilton that he was going to use Robert Cummings for purpose of the removal of timber pursuant to the agreement by and between John T. Gallaher Timber Transfer and Walker Lumber and that the lack of compensation insurance was not a problem because he had coverage and if anyone got hurt on a job that he would indicate that they had just started to work for him such that there would be compensation coverage.

37. That the Plaintiff John T. Gallaher Timber Transfer and specifically John T. Gallaher has not personally or individually suffered any monetary loss as a result of any sums alleged to have been paid within Paragraphs 12 and 13 of the Plaintiff's Complaint.

38. That the Defendant Robert Hamilton and/or Hamilton Enterprises was not the employer of Robert Cummings at the time that his leg was broken.

39. That any injury that occurred to said Robert Cummings was as a result of his own negligence or intentional act in removing the brakes from the log skidder that he was using and then intentionally continuing to operate and use said skidder in such a fashion that the skidder was unable to stop and thereby tipped over from which it is alleged that said Robert Cummings

suffered a broken leg.

WHEREFORE, Defendant Robert Hamilton and/or Hamilton Enterprises respectfully requests that your Honorable Court deny judgment to the Plaintiff and award the Defendant all counsel fees, costs and expenses associated with regard to the defense of the instant Complaint.

COUNTERCLAIM

NOW comes the Defendant, Robert Hamilton, t/a Hamilton Enterprises by and through his attorney, F. Cortez Bell, III, Esquire, who for his Counterclaim to Plaintiff's Complaint would respectfully set forth and aver as follows:

40. That Paragraphs 1 through 39 of the Answer and New Matter to Plaintiff's Complaint would be incorporated herein by reference as part of the Defendants Counterclaim as if the same were set forth herein at length.

41. That the Defendant Robert Hamilton and/or Hamilton Enterprises was not the employer of Robert Cummings.

42. That the Plaintiff John T. Gallaher Timber Transfer was the employer of Robert Cummings.

43. That the Plaintiff, John T. Gallaher Timber Transfer was fully aware that the Defendant Robert Hamilton and/or Hamilton Enterprises had no employees and had no workers' compensation insurance at the time that said Plaintiff, John T. Gallaher Timber

Transfer solicited, permitted and used the services of Robert Cummings in order to complete the timbering pursuant to the agreement between John T. Gallaher Timber Transfer and Walker Lumber.

44. That the Plaintiff John T. Gallaher Timber Transfer, specifically John T. Gallaher discussed with the Defendant the workers compensation issue and specifically indicated that such was not a problem, that coverage was available through John T. Gallaher Timber Transfer and it was on that basis that apparently Robert Cummings began working to complete the performance of the Walker Lumber agreement on behalf of John T. Gallaher Timber Transfer.

45. That the Plaintiff John T. Gallaher Timber Transfer and/or John T. Gallaher has not personally made any payments to anyone such that there has been a monetary loss for which recovery can be sought.

46. That should the Defendant Robert Hamilton and/or Hamilton Enterprises be found liable to the Plaintiff for any amount, the Defendant would assert that it is only through the contact of the Plaintiff that said liability occurred such that any recovery made by the Plaintiff would be fully recoverable by the Defendant as a claim against the Plaintiff because of the Plaintiff, John T. Gallaher Timber Transfer's use of Robert Cummings in order to complete the contract between the Plaintiff John T. Gallaher Timber Transfer and Walker Lumber.

47. That the Defendant Robert Hamilton and/or Hamilton Enterprises would assert a claim against the Plaintiff John T. Gallaher Timber Transfer in the amount of \$14,181.34 plus any costs or expenses incurred by the Defendant Robert Hamilton t/a Hamilton Enterprises in the defense or litigation of the instant matter.

Respectfully submitted,


F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

VERIFICATION

I, Robert Hamilton, verify that the statements made within the foregoing Answer, New Matter and Counterclaim to Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.

This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: March 29, 2004


Robert Hamilton

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

JOHN T. GALLAHER TIMBER
TRANSFER,
Plaintiff

vs.

No. 04-221-CD

ROBERT HAMILTON, t/a
HAMILTON ENTERPRISES
Defendant

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer, New Matter and Counterclaim to Plaintiff's Complaint upon the following persons by mailing such copy first class mail, postage prepaid to:

Timothy Smith, Esquire
Robert J. Monahan, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eight Floor
One Oxford Centre
Pittsburgh, PA 15219

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Plaintiff

Date: 4-1-04

100

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IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Defendant.

CIVIL ACTION NO.: 04-221-CD

**REPLY TO NEW MATTER AND ANSWER
TO COUNTERCLAIM**

Filed on behalf of:
Plaintiff, John T. Gallaher Timber Transfer

Counsel of Record for
This Party:

Timothy R. Smith, Esquire
Pa. I.D. #63282

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

PIETRAGALLO, BOSICK & GORDON
Firm #834

38th Floor, One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED
JUN 16 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

John T. Gallaher Timber Transfer
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, 16656

Defendant.

REPLY TO NEW MATTER AND ANSWER TO COUNTERCLAIM

AND NOW, comes Plaintiff, John T. Gallaher Timber Transfer, by and through its counsel, Timothy R. Smith, Esquire, Robert J. Monahan, Esquire and the law firm of Pietragallo, Bosick & Gordon, and files and serves the following Reply to New Matter and Answer to Counterclaim, setting forth as follows:

REPLY TO DEFENDANT'S NEW MATTER

15. In response to Paragraph 15 of Defendant's New Matter, Plaintiff incorporates herein by reference the allegations of his Complaint as if set forth fully herein.

16. Admitted

17. Admitted.

18. Admitted. (This response pertains to the first paragraph 18 of defendant's New Matter.)

18. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 18, therefore the allegations of Paragraph 18 are denied and strict proof thereof is demanded at time of trial.

19. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 19, therefore the allegations of Paragraph 19 are denied and strict proof thereof is demanded at time of trial.

20. Admitted in part and denied in part. It is admitted that Plaintiff did not mark the timber to be removed in blue. As to the remaining allegations, after a reasonable investigation Plaintiff is

without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 20, therefore the allegations of Paragraph 20 are denied and strict proof thereof is demanded at time of trial.

21. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 21, therefore the allegations of Paragraph 21 are denied and strict proof thereof is demanded at time of trial.

22. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 22, therefore the allegations of Paragraph 22 are denied and strict proof thereof is demanded at time of trial.

23. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 23, therefore the allegations of Paragraph 23 are denied and strict proof thereof is demanded at time of trial.

24. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 24, therefore the allegations of Paragraph 24 are denied and strict proof thereof is demanded at time of trial.

25. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 25, therefore the allegations of Paragraph 25 are denied and strict proof thereof is demanded at time of trial.

26. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 26, therefore the allegations of Paragraph 26 are denied and strict proof thereof is demanded at time of trial.

27. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 27, therefore the allegations of Paragraph 27 are denied and strict proof thereof is demanded at time of trial.

28. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 28, therefore the allegations of Paragraph 28 are denied and strict proof thereof is demanded at time of trial.

29. Admitted.

30. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 30, therefore the allegations of Paragraph 30 are denied and strict proof thereof is demanded at time of trial.

31. Admitted.

32. Denied, and strict proof thereof is required at the time of trial. Plaintiff contacted Defendant to perform tree removal services, and at no time did Plaintiff solicit the employment of Robert Cummings.

33. Admitted.

34. Admitted.

35. It is admitted that Plaintiff was advised by Defendant that Robert Cummings was allegedly an independent contractor. It is further admitted that Plaintiff was advised by Defendant that Defendant had no workers' compensation insurance for Robert Cummings and that it was unnecessary because of a contract entered into between Defendant and Robert Cummings.

36. All of the allegations set forth in Paragraph 36 are denied, and strict proof thereof is required at the time of trial. At no time did Plaintiff advise Defendant of any intent to use Robert Cummings for purpose of removal of timber. Plaintiff contracted with Defendant for the purpose of the removal of timber. It is further denied that Plaintiff ever advised Defendant that Plaintiff's workers' compensation insurance would cover any potential injuries, or that Plaintiff would allege that Robert Cummings worked for Plaintiff, if any injury in fact occurred.

37. Denied, and strict proof thereof is required at the time of trial. The amounts paid to Robert Cummings were paid on behalf of Plaintiff by Court Order of Workers' Compensation Judge Michael E. Koll. Plaintiff's Complaint has been properly plead and Plaintiff's damages are recoverable in this matter.

38. Denied, and strict proof thereof is required at the time of trial. According to the conclusions of law of Workers' Compensation Judge Michael E. Koll in the matter of Cummings v.

Hamilton, et al., which is the case that the instant action arises out of, the court found Defendant Hamilton to be the employer of Robert Cummings at the time of Mr. Cummings' injury.

39. Paragraph 39 contains conclusions of law to which no response is required. However, insofar as a response is deemed required, the allegations contained in Paragraph 39 are denied, and strict proof thereof is demanded at the time of trial.

WHEREFORE, Plaintiff John T. Gallaher Timber Transfer respectfully requests that judgment be entered in its favor on all claims asserted in the Complaint in this action, together with costs.

REPLY TO DEFENDANT'S COUNTERCLAIM

40. Plaintiff incorporates herein by reference the allegations of his Complaint and Paragraph 15 through 39 of its Reply to Defendant's New Matter as if fully set forth at length.

41. Denied, and strict proof thereof is demanded at the time of trial. According to the conclusions of law of Workers' Compensation Judge Michael E. Koll in the matter of Cummings v. Hamilton, et al., which is the case that the instant action arises out of, the court found Defendant Hamilton to be the employer of Robert Cummings at the time of Mr. Cummings' injury.

42. Denied, and strict proof thereof is demanded at the time of trial. According to the conclusions of law of Workers' Compensation Judge Michael E. Koll in the matter of Cummings v. Hamilton, et al., which is the case that the instant action arises out of, the court found Defendant Hamilton to be the employer of Robert Cummings at the time of Mr. Cummings' injury.

43. Admitted in part and denied in part. It is admitted that Plaintiff was aware that Defendant did not have workers' compensation insurance covering Robert Cummings, but was informed by Defendant that such insurance was unnecessary due to the contract entered into between Defendant and Robert Cummings. The remainder of the allegations contained with Paragraph 43 are denied, and strict proof thereof is demanded at the time of trial. It is denied that Plaintiff was made aware that Defendant allegedly did not have any employees. It is further denied that Plaintiff solicited, permitted and/or used the services of Robert Cummings in order to remove timber. Plaintiff solicited Defendant for the removal of timber.

44. Admitted in part and denied in part. It is admitted that Gallaher had a conversation with Hamilton concerning the status of Hamilton's workers' compensation insurance. The remainder of the allegations contained in Paragraph 44 are denied and strict proof thereof is demanded at the time of trial. Plaintiff contracted with Defendant to perform tree removal services.

45. Denied, and strict proof thereof is demanded at the time of trial. The amounts paid to Robert Cummings were paid on behalf of Plaintiff by the Court Order of the Workers' Compensation Judge Michael E. Koll. Plaintiff's Complaint has been properly plead and Plaintiff's damages are recoverable in this matter.

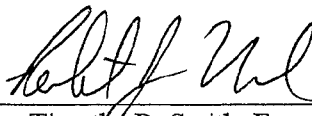
46. Paragraph 46 contains conclusions of law to which no response is required. However, insofar as a response is deemed required, the allegations contained in Paragraph 46 are denied, and strict proof thereof is demanded at the time of trial.

47. After a reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraph 47, therefore the allegations of Paragraph 47 are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Plaintiff John T. Gallaher Timber Transfer respectfully requests that judgment be entered in its favor on all claims asserted in the Complaint in this action, together with costs.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: 

Timothy R. Smith, Esquire
Robert J. Monahan, Esquire

*Attorneys for Plaintiffs,
John T. Gallaher Timber Transfer*

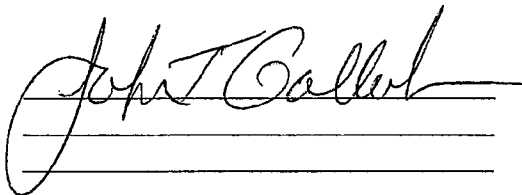
VERIFICATION

I, John T. Gallaher, verify that the statements contained in the foregoing **Reply to New Matter and Answer to Counterclaim** is true and correct to the best of my knowledge, information and belief.

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

John T. Gallaher Timber Transfer

Date: 6/14/04

By: 

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Reply to New Matter and Answer to Counterclaim, was served via U.S. First-Class Mail, postage prepaid, this 15 day of June, 2004, upon the following individual(s):

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656

PIETRAGALLO, BOSICK & GORDON

By: 

Timothy Smith, Esquire
Robert J. Monahan, Esquire

The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Motion for Judgment on the Pleadings** was served via U.S. First-Class Mail, postage prepaid, this 20 day of January, 2006, upon the following individual(s):

Robert D. Hamilton t/a Hamilton Enterprises
Road 1, Box 16
Irvona, PA 16656
(Defendant)

PIETRAGALLO, BOSICK & GORDON

By: 

Robert J. Monahan, Esquire

*Attorneys for Plaintiff,
John T. Gallaher Timber Transfer*

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

ORDER OF COURT

AND NOW, this _____ day of _____, 2006, upon consideration of Plaintiff's Motion for Judgment on the Pleadings, it is hereby ORDERED and DECREED that said Motion is GRANTED, and judgment is entered in favor of the Plaintiff, John T. Gallaher Timber Transfer, on all claims asserted in the Complaint in this action, together with costs, and dismiss Defendant's New Matter and Counterclaim with prejudice.

By the Court,

_____, J.

FILED

(EW)

MAY 26 2006

0/8:30/11

William A. Shaw
Prothonotary/Clerk of Courts

04-221-CD

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City, State, ZIP+4 Pittsburgh, PA 15219

PS Form 3800, June 2002 See Reverse for Instructions

May 25, 2006

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

Re: John T. Gallaher Timber Transfer
Vs.
Robert Hamilton t/a Hamilton Enterprises and Robert D. Cummings
No. 04-221-CD
Superior Court No. 770 WDA 2006

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Please also find enclosed one transcript.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Fredric J. Ammerman, President Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Robert J. Monahan, Esq.
38th Floor, One Oxford Centre
Pittsburgh, PA 15219

F. Cortez Bell, III, Esq.
PO Box 670
Clearfield, PA 16830

Robert D. Cummings
PO Box 77
Wallaceton, PA 16876

John T. Gallaher Timber Transfer

Vs.

Robert D. Hamilton t/a Hamilton Enterprises and Robert D. Cummings

Court No. 04-221-CD; Superior Court No. 770 WDA 2006

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on May 25, 2006.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Date: 05/25/2006

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 04:08 PM

ROA Report

Page 1 of 2

Case: 2004-00221-CD

Current Judge: Fredric Joseph Ammerman

John T. Gallaher Timber Transfer vs. Robert D. Hamilton, Hamilton Enterprises, Robert D. Cummings

Civil Other

| Date | | Judge |
|------------|---|-------------------------|
| 02/17/2004 | Filing: Civil Complaint Paid by: Pietragallo, Boxick & Gordon Receipt number: 1873832 Dated: 02/17/2004 Amount: \$85.00 (Check) 1 CC to Atty. 2 CC to Shff. | No Judge |
| 04/01/2004 | Answer, New Matter and Counterclaim to Plaintiff's Complaint. filed by, s/F. Cortez Bell, III, Esquire Verification s/Robert Hamilton Certificate of Service 5 cc to Atty Bell | No Judge |
| 04/16/2004 | Praecipe for Writ of Summons to Join Robert D. Cummings as additional Defendant, filed by s/F. Cortez Bell, III, Esq. Three CC Attorney Bell Two CC and two writs to Sheriff | No Judge |
| 05/03/2004 | Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm | No Judge |
| 05/19/2004 | Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm | No Judge |
| 06/16/2004 | Reply to New Matter and Answer to Counterclaim filed by Atty. Monahan. No CC. | No Judge |
| 01/23/2006 | Praecipe Requesting Court Administrator to Assign Case to Judge to Schedule an Argument Date, filed by s/ Robert J. Monahan, Esquire. 1CC Atty Monahan | No Judge |
| | Motion For Judgment on The Pleadings, filed by s/ Robert J. Monahan, Esquire. 1CC Atty. Monahan | No Judge |
| 01/24/2006 | Order, NOW, this 23rd day of Jan., 2006, upon consideration of Plaintiff's Motion for Judgment on the Pleadings, Ordered that argument has been scheduled for the 24th day of Feb., 2006 at 2:00 p.m. in Courtroom No. 1. By The Court: Fredric J. Ammerman, Pres. Judge. 1CC Atty. Monahan, 1CC Atty. Bell 1 CC R. Cummings (on 1/27/06-late due to Full Court being down) | Fredric Joseph Ammerman |
| 02/24/2006 | Answer To Motion For Judgment on the Pleadings, filed by s/ F. Cortez Bell, III, Esquire. 5CC Atty. Bell | Fredric Joseph Ammerman |
| 03/01/2006 | Order, NOW, this 24th day of Feb., 2006, following argument on plaintiff's Motion for Judgment on the Pleadings, Ordered that counsel for Def. supply the Court with appropriate brief relative the issue of collateral estoppel/stare decisis within no more than 25 days from this date. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty Monahan, 1CC F. Cortez Bell III, 1CC Robert Cummings | Fredric Joseph Ammerman |
| 03/29/2006 | Order, NOW, this 28th day of March, 2006, following argument on the Plaintiff's Motion for Judgment on the Pleadings and the Court's review of the parties' briefs, it is the Order of this Court that the said Motion is Granted. The Defendant's Answer and Counterclaim is hereby Dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Atty. Rober Monahan, F. Cortez Bell, and Robert Cummings P.O. Box 77, Wallaceton PA 16876 | Fredric Joseph Ammerman |
| 04/06/2006 | Filing: Praecipe to Enter Judgment Paid by: Monahan, Robert J. (attorney for John T. Gallaher Timber Transfer) Receipt number: 1913221 Dated: 04/06/2006 Amount: \$20.00 (Check) Judgment in favor of John Gallaher Timber Transfer and against Robert D. Hamilton t/a Hamilton Enterprises in the amount of \$16,640.89. Filed by s/ Matthew D. Gailey, Esquire. 1CC & Notice to F. Cortez Bell, III, Esquire (envelope provided), Statement to Atty. Gailey | Fredric Joseph Ammerman |

Date: 05/25/2006

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 04:08 PM

ROA Report

Page 2 of 2

Case: 2004-00221-CD

Current Judge: Fredric Joseph Ammerman

John T. Gallaher Timber Transfer vs. Robert D. Hamilton, Hamilton Enterprises, Robert D. Cummings

Civil Other

| Date | | Judge |
|------------|---|-------------------------|
| 04/25/2006 | Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Hamilton, Robert D.) Receipt number: 1913496 Dated: 04/25/2006 Amount: \$45.00 (Check) | Fredric Joseph Ammerman |
| | Order, NOW, this 25th day of April, 2006, the Court having been notified of Appeal to the Superior Court of Pa., it is Ordered that Robert Hamilton, Appellant, file a concise statement of the matters complained of on said Appeal no later than 14 days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Monahan, Bell, 1CC Robert Cummings-PO Box 77 Wallaceton, PA 16876 | Fredric Joseph Ammerman |
| | Notice of Appeal, to Superior Court of Pa., filed by s/ F. Cortez Bell, III, Esquire. 7CC Atty. Bell, 1CC Superior Court w/ \$60.00 check | Fredric Joseph Ammerman |
| 05/01/2006 | Appeal Docket Sheet, filed. No CC Superior Court Number 770 WDA 2006 | Fredric Joseph Ammerman |
| | Order, NOW, this 1st day of May, 2006, Ordered that the court reporter is directed to transcribe oral argument held in the above-captioned matter on Feb. 24, 2006, with costs of same to be borne by the Def. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: R. Monahan, R. Bell 1CC Robert Cummings, PO Box 77, Wallaceton, PA 16876 | Fredric Joseph Ammerman |
| 05/08/2006 | Statement of Matters Complained of on Appeal, filed by s/ F. Cortez Bell, III, Esquire. 4CC to Atty | Fredric Joseph Ammerman |
| 05/16/2006 | Opinion, By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys.: Monahan, F.Bell, 1CC Def. Cummings, Robert D., PO Box 77, Wallaceton, PA 16876.
1CC to: D. Mikesell, Law Library (without Memo) | Fredric Joseph Ammerman |
| 05/18/2006 | Transcript of Argument on Plaintiff's Motion for Judgment on the Pleadings, February 24, 2006, filed. | Fredric Joseph Ammerman |
| 05/25/2006 | May 25, 2006, Mailed Appeal to Superior Court, Certified Mail Number 7002 2030 0004 5014 8088.
May 25, 2006, Notification of Mailing Appeal letters mailed to F. Cortez Bell, III, Esq., Robert J. Monahan, Esq., and Robert D. Cummings with certified copies of the docket sheet and the summary of docket entries submitted to Superior Court. | Fredric Joseph Ammerman |

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

MAY 25 2006

Attest.

Christine E. Hines
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 04-221-CD

John T. Gallaher Timber Transfer

VS.

Robert D. Hamilton t/a Hamilton Enterprises; Robert D. Cummings

| ITEM
NO. | DATE OF
FILING | NAME OF
DOCUMENT | NO. OF
PAGES |
|---------------------|---------------------------|---|-------------------------|
| 01 | 02/17/04 | Civil Complaint | 33 |
| 02 | 04/01/04 | Answer, New Matter and Counterclaim to Plaintiff's Complaint | 16 |
| 03 | 04/16/04 | Praeipe for Writ of Summons to Join Robert D. Cummings as Additional Defendant | 04 |
| 04 | 05/03/04 | Sheriff Return | 34 |
| 05 | 05/19/04 | Sheriff Return | 05 |
| 06 | 06/16/04 | Reply to New Matter and Answer to Counterclaim | 08 |
| 07 | 01/23/06 | Praeipe Requesting Court Administrator to Assign Case to Judge to Schedule an
Argument Date | 03 |
| 08 | 01/23/06 | Motion for Judgment on the Pleadings | 100 |
| 09 | 01/24/06 | Order, Re: argument scheduled on Plaintiff's Motion for Judgment on the Pleadings | 03 |
| 10 | 02/24/06 | Answer to Motion for Judgment on the Pleadings | 08 |
| 11 | 03/01/06 | Order, Re: Following argument on Plaintiff's Motion for Judgment on the Pleadings,
counsel for Defendant to supply Court with appropriate brief relative the issue of
collateral estoppel/stare decisis | 02 |
| 12 | 03/29/06 | Order, Re: Plaintiff's Motion for Judgment is Granted. Defendant's Answer and
Counterclaim is Dismissed | 02 |
| 13 | 04/06/06 | Praeipe to Enter Judgment in favor of John Gallagher Timber Transfer and against
Robert D. Hamilton t/a Hamilton Enterprises in the amount of \$16,640.89 | 06 |
| 14 | 04/25/06 | Notice of Appeal | 07 |
| 15 | 04/25/06 | Order, Re: Concise statement to be filed | 02 |
| 16 | 05/01/06 | Appeal Docket Sheet, 770 WDA 2006 | 03 |
| 17 | 05/01/06 | Order, Re: court reporter directed to transcribe oral argument held February 24, 2006 | 02 |
| 18 | 05/08/06 | Statement of Matters Complained of on Appeal | 03 |
| 19 | 05/16/06 | Opinion | 03 |
| 20 | 05/18/06 | Transcript, Argument on Plaintiff's Motion for Judgment on the Pleadings, February 24,
2006 | Separate
Cover |

UA

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

JOHN T. GALLAHER TIMBER
TRANSFER,
Plaintiff
vs.

ROBERT HAMILTON, t/a
HAMILTON ENTERPRISES,
Defendant(s)

:
: No. 04-221-CD
:
: Type of Case: Civil
:
: Type of Pleading:
: Motion to Stay Writ of
: Execution
:
:
: Filed on Behalf of:
: Robert Hamilton, t/a
: Hamilton Enterprises
:
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
:
: 318 East Locust Street
: P.O. Box 1088
: Clearfield, PA 16830
: Telephone: (814) 765-5537
:
:

FILED 3cc Atty Bell
0/8:55am
OCT 09 2006 (sm)

William A. Shaw
Prothonotary/Clerk of Courts

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

| | | |
|-------------------------|---|---------------|
| JOHN T. GALLAHER TIMBER | : | |
| TRANSFER, | : | |
| Plaintiff | : | |
| | : | |
| vs. | : | No. 04-221-CD |
| | : | |
| ROBERT HAMILTON, t/a | : | |
| HAMILTON ENTERPRISES | : | |
| Defendant | : | |

MOTION TO STAY WRIT OF EXECUTION

NOW, comes the Defendant, Robert Hamilton, t/a Hamilton Enterprises, by and through his attorney, F. Cortez Bell, III, Esquire, who for his Motion to Stay Writ of Execution would respectfully represent and aver as follows:

1. That by Order dated March 28, 2006, your Honorable Court granted the Plaintiff's Motion for Judgment on the pleadings.

2. That on April 6, 2006, the Plaintiff filed a Praecipe to Enter Judgement in the amount of \$16,640.89.

3. That Notice of Appeal to the Superior Court of Pennsylvania was filed on behalf of the Defendant on April 25, 2006

4. That the current status of said appeal is that Counsel for both parties have submitted briefs, the matter has been submitted to the Court and the parties are awaiting the determination of the Superior Court.

5. That by Praecipe submitted on or about September 28, 2006, Counsel for the Defendant has sought a Writ of Execution as

to the sums that are due and owing as to the above captioned matter.

6. That the above captioned matter is currently on appeal and thus cannot be the subject of an Execution.

WHEREFORE, Defendant Robert Hamilton and/or Hamilton Enterprises respectfully requests that your Honorable Court grant a stay of any Execution in this matter until such time as the Superior Court of Pennsylvania may render its determination.

Respectfully submitted,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

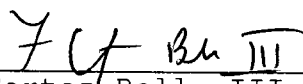
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

| | | |
|-------------------------|---|---------------|
| JOHN T. GALLAHER TIMBER | : | |
| TRANSFER, | : | |
| Plaintiff | : | |
| | : | |
| vs. | : | No. 04-221-CD |
| | : | |
| ROBERT HAMILTON, t/a | : | |
| HAMILTON ENTERPRISES | : | |
| Defendant | : | |

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Motion For Stay of Execution upon the following persons by personal service addressed as follows

Matthew D. Gailey, Esquire
Pietragallo, Bosick & Gordon
The Thirty-Eight Floor
One Oxford Centre
Pittsburgh, PA 15219



F. Cortez Bell, III, Esquire
Attorney for Defendant

Date: October 9, 2006

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Plaintiff,

vs.

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Defendant.

CIVIL ACTION NO.: 04-221-CD

**PRAECIPE FOR WRIT OF EXECUTION
(MONEY JUDGMENT)**

Filed on behalf of Plaintiff:
JOHN T. GALLAHER TIMBER TRANSFER

Counsel of Record for
This Party:

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

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

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

(412) 263-2000

FILED

04/09/2006

m/3:30/w

William A. Shaw
Prothonotary/Clerk of Courts

1 SENT TO ATT

ISSUED 6 WANTS
TO SHFF.

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

PRAECIPE FOR WRIT OF EXECUTION (MONEY JUDGMENT)

TO: Prothonotary

Kindly issue a Writ of Execution (Money Judgment) in favor of John Gallagher Timber Transfer
in the above matter as follows:

Judgment Amount: \$16,640.89

Interest from April 4, 2006 to \$ 466.83
September 26, 2006 at \$2.73 per
diem:

SUBTOTAL: \$17,107.72

Costs to be added by \$
Prothonotary:

PROTHONOTARY COST 125.00

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: Matthew D. Gailey
Matthew D. Gailey, Esquire

Attorneys for Plaintiff,
John T. Gallaher Timber Transfer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Praecipe for Writ of Execution (Money Judgment)** was served via U.S. First-Class Mail, postage prepaid, this 28th day of September, 2006, upon the following individual(s):

F. Cortez Bell, III, Esq.
Bell, Silberblatt & Wood
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830
(*Counsel for Defendant*)

By: Matthew D. Gailey
Matthew D. Gailey

**WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION – LAW**

John T. Gallaher Timber Transfer,

Vs.

NO.: 2004-00221-CD

Robert D. Hamilton,
t/a Hamilton Enterprises,
Robert D. Cummings,

TO THE SHERIFF OF CLEARFIELD COUNTY:

To satisfy the debt, interest and costs due JOHN T. GALLAHER TIMBER TRANSFER, Plaintiff(s) from ROBERT D. HAMILTON, HAMILTON ENTERPRISES, Defendant(s):


- (1) You are directed to levy upon the property of the defendant(s) and to sell interest(s) therein:
- (2) You are also directed to attach the property of the defendant(s) not levied upon in the possession of:

Garnishee(s) as follows:
and to notify the garnishee(s) that: (a) an attachment has been issued: (b) the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof:
- (3) If property of the defendant(s) not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify him/her that he/she has been added as a garnishee and is enjoined as above stated.
- (4) **If Social Security or Supplemental Income funds are directly deposited into an account of the defendant, the levy and attachment shall not include any funds that may be traced to Social Security direct deposits. In addition, the levy and attachment shall not include \$300.00 in the account of the defendant.**

AMOUNT DUE/PRINCIPAL: \$16,640.89
INTEREST: from April 4, 2006 to September 26, 2006
at \$2.73 per diem:
ATTY'S COMM: \$
DATE: 10/9/2006

PROTHONOTARY'S COSTS PAID: \$125.00
SHERIFF: \$

OTHER COSTS: \$


William A. Shaw
Prothonotary/Clerk Civil Division

Received this writ this _____ day
of _____ A.D. _____
At _____ A.M./P.M.

Sheriff

Requesting Party: Matthew D. Gailey, Esq.
38th Floor, One Oxford Centre
Pittsburgh, Pa 15219
412-263-2000

PIETRAGALLO
BOSICK &
GORDON LLP

ATTORNEYS AT LAW

THE THIRTY-EIGHTH FLOOR
ONE OXFORD CENTRE
PITTSBURGH, PA 15219
(412) 263-2000 (412) 261-5295 FAX

| | | |
|----------------------------------|------------------------------------|---------------------------------|
| WILLIAM PIETRAGALLO, II | ROBERT J. D'ANNIBALLE (OH & WV) | LEE ANN RHODES |
| JOSEPH J. BOSICK (PA, OH & WV) | NANCY DAVIS STEWART | JENNIFER R. RUSSELL |
| MARK GORDON | GAYLE L. GODFREY | ANDREA M. BARTKO |
| FRANCIS E. PIPAK, JR. | JEANETTE H. HO (PA & WV) | ALBERT N. PETERLIN (PA & MD) |
| PAUL K. VEY (PA, WV & OH) | BRYAN K. SHRECKENGOST | GREGORY J. FISCHER |
| NORA BARRY FISCHER (PA, IL & WV) | BENJAMIN T. QUEEN, II (PA & USPTO) | JAMES F. MARRION (PA & WV) |
| DAVID H. DILLE | SEAN B. EPSTEIN | MICHAEL E. BARRETT (PA & IL) |
| HARRY J. KLUCHER (PA & NJ) | MARTIN T. DURKIN, JR. | BRIAN S. GREEN (PA & WV) |
| ERIC P. REIF (PA & MI) | GAVIN M. O'CONNOR (PA & WV) | ELIZABETH M. YANELLI |
| CLEM C. TRISCHLER (PA & WV) | MICHAEL MAGEE (PA & WV) | ROBERT J. MONAHAN (PA & WV) |
| PAMELA G. COCHENOUR | TYLER J. SMITH | HEATHER A. TROSTLE (PA & WV) |
| JOHN B. WISE | ROCHELLE L. BRIGHTWELL (PA & WV) | MATTHEW D. GAILEY (PA, OH & WV) |
| GEORGE R. FOX, III | ANTHONY J. BASINSKI | W. BEN STEWART (FL) |
| P. BRENNAN HART | MARTHA S. HELMREICH | DAVID W. TURNER |
| ERIC G. SOLLER | JULIE F. SWEENEY | |
| WILLIAM W. SCHIRMPF, SR. | ERIC A. FISCHER | COUNSEL TO THE FIRM |
| ROBERT R. LEIGHT (PA & WV) | B.J. O'NEILL | ALFRED S. PELÁEZ |
| CHRISTOPHER L. WILDFIRE | MARK T. CALOYER | THOMAS J. WARD |
| ALAN G. TOWNER (PA, MD & USPTO) | MARY MARGARET HILL (PA, OH & CA) | |
| LOUIS C. LONG (PA & WV) | BRYAN S. NEFT (PA, OH, WV & CA) | |
| KENNETH T. NEWMAN (PA, NJ & OH) | TIMOTHY J. GREEN (PA & OH) | |
| ROBERT P. LENART (PA & USPTO) | MICHELLE L. GORMAN (OH & WV) | |
| RICHARD A. POLLARD | | |

DIRECT DIAL NO.: 412-263-1819
FILE NO.: AII 42935
E-MAIL: MDG@PBandG.com

October 3, 2006

Prothonotary of Clearfield County
Court of Common Pleas
P.O. Box 549
Clearfield, PA 16803-0549

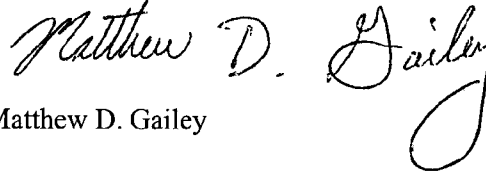
**Re: John T. Gallagher Timber Transfer vs. Robert D. Hamilton
t/a Hamilton Enterprises
In the Court of Common Pleas of Clearfield County, Pennsylvania
Case No. CA 04-221-CD**

Dear Mr. Shaw:

Pursuant to our conversation, enclosed please find our Firm check in the amount of \$20.00 as filing fee for the Writ of Execution I sent you last week. This Writ shall be executed against Robert Hamilton. The Writ is being sought due to Mr. Hamilton's failure to file with your office an appropriate security in the amount of 120% of the amount found due by the lower Court as required by Rule 1731(a) of the Pennsylvania Rules of Appellate Procedure.

Thank you for your help in this matter. If you have any questions, please feel free to call me.

Very truly yours,



Matthew D. Gailey

MDG:mjm
Enclosure

CA

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

JOHN T. GALLAHER TIMBER :
TRANSFER, :
Plaintiff :
vs. : No. 04-221-CD
ROBERT HAMILTON, t/a :
HAMILTON ENTERPRISES, :
Defendant :


FILED^{4cc}
OCT 12 2006
William A. Shaw
Prothonotary/Clerk of Courts
Amy Bell
icc Shff
GK

RULE RETURNABLE

AND NOW, this 11th day of October, 2006 upon consideration of the Motion For Stay of Execution filed with regard to the above-captioned matter, it is the Order of this Court that a Rule is directed to the Plaintiff, John T. Gallaher, Timber Transfer, to appear and show cause why the prayer of said Motion for Stay of Execution should not be granted. It is further Ordered that a Stay of Execution shall be in effect until the Court has heard the Motion on its merits and made a determination thereon.

Said Rule Returnable on the 4th day of December, 2006 at 11:00 o'clock A.M. for hearing before this Court in Courtroom No. 3.

BY THE COURT,



FILED

OCT 12 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/12/06

☒ You are responsible for serving all appropriate parties.

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

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☒ Special Instructions:

The Prothonotary also served a certified
copy on the Sheriff

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

CIVIL ACTION NO.: 04-221-CD

Plaintiff,

vs.

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Defendant.

**RESPONSE TO MOTION TO STAY
WRIT OF EXECUTION**

Filed on behalf of Plaintiff:
JOHN T. GALLAHER TIMBER TRANSFER

Counsel of Record for
This Party:

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

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

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

(412) 263-2000

FILED
m19: ddb
OCT 16 2006
no cc
LM

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

RESPONSE TO MOTION TO STAY WRIT OF EXECUTION

AND NOW, comes the Plaintiff, John T. Gallaher Timber Transfer, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP, and files the within Response Motion to Stay Writ of Execution, and argues in support of the same as follows:

1. The averments contained in Paragraph 1 of Defendant's Motion to Stay Writ of Execution are admitted.

2. The averments contained in Paragraph 2 of Defendant's Motion to Stay Writ of Execution are admitted.

3. The averments contained in Paragraph 3 of Defendant's Motion to Stay Writ of Execution are admitted.

4. The averments contained in Paragraph 4 of Defendant's Motion to Stay Writ of Execution are admitted.

5. The averments contained in Paragraph 5 of Defendant's Motion to Stay Writ of Execution are admitted.

6. The averments contained in Paragraph 6 of Defendant's Motion to Stay Writ of Execution are denied. Plaintiff avers that Defendant has failed to adhere to Pennsylvania Rule of

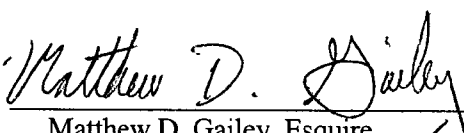
Appellate Procedure 1731(a). This Rule mandates that an appeal from an Order solely involving payment of money will not operate as a supersedeas unless the appealing party files with the Clerk of the lower Court appropriate security in the amount of 120% of the amount found due by the lower Court and remaining unpaid. *See* Pennsylvania Rule of Appellate Procedure 1731.

7. Due to the failure of the Defendant to file appropriate security as required by the Rules of Appellate Procedure, execution on this judgment is appropriate at this time.

WHEREFORE, Plaintiff, John T. Gallaher Timber Transfer, respectfully requests that this Honorable Court issue an Order denying Defendant's Motion to Stay Writ of Execution.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: 
Matthew D. Gailey, Esquire
*Attorneys for Plaintiff,
John T. Gallaher Timber Transfer*

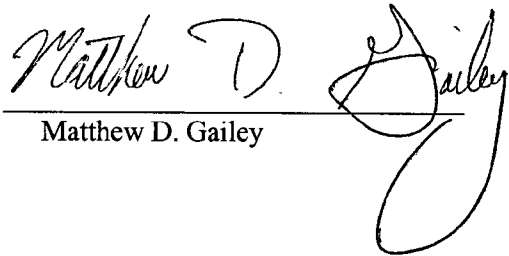
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Response to Motion to Stay Writ of Execution was served via U.S. First-Class Mail, postage prepaid, this 1st day of October, 2006, upon the following individual(s):

F. Cortez Bell, III, Esq.
Bell, Silberblatt & Wood
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830
(*Counsel for Defendant*)

By: _____

Matthew D. Gailey

A handwritten signature in black ink, appearing to read "Matthew D. Gailey", written over a horizontal line. The signature is stylized with a large, looping "G" at the end.

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

ORDER OF COURT

AND NOW, on this _____ day of _____, 2006, upon consideration of the herein RESPONSE TO MOTION TO STAY WRIT OF EXECUTION, it is hereby ORDERED, ADJUDGED and DECREED that the Defendant's Motion to Stay Writ of Execution is DENIED.

_____. J.

Date: 12/04/2006
Time: 01:47 PM

Clearfield County Court of Common Pleas
Receipt

NO. 1916666
Page 1 of 1

Received of: Hamilton, Robert D. \$ 17,000.00

Road 1 Box 16
Irvona, PA 16656

Seventeen Thousand and 00/100 Dollars

Defendant: John T. Gallaher Timber Transfer vs. Robert D. Hamilton, etal.
Case Litigant type

Amount

2004-00221-CD Defendant
Trust account

17,000.00

Total: 17,000.00

Balance due: 0.00

PAID
12/4/06

Check: 3726

Payment Method: Check
Amount Tendered: 17,000.00
Change Returned: 0.00
Clerk: BHUDSON

William A. Shaw, Prothonotary/Clerk of Cou
By: _____
Deputy Clerk

FILED
0124281
DEC 07 2006

William A. Shaw
Prothonotary/Clerk of Courts

No. 04-221-CD

ICC: Mr. Robert Cummings
PO Box 77
Wallace, AL 36676
(60)

GK

2. The Motion to Stay Execution Proceedings is hereby granted, pending the outcome of the appeal presently before the Pennsylvania Superior Court.

Fred J. Krummrich
President Judge

FILED

DEC 07 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/17/06

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 X ~~Plaintiff(s)~~ X ~~Defendant(s)~~ X Defendant(s) Attorney

 Special Instructions:

LA

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Plaintiff,

vs.

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Defendant.

CIVIL ACTION NO.: 04-221-CD

**PRAECIPE TO SCHEDULE AN
ARGUMENT DATE**

Filed on behalf of Plaintiff:
JOHN T. GALLAHER TIMBER TRANSFER

Counsel of Record for
This Party:

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

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

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

(412) 263-2000

FILED No
m/10:58/01 cc
SEP 10 2007 (GR)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

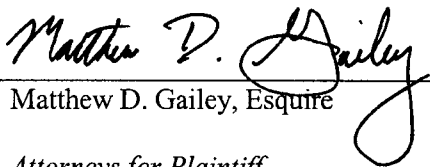
PRAECIPE TO SCHEDULE AN ARGUMENT DATE

TO: THE PROTHONOTARY OF CLEARFIELD COUNTY

Kindly place Plaintiff, John T. Gallaher Timber Transfer's Petition for Release of Funds on the next available argument list.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: 
Matthew D. Gailey, Esquire
*Attorneys for Plaintiff,
John T. Gallaher Timber Transfer*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Praecipe to Schedule an Argument Date** was served via U.S. First-Class Mail, postage prepaid, this 6th day of September, 2007, upon the following individual(s):

F. Cortez Bell, III, Esq.
Bell, Silberblatt & Wood
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830
Counsel for Defendant

PIETRAGALLO, BOSICK & GORDON, LLP

By: Matthew D. Gailey
Matthew D. Gailey, Esq.
Attorneys for Plaintiff,
John T. Gallaher Timber Transfer

CA

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

FILED

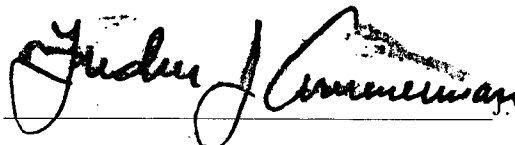
SEP 18 2007

0/4:00/6
William A. Shaw
Prothonotary/Clerk of Courts
3 cems to Att (6K)

ORDER OF COURT TO SCHEDULE AN ARGUMENT DATE

AND NOW, this 18th day of September, 2007, it is hereby
ORDERED, ADJUDGED and DECREED that argument on Plaintiff John T. Gallaher Timber
Transfer's Petition for Release of Funds shall be held on the 9th day of
October, 2007 at 10:30 o'clock A m. before the Honorable John K. Reilly, Jr.

BY THE COURT:



_____ Special Instructions:
 _____ Defendants)
 _____ Plaintiff(s)
 _____ The Prothonotary's office has provided service to the following parties:
 _____ Plaintiff(s) Attorney
 _____ Defendant(s) Attorney
 _____ Other

DATE: 2-18-07
 You are responsible for serving all appropriate parties.

William A. Shaw
 Prothonotary/Clerk of Courts

FILED
 SEP 18 2007

CLEARFIELD COUNTY PROTHONOTARY 7-83

1213

ESCROW ACCOUNT
P.O. BOX 549
CLEARFIELD, PA 16830

William A. Shaw

October 9, 19 2007 ^{60-629/313}

PAY
TO THE
ORDER OF John T. Gallaher Timber Transfer

\$ 17,000.00

Seventeen Thousand and no/100----- DOLLARS



Main Office
11 North 2nd Street
Clearfield, PA 16830

FOR 2004-221-CD Release per Court Order
10-9-07

IMMA

⑆031306294⑆ 1 2 26577 2⑈ 1213

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

. Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

ORDER OF COURT

AND NOW, this 9 day of Oct, 2007, upon consideration of the PETITION FOR RELEASE OF FUNDS, it is hereby ORDERED, ADJUDGED and DECREED that the Prothonotary of Clearfield County, Pennsylvania release the \$17,000.00 appeal bond to the Plaintiff. The Defendant is also Ordered to forward all statutory interest allowed in this matter in the amount of 6% from the date of the December 7, 2006 Order to the Plaintiff.

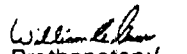
/s/ JOHN K. REILLY, JR.

J.

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



Attest.


Prothonotary/
Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

CIVIL ACTION NO.: 04-221-CD

Plaintiff,

vs.

PETITION FOR RELEASE OF FUNDS

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, PA 16656
(Clearfield County)

Filed on behalf of Plaintiff:
JOHN T. GALLAHER TIMBER TRANSFER

Counsel of Record for
This Party:

Defendant.

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

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

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

(412) 263-2000

FILED ^{vo}
m 10:58 ^{cc}
SEP 10 2007 ^(GK)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

PETITION FOR RELEASE OF FUNDS

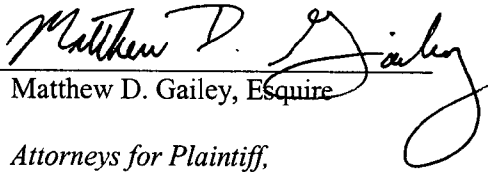
AND NOW, comes the Plaintiff, John T. Gallaher Timber Transfer, by and through its attorneys, Pietragallo, Bosick & Gordon, LLP, and files the within Petition for Release of Funds, and argues in support of the same as follows:

1. On December 7, 2006, this Honorable Court entered an Order mandating that the amount of \$17,000.00 be immediately paid to the Prothonotary of Clearfield County as an appeal bond. See December 7, 2006 Order attached hereto as Exhibit "A".
2. An Appeal was filed by Defendants on April 25, 2006.
3. A Motion to Stay Execution Proceedings was granted pending the outcome of the Appeal pending before the Superior Court of Pennsylvania. See Order attached hereto as Exhibit "A".
4. On or about August 29, 2007, the Superior Court issued an Opinion affirming the lower court's decision to grant judgment on the pleadings to the Plaintiff in this matter. See Opinion attached hereto as Exhibit "B".
5. As such, the release of the \$17,000.00 being held by the Prothonotary's office to the Plaintiff is appropriate and necessary at this time.

WHEREFORE, Plaintiff, John T. Gallaher Timber Transfer, respectfully requests that this Honorable Court issue an Order directing that the Prothonotary of Clearfield County, Pennsylvania release the \$17,000.00 being held to the Plaintiff.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON, LLP

By: 
Matthew D. Gailey, Esquire
Attorneys for Plaintiff,
John T. Gallaher Timber Transfer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Petition for Release of Funds was served via U.S. First-Class Mail, postage prepaid, this 6 day of September, 2007, upon the following individual(s):

F. Cortez Bell, III, Esq.
Bell, Silberblatt & Wood
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830
(*Counsel for Defendant*)

By:


Matthew D. Gailey

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

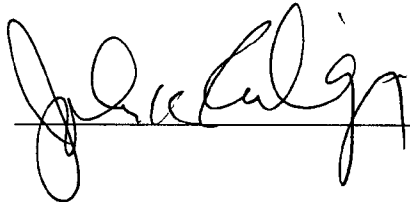
vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

ORDER OF COURT

AND NOW, this 9 day of Oct, 2007, upon consideration of the PETITION FOR RELEASE OF FUNDS, it is hereby ORDERED, ADJUDGED and DECREED that the Prothonotary of Clearfield County, Pennsylvania release the \$17,000.00 appeal bond to the Plaintiff. The Defendant is also Ordered to forward all statutory interest allowed in this matter in the amount of 6% from the date of the December 7, 2006 Order to the Plaintiff.

 J.

FILED 3CC
010:03:01
OCT 09 2007
Atty Gailey
William A. Shaw
Prothonotary/Clerk of Courts
(Lk)

FILED

OCT 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/9/07

☒ You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOHN T. GALLAHER TIMBER
TRANSFER

-VS-

ROBERT HAMILTON, t/a
HAMILTON ENTERPRISES

:
:
:
:
:
:
:

No. 04-221-CD

O R D E R

NOW, this 4th day of December, 2006, following
brief argument on the Motion for Stay of Execution filed on
October 9, 2006, on behalf of the Defendant, it is the
ORDER of this Court as follows:

1. F. Cortez Bell, III, Esquire, counsel for
the Defendant, shall cause the amount of Seventeen Thousand
(\$17,000.00) Dollars to immediately be paid to the
Prothonotary of Clearfield County in order that the same
will be considered as an appeal bond, as required by the
Rules of Civil Procedure. The Prothonotary shall not
release the monies without an Order from this Court;

2. The Motion to Stay Execution Proceedings is
hereby granted, pending the outcome of the appeal presently
before the Pennsylvania Superior Court.

BY THE COURT,

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

/s/ Fredric J. Ammerman

President Judge

DEC 07 2006

Attest.

William H. Shaw
Prothonotary/
Clerk of Courts

EXHIBIT

tabbles

A

JOHN T. GALLAHER TIMBER
TRANSFER,

Appellee

v.

ROBERT HAMILTON, T/A HAMILTON
ENTERPRISES,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 770 WDA 2006

Appeal from the Judgment entered April 6, 2006
In the Court of Common Pleas of CLEARFIELD County
Civil Division at No 04-221-CD

BEFORE: ORIE MELVIN, McCAFFERY, AND JOHNSON, JJ.

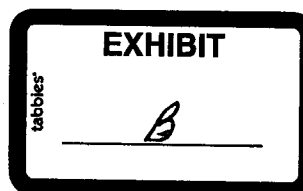
OPINION BY McCAFFERY, J.:

FILED: August 29, 2007

¶ 1 Appellant, Robert Hamilton, t/a Hamilton Enterprises (hereinafter "Hamilton"), appeals from the judgment entered in the Clearfield County Court of Common Pleas following the trial court's granting of the motion for judgment on the pleadings of Appellee, John T. Gallaher Timber Transfer (hereinafter "Gallaher"). After careful review, we affirm.

¶ 2 The undisputed relevant facts and procedural history underlying this matter are as follows. Robert D. Cummings suffered an injury on August 13, 1999, while operating a log skidder owned by Hamilton. Mr. Cummings filed a claim petition against Hamilton pursuant to the Workers' Compensation Act.¹ Hamilton filed petitions for joinder of additional defendants, including

¹ 77 P.S. §§ 1-1041.4; 2501-2626.



Gallaher. Workers' Compensation Judge ("WCJ") Michael E. Koll presided over hearings on November 14, 2000, and March 22, 2001. On January 31, 2002, WCJ Koll entered an order which held that Mr. Cummings was entitled to receive workers' compensation benefits for the injuries he had sustained.² WCJ Koll also concluded that Hamilton was Mr. Cummings's primary employer and, accordingly, was responsible for payment of benefits to Mr. Cummings. WCJ Koll determined that Gallaher was a statutory employer of Mr. Cummings, and thus was responsible for payment of the compensation if Hamilton failed to make payment as ordered. Based upon the evidence presented by all of the parties, the WCJ specifically set forth the following findings and conclusions pertinent to the issues raised here:

On August 13, 1999, the Claimant, Robert Cummings, suffered a work injury during the course and scope of his employment with Defendant/Employer, [Hamilton]....

* * *

It is found that, at the time of his work injury, the Claimant was not an employee of ... [Gallaher].

* * *

It is found that, at the time of his work injury, the Claimant's Employer, [Hamilton], was serving in the capacity of a sub-contractor for [Gallaher].

* * *

² WCJ Koll amended his order February 19, 2002, and again February 26, 2002, to allow for deduction of attorney's fees. The relevant findings and legal conclusions remained the same.

It is further found that [Gallagher] is ... a statutory employer under Section 302(d) of the Pennsylvania Workers' Compensation Act.

* * *

[I]n finding the Claimant was an employee of [Hamilton], ... it is noted that 'in determining whether a claimant is an independent contractor or employee, the Pennsylvania Supreme Court has set forth the following factors to consider in determining the type of relationship which exists: control of the manner in which work is to be done; responsibility for result only; terms of agreement between the parties; nature of the work or occupation; skill required for performance; whether one employee is engaged in a distinct occupation or business; which party supplied the tools; whether payment is by time or by the job; whether work is part of the regular business of the alleged employer, and whether the alleged employer has the right to terminate employment at any time. ... [T]he key element is whether the alleged employer has the right to control the work to be done, and the manner in which it is performed.'

* * *

Upon review of the consistent aspects of each of their testimonies, it is found that the relationship is overwhelmingly that of an employee.... [I]n most all aspects of the relationship[,] [the Claimant] was treated as an employee, being paid on an hourly basis, or at the discretion of [Hamilton] as to any bonuses; [the Claimant] only performed work for [Hamilton]; the work which he performed was part of the regular business of [Hamilton]; and [Hamilton] provided all of the tools and equipment.

* * *

The Claimant has sustained his burden of proof, that he suffered a work injury on August 13, 1999, ... entitling him to Workers' Compensation benefits ... together with the payment of medical costs and expenses causally related to same.

[Hamilton] shall be responsible for the payment of such Workers' Compensation benefits, together with the reimbursement of any Public Welfare Lien reimbursement for the payment of any such medical expenses.

* * *

[Hamilton] has failed to sustain its burden of proof, that [Gallaher was an employer] of the Claimant at the time of his August 13, 1999 work injury.

* * *

[I]n the absence of payment of the foregoing by [Hamilton], [Gallaher], as the statutory employer, and/or its Workers' Compensation Insurer, shall be responsible for payment of compensation payable hereunder.

(WCJ's Findings of Fact, Conclusions of Law and Order, dated January 31, 2002, at 8-11).

¶ 3 Hamilton did not take an appeal from WCJ Koll's decision to the Workers' Compensation Appeal Board. Hamilton also did not pay the benefits due to Mr. Cummings. Because of WCJ Koll's ruling and Hamilton's failure to pay, on or about March 22, 2003, Gallaher made payments totaling \$14,181.34 to Mr. Cummings and to settle the public welfare lien.³

¶ 4 On February 17, 2004, Gallaher filed a complaint in the court of common pleas seeking reimbursement from Hamilton for the funds paid pursuant to 77 P.S. § 462. Hamilton filed an answer, new matter and counterclaim denying that (1) Mr. Cummings was an employee of Hamilton

³ Gallaher paid Mr. Cummings \$7,824.28 and settled the public welfare lien for \$6,327.06.

on August 13, 1999; (2) the injury was work related; and (3) the WCJ found Hamilton liable to pay benefits; instead, Hamilton asserted that Gallaher was Mr. Cummings's employer. (Answer, New Matter and Counterclaim to Plaintiff's Complaint, filed April 1, 2004). On January 23, 2006, Gallaher filed a motion for judgment on the pleadings, which the trial court granted on March 28, 2006, following argument and briefing by the parties. The trial court determined that Gallaher was entitled to recover from Hamilton based upon the WCJ's decision, and moreover, that the doctrine of collateral estoppel barred litigation of the issues Hamilton raised regarding the debt owed. Upon praecipe, the prothonotary entered judgment on April 6, 2006. On April 25, 2006, Hamilton filed a timely notice of appeal and now raises the following question for our review:

Whether the [trial] court erred in granting [Gallaher's] motion for judgment on the pleadings and dismissing [Hamilton's] answer and counterclaim in that although originally arising as a result of a workers' compensation matter, the claim of [Gallaher] as statutory employer, versus [Hamilton], as employer, in a court of common pleas civil proceeding must still proceed in accord with the rules of civil procedure which allow the filing of a counterclaim and the raising of defenses of liability and negligence on the part of others for the injury which occurred.

(Hamilton's Brief at v).

¶ 5 Preliminarily, we note that our scope and standard of review are well-settled:

As our Supreme Court has explained, appellate review of a trial court's decision to grant or deny judgment on the

pleadings is limited to determining whether the trial court committed an error of law or whether there were facts presented which warrant a jury trial. In conducting this review, we look only to the pleadings and any documents properly attached thereto. Judgment on the pleadings is proper only where the pleadings evidence that there are no material facts in dispute such that a trial by jury would be unnecessary.

In passing on a challenge to the sustaining of a motion for judgment on the pleadings, our standard of review is limited. We must accept as true all well pleaded statements of fact of the party against whom the motion is granted and consider against him only those facts that he specifically admits. We will affirm the grant of such a motion only when the moving party's right to succeed is certain and the case is so free from doubt that the trial would clearly be a fruitless exercise.

Maryland Casualty Co. v. Odyssey Contracting Corp., 894 A.2d 750, 753-54 (Pa.Super. 2006), *appeal denied*, 589 Pa. 739, 909 A.2d 1290 (2006), *cert. denied*, 127 S.Ct. 1887 (2007) (citations and quotation marks omitted).

¶ 6 Instantly, Hamilton asserts that the Workers' Compensation Act may provide Gallaher with the right to recover from Hamilton the money it paid; however, Gallaher "must still establish liability and damages as one would in any other civil case." (Hamilton's Brief at 2). Claiming to be a case of first impression, presumably as the reason for its failure to cite any supporting law, Hamilton argues that it did not have the opportunity to assert certain defenses against Gallaher at the workers' compensation hearing and, thus, collateral estoppel should not be applicable to this matter. As a specific

example, Hamilton proclaims it is entitled to litigate the issue of negligent supervision or control on the part of Gallaher over the job site and over Mr. Cummings. Whereas Gallaher seeks to enforce a judgment, Hamilton seeks to relitigate the case.

¶ 7 In support of its decision to grant Gallaher's motion, the trial court relied upon the doctrine of collateral estoppel, also known as issue preclusion. (Trial Court Opinion, dated May 15, 2006, at 2).

Collateral estoppel is applicable when the issue decided in a prior adjudication is identical to that presented in the later action; there was a final judgment on the merits; the party against whom the doctrine is asserted was a party to the prior adjudication or was in privity with such a party; and the party against whom it is asserted had a full and fair opportunity to litigate the issue in the prior adjudication.

Krosnowski v. Ward, 836 A.2d 143, 148 (Pa.Super. 2003) (*en banc*) (citing **Murphy v. Duquesne University**, 565 Pa. 571, 599, 777 A.2d 418, 435 (2001)). Hence, collateral estoppel prevents "a question of law or an issue of fact which has once been litigated and adjudicated finally in a court of competent jurisdiction from being relitigated in a subsequent suit." **Capobianchi v. Bic Corporation**, 666 A.2d 344, 348 (Pa.Super. 1995) (quoting **Day v. Volkswagenwerk Aktiengesellschaft**, 464 A.2d 1313, 1318 (Pa.Super. 1983)).

¶ 8 In **Capobianchi, supra**, this Court determined that the doctrine of collateral estoppel precluded relitigation of an issue because it had been

previously litigated in the workers' compensation court. There, our Court stated:

The doctrine of collateral estoppel is not unavailable simply because administrative procedures are involved; where the agency is acting in a judicial capacity and resolves disputed issues of fact which the parties had an opportunity to litigate, the [courts] will not hesitate to apply preclusion principles.

Id. at 349 (citation omitted). The appellant in **Capobianchi** sought to litigate the issue of causation in a subsequent products liability case when the issue had already been litigated as one of the central questions in a previous workers' compensation claim involving the same parties. The Court concluded that the appellant was estopped from pursuing the identical issue in a common law tort action. *Id.*; *see also Rue v. K-Mart Corp.*, 552 Pa. 13, 21 n.4, 713 A.2d 82, 87 n.4 (1998) (recognizing "the body of caselaw concerning the preclusive effect of workers' compensation proceedings" and citing **Capobianchi** with approval).

¶ 9 Similarly, in the case *sub judice*, the WCJ was competent to hear Mr. Cummings's initial claim against Hamilton. *See Capobianchi, supra*. The questions of control over the work and the work site as well as liability were the central issues of Mr. Cummings's claim against Hamilton.⁴ Both parties

⁴ As our sister court has previously explained:

Whether an employer/employee relationship exists, for workers' compensation purposes, is a conclusion of law to be based upon findings of fact. ... There is no set formula for determining the existence of an employer/employee

to the instant case were parties to the workers' compensation claim, and Hamilton was afforded a full and fair opportunity to litigate the issues before WCJ Koll. Following the presentation of evidence by all parties, the WCJ determined that Hamilton, not Gallaher, was Mr. Cummings's employer and that Hamilton bore primary responsibility and liability for payment. The WCJ held that Gallaher was secondarily responsible should Hamilton default on its obligation. Hamilton did not appeal from WCJ Koll's order. Because the workers' compensation judgment is final, Hamilton is estopped from pursuing these identical issues in a common law tort action. **See Capobianchi, supra.**

¶ 10 Based upon the foregoing analysis, we conclude that the trial court correctly applied the doctrine of collateral estoppel to Hamilton's claims and properly granted Gallaher's motion for judgment on the pleadings. Accordingly, we affirm the judgment.

¶ 11 Judgment affirmed.

relationship, but the most important factor is evidence of actual control or the right to control the work to be done and the manner of its performance.

Reflex Systems, Inc. v. W.C.A.B. (Ferrucci), 784 A.2d 217, 221-22 (Pa.Cmwlt. 2001) (quoting **Williams v. W.C.A.B. (Global Van Lines)**, 682 A.2d 23 (Pa.Cmwlt. 1996)).

J.S65035/06

Judgment Entered:

Eleanor K. Valecko

Deputy Prothonotary

DATE: August 29, 2007

The Superior Court of Pennsylvania
Sitting at Pittsburgh

6th floor Grant Building
Suite 600
Pittsburgh, Pennsylvania
15219

**CERTIFICATE OF CONTENTS OF REMANDED RECORD
AND NOTICE OF REMAND**
under

PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:
RECORD, 1 TRANSCRIPT, SUPERIOR COURT JUDGMENT ORDER AND OPINION

As remanded from said court in the following matter:

**John T Gallagher Timber Trans. v. Hamilton, R.,
NO. 770 WDA 2006**

**COURT OF COMMON PLEAS-CIVIL DIVISION-CLEARFIELD COUNTY
NO. 04-221-CD**

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

FILED
OCT 11 2007

William A. Shaw
Prothonotary/Clerk of Courts

The date of which the record is remanded October 9, 2007

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

Eleanor R. Valecko

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: October 11, 2007

William A. Shaw
(Signature & Title)

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

Date: 05/18/2006

Time: 09:53 AM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2004-00221-CD

Current Judge: Fredric Joseph Ammerman

John T. Gallaher Timber Transfer vs. Robert D. Hamilton, Hamilton Enterprises, Robert D. Cummings

Civil Other

40
32
18
Date 18/0

| Date | Judge |
|--|-------------------------|
| 02/17/2004 | No Judge |
| (1) Filing: Civil Complaint Paid by: Pietragallo, Boxick & Gordon Receipt number: 1873832 Dated: 02/17/2004 Amount: \$85.00 (Check) 1 CC to Atty. 2 CC to Shff. 33 | |
| 04/01/2004 | No Judge |
| (2) Answer, New Matter and Counterclaim to Plaintiff's Complaint. filed by, s/F. Cortez Bell, III, Esquire Verification s/Robert Hamilton Certificate of Service 5 cc to Atty Bell 16 | |
| 04/16/2004 | No Judge |
| (3) Praecipe for Writ of Summons to Join Robert D. Cummings as additional Defendant, filed by s/F. Cortez Bell, III, Esq. Three CC Attorney Bell Two CC and two writs to Sheriff 4 | |
| 05/03/2004 | No Judge |
| (4) Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm 34 | |
| 05/19/2004 | No Judge |
| (5) Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm 5 | |
| 06/16/2004 | No Judge |
| (6) Reply to New Matter and Answer to Counterclaim filed by Atty. Monahan. No CC. 8 | |
| 01/23/2006 | No Judge |
| (7) Praecipe Requesting Court Administrator to Assign Case to Judge to Scheduled an Argument Date, filed by s/ Robert J. Monahan, Esquire. 1CC Atty Monahan 3 | |
| | No Judge |
| (8) Motion For Judgment on The Pleadings, filed by s/ Robert J. Monahan, Esquire. 1CC Atty. Monahan 100 | |
| 01/24/2006 | Fredric Joseph Ammerman |
| (9) Order, NOW, this 23rd day of Jan., 2006, upon consideration of Plaintiff's Motion for Judgment on the Pleadings, Ordered that argument has been scheduled for the 24th day of Feb., 2006 at 2:00 p.m. in Courtroom No. 1. By The Court: Fredric J. Ammerman, Pres. Judge. 1CC Atty. Monahan, 1CC Atty. Bell 1 CC R. Cummings (on 1/27/06-late due to Full Court being down) 3 | |
| 02/24/2006 | Fredric Joseph Ammerman |
| (10) Answer To Motion For Judgment on the Pleadings, filed by s/ F. Cortez Bell, III, Esquire. 5CC Atty. Bell 8 | |
| 03/01/2006 | Fredric Joseph Ammerman |
| (11) Order, NOW, this 24th day of Feb., 2006, following argument on plaintiff's Motion for Judgment on the Pleadings, Ordered that counsel for Def. supply the Court with appropriate brief relative the issue of collateral estoppel/stare decisis within no more than 25 days from this date. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty Monahan, 1CC F. Cortez Bell III, 1CC Robert Cummings 2 | |
| 03/29/2006 | Fredric Joseph Ammerman |
| (12) Order, NOW, this 28th day of March, 2006, following argument on the Plaintiff's Motion for Judgment on the Pleadings and the Court's review of the parties' briefs, it is the Order of this Court that the said Motion is Granted. The Defendant's Answer and Counterclaim is hereby Dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Atty. Rober Monahan, F. Cortez Bell, and Robert Cummings P.O. Box 77, Wallaceton PA 16876 3 | |
| 04/06/2006 | Fredric Joseph Ammerman |
| (13) Filing: Praecipe to Enter Judgment Paid by: Monahan, Robert J. (attorney for John T. Gallaher Timber Transfer) Receipt number: 1913221 Dated: 04/06/2006 Amount: \$20.00 (Check) Judgment in favor of John Gallgher Timber Transfer and against Robert D. Hamilton t/a Hamilton Enterprises in the amount of \$16,640.89. Filed by s/ Matthew D. Gailey, Esquire. 1CC & Notice to F. Cortez Bell, III, Esquire (envelope provided), Statement to Atty. Gailey 6 | |

Date: 05/18/2006

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:53 AM

ROA Report

Page 2 of 2

Case: 2004-00221-CD

Current Judge: Fredric Joseph Ammerman

John T. Gallaher Timber Transfer vs. Robert D. Hamilton, Hamilton Enterprises, Robert D. Cummings

Civil Other

| Date | | Judge |
|------------|--|-------------------------|
| 04/25/2006 | (14) Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Hamilton, Robert D.) Receipt number: 1913496 Dated: 04/25/2006 7
Amount: \$45.00 (Check) | Fredric Joseph Ammerman |
| | Order, NOW, this 25th day of April, 2006, the Court having been notified of Appeal to the Superior Court of Pa., it is Ordered that Robert Hamilton, Appellant, file a concise statement of the matters complained of on said Appeal no later than 14 days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Monahan, Bell, 1CC Robert Cummings-PO Box 77 Wallacetown, PA 16876 2 | Fredric Joseph Ammerman |
| | Notice of Appeal, to Superior Court of Pa., filed by s/ F. Cortez Bell, III, Esquire. 7CC Atty. Bell, 1CC Superior Court w/ \$60.00 check | Fredric Joseph Ammerman |
| 05/01/2006 | (15) Appeal Docket Sheet, filed. No CC 770 WDA 2006 3 | Fredric Joseph Ammerman |
| | Order, NOW, this 1st day of May, 2006, Ordered that the court reporter is directed to transcribe oral argument held in the above-captioned matter on Feb. 24, 2006, with costs of same to be borne by the Def. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: R. Monahan, R. Bell 1CC Robert Cummings, PO Box 77, Wallacetown, PA 16876 3 | Fredric Joseph Ammerman |
| 05/08/2006 | (18) Statement of Matters Complained of on Appeal, filed by s/ F. Cortez Bell, III, Esquire. 4CC to Atty 3 | Fredric Joseph Ammerman |
| 05/16/2006 | (19) Opinion, By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys.: Monahan, F. Bell, 1CC Def. Cummings, Robert D., PO Box 77, Wallacetown, PA 16876. 1CC to: D. Mikesell, Law Library (without Memo) 3 | Fredric Joseph Ammerman |

5/18/06 (20) Transcript

slc

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MAY 18 2009 Set issued to
(15) Atty Bev
William A. Shaw
Prothonotary/Clerk of Courts copy of disc to C/A

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

CIVIL ACTION NO.: 04-221-CD

Plaintiff,

vs.

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

**PRAECIPE TO SETTLE, DISCONTINUE
AND SATISFY JUDGMENT**

Defendant.

Filed on behalf of Plaintiff:
JOHN T. GALLAHER TIMBER TRANSFER

Counsel of Record for
This Party:

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

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

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

(412) 263-2000

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY

JOHN T. GALLAHER TIMBER TRANSFER
P.O. Box 304
Irvona, PA 16656

Civil Action No.: 04-221-CD

Plaintiff,

vs

ROBERT D. HAMILTON
t/a HAMILTON ENTERPRISES
Road 1, Box 16
Irvona, 16656

Defendant.

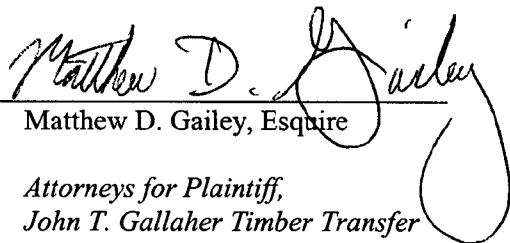
PRAECIPE TO SETTLE, DISCONTINUE AND SATISFY JUDGMENT

TO: THE PROTHONOTARY OF CLEARFIELD COUNTY

Kindly mark this case and the Judgment herein "Settled, Discontinued, and Judgment Satisfied."

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

By: 
Matthew D. Gailey, Esquire
*Attorneys for Plaintiff,
John T. Gallaher Timber Transfer*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **Praecipe to Settle, Discontinue and Satisfy Judgment** was served via U.S. First-Class Mail, postage prepaid, this 8th day of November, 2007, upon the following individual:

F. Cortez Bell, III, Esq.
Bell, Silberblatt & Wood
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830
Counsel for Defendant

PIETRAGALLO, BOSICK & GORDON, LLP

By: Matthew D. Gailey
Matthew D. Gailey, Esq.
Attorneys for Plaintiff,
John T. Gallaher Timber Transfer

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

CIVIL DIVISION

John T. Gallaher Timber Transfer

Vs.

No. 2004-00221-CD

**Robert D. Hamilton
Hamilton Enterprises
Robert D. Cummings**

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

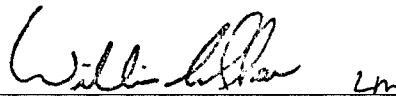
I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on May 18, 2009, marked:

Settled, Discontinued and Satisfy Judgment

Record costs in the sum of \$125.00 have been paid in full by Pietragallo Bosick & Gordon.

Record costs in the sum of \$52.00 have been paid in full by F. Cortez Bell III Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 18th day of May A.D. 2009.



William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CERTIFICATE OF SATISFACTION OF JUDGMENT

John T. Gallaher Timber Transfer

No.: 2004-00221-CD

Vs.

Debt: \$17,107.72

Robert D. Hamilton
Hamilton Enterprises
Robert D. Cummings

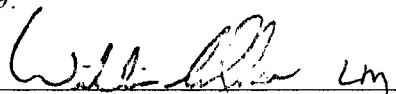
Atty's Comm.:

Interest From:

Cost: \$7.00

NOW, Monday, May 18, 2009 , directions for satisfaction having been received, and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 18th day of May, A.D. 2009.



Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20470
NO: 04-221-CD

PLAINTIFF: JOHN T. GALLAHER TIMBER TRANSFER
vs.
DEFENDANT: ROBERT D. HAMILTON T/A HAMILTON ENTERPRISES

Execution PERSONAL PROPERTY

SHERIFF RETURN

DATE RECEIVED WRIT: 10/10/2660

LEVY TAKEN @

POSTED @

SALE HELD

SOLD TO

SOLD FOR AMOUNT PLUS COSTS

WRIT RETURNED 11/16/2011

DATE DEED FILED **NOT SOLD**

FILED
02:44:31
NOV 16 2011
William A. Shaw
Prothonotary/Clerk of Courts

DETAILS

@ SERVED ROBERT D. HAMILTON T/A HAMILTON ENTERPRISES

ROBERT D. HAMILTON T/A HAMILTON ENTERPRISES, DEFENDANT WAS NOT SERVED OR LEVIED AT ROAD 1, BOX 16, IRVONA, CLEARFIELD COUNTY, PENNSYLVANIA RECEIVED A RULE RETURNABLE WITH A HEARING DATE OF DECEMBER 4, 2006.

@ SERVED

NOW, NOVEMBER 16, 2011 RETURN WRIT AS HAVING BEEN PRAECIPED TO SETTLE, DISCONTINUE AND SATISFY ON MAY 18, 2009.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20470
NO: 04-221-CD

PLAINTIFF: JOHN T. GALLAHER TIMBER TRANSFER

vs.

DEFENDANT: ROBERT D. HAMILTON T/A HAMILTON ENTERPRISES

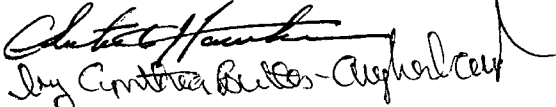
Execution PERSONAL PROPERTY

SHERIFF RETURN

SHERIFF HAWKINS \$0.00

SURCHARGE PAID BY

So Answers,


Chester A. Hawkins
Sheriff

WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION – LAW

John T. Gallaher Timber Transfer,

Vs.

NO.: 2004-00221-CD

Robert D. Hamilton,
t/a Hamilton Enterprises,
Robert D. Cummings,

TO THE SHERIFF OF CLEARFIELD COUNTY:

To satisfy the debt, interest and costs due JOHN T. GALLAHER TIMBER TRANSFER, Plaintiff(s) from ROBERT D. HAMILTON, HAMILTON ENTERPRISES, Defendant(s):

- (1) You are directed to levy upon the property of the defendant(s) and to sell interest(s) therein:
- (2) You are also directed to attach the property of the defendant(s) not levied upon in the possession of:

Garnishee(s) as follows:
and to notify the garnishee(s) that: (a) an attachment has been issued; (b) the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof;
- (3) If property of the defendant(s) not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify him/her that he/she has been added as a garnishee and is enjoined as above stated.
- (4) **If Social Security or Supplemental Income funds are directly deposited into an account of the defendant, the levy and attachment shall not include any funds that may be traced to Social Security direct deposits. In addition, the levy and attachment shall not include \$300.00 in the account of the defendant.**

AMOUNT DUE/PRINCIPAL: \$16,640.89
INTEREST: from April 4, 2006 to September 26, 2006
at \$2.73 per diem:
ATTY'S COMM: \$
DATE: 10/9/2006

PROTHONOTARY'S COSTS PAID: \$125.00
SHERIFF: \$
OTHER COSTS: \$



William A. Shaw
Prothonotary/Clerk Civil Division

Received this writ this 10th day
of October A.D. 2006
At 9:00 AM/P.M.

Charles G. Hawkins
Sheriff Cynthia Butler-Deffenbaugh

Requesting Party: Matthew D. Gailey, Esq.
38th Floor, One Oxford Centre
Pittsburgh, Pa 15219
412-263-2000

**PERSONAL PROPERTY SALE
SCHEDULE OF DISTRIBUTION**

NAME ROBERT D. HAMILTON T/A HAMILTON ENTERPRISES

NO. 04-221-CD

NOW, November 16, 2011, by virtue of the Writ hereunto attached, after having given due and legal notice of time and place of sale by handbills posted on the premises setting forth the date, time and place of sale, I exposed the within described real estate of Robert D. Hamilton T/A Hamilton Enterprises to public venue or outcry at which time and place I sold the same to he/she being the highest bidder, for the sum of and made the following appropriations, viz:

SHERIFF COSTS:

| | |
|----------------------------|---------------|
| RDR | |
| SERVICE | |
| MILEAGE | |
| LEVY | |
| MILEAGE | |
| POSTING | |
| HANDBILLS | |
| COMMISSION | 0.00 |
| POSTAGE | |
| HANDBILLS | |
| DISTRIBUTION | |
| ADVERTISING | |
| ADD'L SERVICE | |
| ADD'L POSTING | |
| ADD'L MILEAGE | |
| ADD'L LEVY | |
| BID/ SETTLEMENT AMOUNT | |
| RETURNS/DEPUTIZE | |
| COPIES | |
| BILLING/PHONE/FAX | |
| CONTINUED SALES | |
| MISCELLANEOUS | |
| TOTAL SHERIFF COSTS | \$0.00 |

PLAINTIFF COSTS, DEBT AND INTEREST:

| | |
|--------------------------------|--------------------|
| DEBT-AMOUNT DUE | 16,640.89 |
| INTEREST @ % | 0.00 |
| FROM TO | |
| PROTH SATISFACTION | |
| LATE CHARGES AND FEES | |
| COST OF SUIT-TO BE ADDED | |
| FORECLOSURE FEES | |
| ATTORNEY COMMISSION | |
| REFUND OF ADVANCE | |
| REFUND OF SURCHARGE | |
| SATISFACTION FEE | |
| ESCROW DEFICIENCY | |
| PROPERTY INSPECTIONS | |
| INTEREST | 466.83 |
| MISCELLANEOUS | |
| TOTAL DEBT AND INTEREST | \$17,232.72 |
| COSTS: | |
| ADVERTISING | 0.00 |
| TAXES - COLLECTOR | |
| TAXES - TAX CLAIM | |
| DUE | |
| LIEN SEARCH | |
| ACKNOWLEDGEMENT | |
| SHERIFF COSTS | 0.00 |
| LEGAL JOURNAL COSTS | 0.00 |
| PROTHONOTARY | 125.00 |
| MORTGAGE SEARCH | |
| MUNICIPAL LIEN | |
| TOTAL COSTS | \$125.00 |
| TOTAL COSTS | \$17,232.72 |

COMMISSION 2% ON THE FIRST \$ 100,000 AND 1/2% ON ALL OVER THAT. DISTRIBUTION WILL BE MADE IN ACCORDANCE WITH THE ABOVE SCHEDULE UNLESS EXCEPTIONS ARE FILED WITH THIS OFFICE **WITHIN TEN (10) DAYS FROM THIS DATE.**

CHESTER A. HAWKINS, Sheriff

CIVIL DIVISION

ORIGINAL

JOHN T. GALLAHER TIMBER
TRANSFER,
Plaintiff

-VS-

No. 2004-221-CD

ROBERT D. HAMILTON, t/a
HAMILTON ENTERPRISES,
Defendant

PROCEEDINGS:

Argument on Plaintiff's Motion for Judgment on the Pleadings

BEFORE:

HONORABLE FREDRIC J. AMMERMAN
President Judge

DATE:

Friday, February 24, 2006

PLACE:

Clearfield County Courthouse
Courtroom No. 1
Clearfield, Pennsylvania

REPORTED BY:

Thomas D. Snyder, RPR
Official Court Reporter

APPEARANCES:

ROBERT J. MONAHAN, ESQUIRE
Petragallo Bosick & Gordon
For - Plaintiff

F. CORTEZ BELL, III, ESQUIRE
Bell, Silberblatt & Wood
For - Defendant

FILED
OCT 07 2019
BRIAN K. SPENCER
PROTHONOTARY & CLERK OF COURTS