

04-337-CD  
CITICAPITAL COMMERCIAL CORP. vs. JOSEPH A. OWENS

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

CITICAPITAL COMMERCIAL CORP.

Plaintiff

vs.

JOSEPH A. OWENS

Defendant

No. 04-337-CD

COMPLAINT IN CIVIL ACTION

FILED ON BEHALF OF  
Plaintiff

COUNSEL OF RECORD OF  
THIS PARTY:

William T. Molczan, Esquire  
PA I.D. #47437  
WELTMAN, WEINBERG & REIS CO., L.P.A.  
2718 Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
(412) 434-7955  
WWR#03389120

FILED

MAR 11 2004

William A. Shaw  
Prothonotary

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

CITICAPITAL COMMERCIAL CORP.

Plaintiff

No.

vs.

JOSEPH A. OWENS

Defendant

**COMPLAINT IN CIVIL ACTION AND 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 an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

LAWYER REFERRAL SERVICE

PA Bar Association

P.O. Box 186

Harrisburg, PA 17108

1-800-692-7375

## COMPLAINT

1. Plaintiff is a corporation with offices at 250 E. Carpenter Freeway, 4 Decker, Irving, TX 75062.
2. Defendant is an adult individual residing at RR 1, Box 180, Penfield, PA 15849.
3. On or about June 14, 2000, Sky Haven Coal, Inc. and the Plaintiff entered into a written Master Lease Schedule (hereinafter referred to as the "Agreement") for the lease of a 1979 Caterpillar Loader Model 988B, Serial #50W3274 and a 1979 Caterpillar Loader Model 988B, Serial #50W3347, more particularly identified in the Agreement, a true and correct copy of which is attached hereto, marked as Exhibit "1" and made a part hereof.
4. As further inducement for the extension of credit, Defendant, Joseph A. Owens, executed and delivered to Plaintiff his personal guaranty, a true and correct copy of which is attached hereto, marked as aforementioned Exhibit "2," and made a part hereof.
5. By the terms of the Agreement, Defendant was to make 60 (sixty) payments of \$8,380.98, commencing July 20, 2000, and to pay certain license fees due at the inception of the lease and during the lease term.

6. The terms of said Agreement provide for termination upon satisfaction by Defendant of all obligations provided thereunder and upon the return of the vehicle by Defendant to Plaintiff at the end of the lease term, which term would end 60 (sixty) months after it commenced.

7. Plaintiff avers that Defendant defaulted under the terms of the Lease Agreement by failing to make payment to Plaintiff as promised.

8. Due to the Defendant's default under the Agreement, Plaintiff exercised its right to terminate the Lease.

9. After calculating the early termination charges due Plaintiff pursuant to the terms of the Lease, Plaintiff avers that a balance of \$193,199.37 as of February 23, 2004 is due from Defendant.

10. Plaintiff avers that the Contract between the parties provides that Plaintiff is entitled to interest at the rate of 11.16% per annum.

11. Plaintiff avers that the Agreement between the parties provides that Defendant will pay Plaintiff's attorneys' fees.

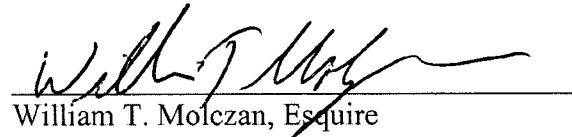
12. Plaintiff avers that such attorneys' fees will amount to \$5,000.00.

13. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the principal balance, interest, attorneys' fees or any part thereof to Plaintiff.

WHEREFORE, Plaintiff demands Judgment in its favor and against Defendant, Joseph A. Owens, individually, in the amount of \$193,199.37 with continuing interest thereon at the rate 18% per annum from February 23, 2004 plus attorneys' fees of \$5,000.00 and costs.

**THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED SHALL BE USED FOR THAT PURPOSE.**

WELTMAN, WEINBERG & REIS, CO., L.P.A.

A handwritten signature in black ink, appearing to read "William T. Moleczan", is written over a horizontal line.

William T. Moleczan, Esquire  
PA I.D. #47437

WELTMAN, WEINBERG & REIS CO., L.P.A.  
2718 Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
(412) 434-7955  
WWR#03389120



## MASTER LEASE SCHEDULE

Schedule # 513908Schedule Date: June 5, 2000

Master Lease Agreement No. 88486 ("Lease") dated DECEMBER 10, 1999, by and between American Equipment Leasing, a division of EAB Leasing Corp., ("Lessor"), and SKY HAVEN COAL, INC. ("Lessee"), RR#1, BOX 180, PENFIELD, PA 15849. This Schedule incorporates the terms of the Lease.

**ORIGINAL RENTAL TERM:** Total amount of Suppliers Invoices \$389,000.00

Total Term: 60 Months; Total No. of Payments: 60; 60 Monthly Rental Payments: \$8,380.88 (plus tax, if applicable)

Supplier:	<u>EQUIPMENT LOCATORS, INC.</u>	Address:	<u>107 WEST FIRST STREET, CLEARFIELD, PA 16830</u>
Base Term Commencement Date:		Skip payment months:	<u>N/A</u>
Initial Payment:	<u>\$8,380.88</u>	Representing:	<u>FIRST MONTHLY RENTAL</u>
Security Deposit:	<u>\$0.00</u>	Date Received:	<u>N/A</u>
Documentation Fee:	<u>\$500.00</u>	Date Received:	
Final Delivery Date:			

You authorize us to fill in the Final Delivery Date (as defined in the Lease) and the Base Term Commencement Date (as determined in accordance with the terms of this Schedule).

**Rental Payment Adjustment.** Calculation of your rental payment is based on the yield for 'United States Treasury Bonds, Notes and Bills Obligations' of a term of 60 months (Treasury Obligations), as published in the Wall Street Journal, Treasury Bonds, Notes and Bills table on MAY 25, 2000 ('Index Date'), with a yield to maturity of 5.718 NOV 04 yielding 6.74% (Indexed Treasury Obligation). The 'Commencement Date' of this Schedule shall be the date that (i) we receive a complete set of properly executed Lease Documents (including this Schedule) and (ii) you have otherwise satisfied all conditions of this transaction. If on the Commencement Date, Treasury Obligations have a yield to maturity higher than that of the Indexed Treasury Obligation had on the Index Date, the amount of your rental payment under this Schedule will be adjusted to reflect the proportionate increase. We will notify you in writing of any such adjustment and you agree to provide written confirmation of the adjustment, upon our request.

For the period commencing on the Final Delivery Date and ending on the Base Term Commencement Date, you shall pay 'Precommencement Rent' (together with any applicable taxes due) on account of Equipment subject of this Schedule which shall be calculated by multiplying (a) the total amount of the Supplier's Invoice(s) for the Equipment times (b) a monthly factor which shall be 0.215450%. Precommencement Rent shall be assessed on a per diem basis based upon a 365 day year and shall be adjusted proportionately for the actual number of days elapsed between the Final Delivery Date and Base Term Commencement Date. Precommencement Rent shall be due and payable on the Base Term Commencement Date.

**LEASED EQUIPMENT ("Equipment"):** See Attached Exhibit

Base Term Commencement Date: \_\_\_\_\_

The Base Term Commencement Date as to the Equipment subject of this Schedule means the Selected Monthly Due Date designated below falling immediately after the date we receive from you a complete set of properly executed Lease Documents (including a Certificate of Acceptance for all Equipment).

SELECTED MONTHLY DUE DATE:

Select only one Due Date: ( ) 5th OR (X) 20th

July

Please Initial G.A.O.

Note: In the absence of your selection of a 'Selected Monthly Due Date', the Base Term Commencement Date shall be the 20th of the month commencing immediately after the month in which we receive from you a complete set of properly executed Lease Documents (including a Certificate of Acceptance for all Equipment).

If the Final Delivery Date has occurred prior to your execution of this Schedule, you acknowledge that all of the Equipment Identified on Exhibit A was received by you, has been installed, is in every way acceptable to you, and you authorize us to pay the Supplier, if Supplier has not been paid. (In the event that the Final Delivery Date has not occurred prior to the time you execute this and return it to us, you authorize us to insert the Final Delivery Date where provided above, as that date is reflected in a Certificate of Acceptance regarding the Equipment which you shall forward to us. You also authorize us to insert the appropriate Base Term Commencement Date reflective of the date of our receipt of a complete set of properly executed Lease Documents.)

**Requirements Following Base Term.** After you have satisfied all Obligations under the Lease, including payment of all rentals, late charges, taxes, and other expenses due and to become due with respect to the Equipment, and have paid an additional payment of \$100.00, title to the Equipment shall pass to you on an as is/where is basis (exclusive of ownership rights of any software subject of this Lease).

In addition to all terms and conditions of the Lease Documents, the Master Lease is amended to provide that time is of the essence with regard to all matters pertaining to the Master Lease, all Schedules executed in connection with the Master Lease, and all other Lease Documents related to the Master Lease.

Paragraph 7(c) of the Master Lease is amended in relevant part to provide that if any payment of rent or other payment payable under the Lease Documents is not paid when due, you shall pay us a late charge equal to: (i) the greater of ten percent (10%) of the late payment, or \$20.00; or the highest rate permissible under applicable, which ever is lesser. All other provisions of paragraph 7(c) not expressly amended by this shall remain in force.

**Taxes.** Paragraph 17, 'Taxes', of the Master Lease is amended and restated as follows: (a) General. You assume liability for and shall indemnify and defend us against, all fees, taxes, and charges of any nature imposed by any governmental authorities upon or relating to any Equipment. (b) Filing. If at any time such taxes, fees, or charges are imposed, we (or our agents) shall make and file any or all declarations and returns in connection with such taxes in order to pay the same (unless we otherwise direct that you shall make and file all declarations and returns in connection with such taxes and send us evidence of timely payment). (c) Rental, Sales, and/or Use Taxes. We shall directly remit all rental, sales and/or use taxes to the appropriate taxing unit and you shall remit to us, upon demand, any and all such taxes as we shall require. (d) Personal Property Taxes. For Equipment subject to personal property taxes, to liquidate such taxes you agree to pay us an annual liquidated amount ('Assessed Amount') which shall be based upon the Equipment price (as set forth in the original Supplier Invoice), reduced by depreciation calculated in accordance with applicable depreciation schedules used by the applicable taxing jurisdiction at the applicable tax rate. The Assessed Amount shall be payable by you without regard to any discounts or reduction we may obtain by reason of early payment or otherwise. In addition, you shall pay us an annual Tax Administration fee of \$50.00 per Schedule if any personal property taxes are imposed upon Equipment subject of that Schedule. (e) Audits and Exemption Certificates. You will be responsible for any audit adjustment if a tax exemption certificate furnished by you is not accepted by the applicable taxing authority. You will otherwise indemnify us for taxes, interest, penalties and other sums charged as a result of audit adjustments occurring for any reason with respect to your Lease or Equipment (including if a certificate is denied).

**EXHIBIT**

1

Sent By: AEL;

5705488439 ;

Jun-5-00 9:46AM;

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### COLLATERAL SECURITY AGREEMENT FOR LEASE

The agreement, made this 10th day of December, 1999, by and between Sky Haven Coal, Inc. a PA (corporation), with a place of business at RR #1, Box 180, Penfield, PA 15849 ("Debtor"), and

American Equipment Leasing, a division of EAB Leasing Corp., a Pennsylvania corporation, with a place of business at 6 Commerce Drive, Reading, Pennsylvania, 19607, ("AEL").

WHEREAS, the parties hereto have entered into a Master Lease Agreement and Schedule thereto dated the 10th day of December, 1999, (collectively, "Lease") wherein AEL has agreed to lease to the Debtor certain equipment described in the Lease, being (collectively, "Lease Equipment"); and,

WHEREAS, to further secure the payment due AEL pursuant to the Lease, the Debtor hereby grants to AEL a security interest in the property described below (individually and collectively referred to as "Collateral") owned wholly by Debtor.

WITNESSETH, in consideration of the entry of the Lease by mutual covenants and promises set forth herein, Debtor and AEL, intending to be legally bound, agree as follows:

1. Recitals. The above recitals are incorporated herein as though they were more fully set forth.

2. Creation of Security Interest. Debtor hereby grants to AEL a security interest in the Collateral and to secure the performance by Debtor to AEL of all Obligations. "Obligations" means the payment by Debtor under the Lease and any renewals or extensions thereof, payments due and reimbursement of all expenditures by AEL for taxes, insurance, repairs to, and maintenance of, the Collateral and all costs and expenses incurred by AEL in the collection and enforcement of the Lease, and any and all other liabilities of Debtor to AEL, now existing or hereafter incurred. It is expressly contemplated that the Lease Equipment shall be attached to the Collateral. Debtor agrees that the Lease Equipment shall at all times remain property of AEL and shall not become an accession to the Collateral. Debtor further agrees that, in addition to all other remedies herein conferred, AEL shall have the right to remove the Lease Equipment from the Collateral at any time after default under the Lease or under the terms hereof, and shall have the right to proceed with all remedies under the Lease and/or the terms hereof with regard to the Leased Equipment and/or the Collateral, which remedies shall be cumulative and not an election of remedies.

3. Description of Collateral. The Collateral, subject to the Security Agreement herein referred to as Collateral, is the personal property of the following description: One (1) 1978 Caterpillar Dozer Model D9H Serial #90V6029 and One (1) 1977 Caterpillar Dozer Model D9H Serial #90V8193

together with all equipment, parts, appliances, accessions, and appurtenances now or hereafter placed thereon, all of which shall be deemed a component part of Collateral, and proceeds thereof, including insurance proceeds.

4. Warranties and Representation. Debtor warrants that Debtor is the exclusive owner of the Collateral, free and clear of all liens, encumbrances, and security interest. Debtor agrees to pay all taxes and other charges against said Collateral promptly when same become due. The loss or destruction of said Collateral from any cause with or without fault of the Debtor shall not affect in any way the liability of the Debtor to repay any and all indebtedness hereby secured. The Debtor agrees not to use said Collateral illegally, not to encumber, sell, transfer, or otherwise dispose of the Collateral without written permission of AEL, to keep the Collateral in good and serviceable condition and repair, and not to allow the same to be misused or abused. Debtor further agrees not to remove the Collateral from the following address: RR #1, Box 180, Penfield, PA 15849 without AEL's written permission, which permission shall not be unreasonably withheld. Debtor shall maintain insurance on the Collateral against such risks, and in such companies, and in such amounts as AEL shall require at the time of execution hereof, and such insurance shall name Debtor and AEL as loss payees as their respective interests shall appear. Debtor shall deliver all such insurance policies to AEL upon AEL's request. In the event that Debtor shall fail to procure or maintain such insurance when AEL has required the same, AEL may, but shall have no duty to, procure such insurance and Debtor shall immediately, upon demand, reimburse lender for all amounts so paid as a payment due under the terms of the lease. Debtor shall sign and execute, along with AEL, any Uniform Commercial Code financing statement or any other document deemed necessary to protect the security interest created hereunder; Debtor shall pay promptly, when due, all taxes and assessments upon the Collateral for its use and operation; Debtor shall indemnify AEL against any and all claims

Sent By: AEL;

5705488489 ;

Jun-5-00 9:48AM;

Page 3

SKY HAVEN COAL, INC.  
EXHIBIT "A"

EQUIPMENT LOCATORS, INC.

1 USED CAT 777B OFF HIGHWAY TRUCK  
S/N 4YC00477

ADDITIONAL COLLATERAL

1 1979 CAT 988B LOADER  
S/N 50W3274  
1 1979 CAT 988B LOADER  
S/N 50W3347

### COLLATERAL SECURITY AGREEMENT FOR LEASE

The agreement, made this 5th day of June, 2000, by and between Sky Haven Coal, Inc. a PA (corporation), with a place of business at RR #1, Box 180, Penfield, PA 15849 ("Debtor"), and

American Equipment Leasing, a division of EAB Leasing Corp., a Pennsylvania corporation, with a place of business at 6 Commerce Drive, Reading, Pennsylvania, 19607, ("AEL").

WHEREAS, the parties hereto have entered into a Master Lease Agreement dated the 10<sup>th</sup> day of December, 1999 and Schedule dated the 5<sup>th</sup> day of June, 2000, (collectively, "Lease") wherein AEL has agreed to lease to the Debtor certain equipment described in the Lease, being (collectively, "Lease Equipment"); and,

WHEREAS, to further secure the payment due AEL pursuant to the Lease, the Debtor hereby grants to AEL a security interest in the property described below (individually and collectively referred to as "Collateral") owned wholly by Debtor.

WITNESSETH, in consideration of the entry of the Lease by mutual covenants and promises set forth herein, Debtor and AEL, intending to be legally bound, agree as follows:

1. Recitals. The above recitals are incorporated herein as though they were more fully set forth.
2. Creation of Security Interest. Debtor hereby grants to AEL a security interest in the Collateral and to secure the performance by Debtor to AEL of all Obligations. "Obligations" means the payment by Debtor under the Lease and any renewals or extensions thereof, payments due and reimbursement of all expenditures by AEL for taxes, insurance, repairs to, and maintenance of, the Collateral and all costs and expenses incurred by AEL in the collection and enforcement of the Lease, and any and all other liabilities of Debtor to AEL, now existing or hereafter incurred. It is expressly contemplated that the Lease Equipment shall be attached to the Collateral. Debtor agrees that the Lease Equipment shall at all times remain property of AEL, and shall not become an accession to the Collateral. Debtor further agrees that, in addition to all other remedies herein conferred, AEL shall have the right to remove the Lease Equipment from the Collateral at any time after default under the Lease or under the terms hereof, and shall have the right to proceed with all remedies under the Lease and/or the terms hereof with regard to the Leased Equipment and/or the Collateral, which remedies shall be cumulative and not an election of remedies.
3. Description of Collateral. The Collateral, subject to the Security Agreement herein referred to as Collateral, is the personal property of the following description: One (1) 1979 Caterpillar Loader Model 988B Serial #50VV3274 and One (1) 1979 Caterpillar Loader Model 988B Serial #50VV3347.

together with all equipment, parts, appliances, accessions, and appurtenances now or hereafter placed thereon, all of which shall be deemed a component part of Collateral, and proceeds thereof, including insurance proceeds.

4. Warranties and Representation. Debtor warrants that Debtor is the exclusive owner of the Collateral, free and clear of all liens, encumbrances, and security interest. Debtor agrees to pay all taxes and other charges against said Collateral promptly when same become due. The loss or destruction of said Collateral from any cause with or without fault of the Debtor shall not affect in any way the liability of the Debtor to repay any and all indebtedness hereby secured. The Debtor agrees not to use said Collateral illegally, not to encumber, sell, transfer, or otherwise dispose of the Collateral without written permission of AEL, to keep the Collateral in good and serviceable condition and repair, and not to allow the same to be misused or abused. Debtor further agrees not to remove the Collateral from the following address: RR #1, Box 180, Penfield, PA 15849 without AEL's written permission, which permission shall not be unreasonably withheld. Debtor shall maintain insurance on the Collateral against such risks, and in such companies, and in such amounts as AEL shall require at the time of execution hereof, and such insurance shall name Debtor and AEL as loss payees as their respective interests shall appear. Debtor shall deliver all such insurance policies to AEL upon AEL's request. In the event that Debtor shall fail to procure or maintain such insurance when AEL has required the same, AEL may, but shall have no duty to, procure such insurance and Debtor shall immediately, upon demand, reimburse lender for all amounts so paid as a payment due under the terms of the lease. Debtor shall sign and execute, along with AEL, any Uniform Commercial Code financing statement or any other document deemed necessary to protect the security interest created hereunder, Debtor shall pay promptly, when due, all

taxes and assessments upon the Collateral for its use and operation; Debtor shall indemnify AEL against any and all claims arising out of the use of the Collateral.

5. Default and Remedies. Time is of the essence of the Lease and the within Security Agreement, and should Debtor commit a default under the Lease or this Security Agreement, the entire indebtedness under the Lease, hereby secured, shall become immediately due and payable, without notice or demand. AEL may thereupon take possession of the Collateral; and, for that purpose, AEL may, so far as Debtor can give authority therefor, enter upon any premises which said Collateral or any part thereof may be situated and remove the same therefrom and proceed to sell same in accordance with the Uniform Commercial Code. From the proceeds of any such sale, AEL may deduct the expenses of repossessing, storing, and selling the Collateral; including, but not limited to, reasonable attorneys' fees incident to the collection of the debt secured hereby, and any and all other reasonable attorneys' fees incident to the enforcement of the rights of AEL hereunder. The balance thereof shall be applied to the amount due. Debtor shall pay any resulting deficiency with interest thereon as provided for under the terms of the Lease.

6. Miscellaneous. All rights of AEL hereunder shall inure to the benefit of AEL, its successors and assigns; all obligations of the Debtor shall bind the Debtor's heirs, executors, administrators, successors, and assigns. If there would be more than one Debtor, their obligations hereunder shall be joint and several. This agreement is governed by the laws of the Commonwealth of Pennsylvania.

AMERICAN EQUIPMENT LEASING,  
A DIVISION OF THE EAB LEASING CORP. (AEL)

Signature: Sonja L. Liebrich

Date: 6/14/00

SKY HAVEN COAL, INC.

Signature: Joseph A. Stevens

Date: 6-10-00

SKY HAVEN COAL, INC.  
RR #1, BOX 180  
PENFIELD, PA 15849

APP # 16501  
CID # 88466

EQUIPMENT SCHEDULE

ONE (1) USED 1990 CATERPILLAR MODEL 777B OFF-HIGHWAY TRUCKS  
S/N 4YC01323  
ONE (1) USED 1992 CATERPILLAR MODEL 777B OFF-HIGHWAY TRUCKS  
S/N 4YC01727

ADDITIONAL COLLATERIAL

ONE (1) USED 1979 CATERPILLAR MODEL 988B LOADER  
S/N 50W3274  
ONE (1) USED 1979 CATERPILLAR MODEL 988B LOADER  
S/N 50W3347



## GUARANTY

In this Guaranty, the words "you" and "your" mean the Guarantor(s) indicated below. The phrase "Customer" means SKY HAVEN COAL, INC., which is the Customer in transactions with American Equipment Leasing, a division of EAB Leasing Corp., whether in those transactions the Customer is: (a) lessee under any lease agreements, master lease agreements, together with all schedules executed in connection with the master lease agreements, agreements granting lease availability or credit, and all other agreements related to the transactions contemplated in connection with the lease agreements; and/or (b) borrower (or recipient of credit) under the terms of any notes, loan agreements, security agreements, (as well as riders to security agreements or loan agreements), instruments, documents, mortgages, assignments or other contracts or arrangements whereby we shall grant credit or advance funds, whether the transactions as described in (a) and (b) (which shall be referred to as "AEL Transactions") have occurred in the past or contemporaneous to the execution of this guaranty agreement, or shall arise in the future, and whether the agreements evidencing the AEL Transactions (which shall be referred to as AEL Agreements) have been executed, or shall be executed by the Customer at any time in the future. The words "we", "us" and "our" in this Guaranty means American Equipment Leasing, the lessor or lender under the AEL Transactions.

**Guaranty of Obligations.** In consideration of our entering into the AEL Transactions with the Customer under the terms of the AEL Agreements, you unconditionally, absolutely and irrevocably become surety to us, and guarantee to us and to our successors and assigns: (a) the prompt payment in full of all indebtedness, liability or liabilities of any and every kind and nature by the Customer as required under the terms of the AEL Agreements, whether such obligations exist now or arise at any time or times after the date of this Guaranty; and, (b) Customer's prompt, full and faithful performance, observance, and discharge of each and every term, condition, agreement, representation, warranty, undertaking, covenant, guaranty and provision to be performed, observed, or discharged by all other obligations and provisions to be performed by the Customer under the terms of the AEL Agreements; and, (c) the Customer's prompt payment in full, when due or declared due and at all times thereafter, of all indebtedness, liability or liabilities of any and every kind and nature now or at any time or times after the date of this Guarantee, whether owing, arising, due or payable from Customer to you, howsoever evidenced, created, incurred, acquired, or owing, whether primary, secondary, direct, contingent, fixed or otherwise, and whether arising under any other agreements with us, whether now existing or at any time or times after the date of this Guarantee executed by Customer and delivered to us (all obligations under (a), (b) and (c) being collectively referred to as "Customer's Obligations"). You agree that you are directly and primarily liable, jointly and severally with Customer (and with all other guarantors of the Customer's Obligations), for performance of the Customer's Obligations and that our entry into the AEL Transactions shall be a direct economic benefit to you.

**Satisfaction of Customer's Obligations.** You agree that if any Customer's Obligations are not satisfied when due, you will, upon our demand, immediately satisfy those Customer's Obligations or, if we shall accelerate the maturity of the Customer's Obligations, you will satisfy all of the Customer's Obligations. No such satisfaction shall discharge your liability to us until all Customer's Obligations shall have been satisfied in full. You further agree to pay to us, upon demand, all reasonable costs and expenses, including attorneys' fees, that we incur in enforcing or attempting to enforce the performance or satisfaction of Customer's Obligations.

**Consents and Waivers.** You assent to all terms and agreements made between us and the Customer under the AEL Agreements. You consent and agree that we may do any of the following: (i) Waive or delay the exercise of any of our rights or remedies against the Customer or any other person or entity; (ii) Release the Customer or any other person or entity (including any other guarantor of the Customer's Obligations); (iii) Renew or extend the terms of any of the Customer's Obligations or any of the AEL Agreements or modify any of the AEL Agreements; (iv) Apply payments by the Customer, you, or any other person or entity to Customer's Obligations in our discretion. You waive all notices with respect to this Guaranty or with respect to the Customer's Obligations, including, but without limitation, notice of: (i.) our acceptance of this Guaranty or our intention to act, or our actions in reliance of this Guaranty; (ii.) The present existence or future incurring of, or any terms or amounts of, or any change or amendment in, any of the Customer's Obligations; (iii.) Presentment, demand, protest and notice of non-payment, protest in relation to any instrument evidencing any of the Customer's Obligations, and any other demands and notices required by law, except as such waiver may be expressly prohibited by law.

**Unconditional Guaranty.** Your liability under this Guaranty is absolute and unconditional, without regard to the liability of any other person, and shall not in any manner be affected by any action taken or not taken by us, which action or inaction is herein consented and agreed to. No delay in making demand on you shall prejudice our rights to enforce this Guaranty. All of our rights and remedies shall be cumulative and any failure to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other right at any time, and from time to time, thereafter. This Guaranty shall be continuing and shall be binding upon you regardless of how long before or after the date of this Guaranty any of the Customer's Obligations were or shall be incurred. This Guaranty shall continue in full force and effect until Customer's Obligations are fully paid, performed and discharged and we give you written notice of that fact.

**Rescinded Payments.** Following a partial or entire payment of Customer's Obligations, this Guaranty shall remain in effect or be reinstated, as the case may be, as though such payment had never been made with respect to any such payment which is rescinded or otherwise restored or returned by us to you (or any other person) under authority of law, rule, regulation, order of court or governmental agency, whether arising out of any proceeds under the United States Bankruptcy Code or otherwise.

**Continuing Guaranty.** This Guaranty shall be a continuing guaranty, and shall be binding upon you regardless of how long before or after the date hereof any of the Customer's Obligations were or are incurred. This Guaranty shall inure to our benefit and of our successors and assigns, and to any person to whom we may grant an interest in any of the Customer's Obligations, and shall be binding upon you and your respective successors and assigns.

You warrant and represent to us that you have read this Guaranty and you acknowledge that you understand its contents.

THIS GUARANTY SHALL BE GOVERNED BY LAWS, STATUTES, AND DECISIONS OF THE COMMONWEALTH OF PENNSYLVANIA. ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY, OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO, OR FROM THIS GUARANTY TO BE LITIGATED (AT OUR SOLE DISCRETION AND ELECTION), IN COURTS WITHIN THE COMMONWEALTH OF PENNSYLVANIA.

On this Date of 12-14-99

JOSEPH A. OWENS

PRINT NAME

PRINT NAME

SIGNATURE

SIGNATURE

RR#1, BOX 180

ADDRESS

ADDRESS

PENFIELD, PA 15849

CITY

STATE

ZIP CODE

CITY

STATE

ZIP CODE

814-765-1665

HOME PHONE NUMBER

HOME PHONE NUMBER

200-16-9363

SOCIAL SECURITY NUMBER

SOCIAL SECURITY NUMBER

VERIFICATION

The undersigned does hereby verify subject to the penalties of 18 PA.C.S. §4904 relating to unsworn falsifications to authorities, that he/she is CLARISA SKINNER  
(Name)  
LIQUIDATION ANALYST of CITICAPITAL COMMERCIAL CORP, plaintiff herein, that  
(Title) (Company)  
he/she is duly authorized to make this Verification, and that the facts set forth in the foregoing Complaint in Civil Action are true and correct to the best of his/her knowledge, information and belief.

Clarisa Skinner  
(Signature)

WWR# 03389120

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

CITICAPITAL COMMERCIAL CORP.

VS.

OWENS, JOSEPH A.

COMPLAINT

Sheriff Docket #

15298

04-337-CD

**SHERIFF RETURNS**


NOW MARCH 25, 2004 AT 2:15 PM SERVED THE WITHIN COMPLAINT ON JOSEPH A. OWENS, DEFENDANT AT RESIDENCE, RR#1 BOX 180, PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JOSEPH A. OWENS A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: COUDRIET/Ryen

**Return Costs**


Cost	Description
30.00	SHERIFF HAWKINS PAID BY: ATTY CK# 8126999
10.00	SURCHARGE PAID BY: ATTY CK# 8127000

Sworn to Before Me This

10<sup>th</sup> Day Of May 2004

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

So Answers,

  
by Maureen Harris  
Chester A. Hawkins  
Sheriff

**FILED**

015684  
MAY 10 2004



William A. Shaw  
Prothonotary/Clerk of Courts

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

CITICAPITAL COMMERCIAL CORP

Plaintiff

vs.

JOSEPH A OWENS

Defendant

No. 04-337-CD

PRAECIPE TO SETTLE, DISCONTINUE  
AND END WITHOUT PREJUDICE TO REFILE

FILED ON BEHALF OF  
Plaintiff

COUNSEL OF RECORD OF  
THIS PARTY:

James C. Warmbrodt  
PA I.D #42524  
William T. Molczan, Esquire  
PA. I.D.#47437  
WELTMAN, WEINBERG & REIS CO., L.P.A.  
2718 Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
(412) 434-7955

WWR#03389120

FILED  
M 2:05 PM  
Clerk of Court  
E6K

OCT 14 2004

W. A. Shaw  
Clerk

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

CITICAPITAL COMMERCIAL CORP

Plaintiff

vs.

Civil Action No. 04-337-CD

JOSEPH A OWENS

Defendant

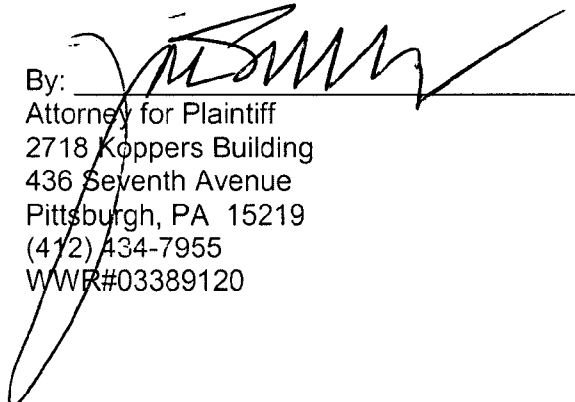
PRAECIPE TO SETTLE, DISCONTINUE  
AND END WITHOUT PREJUDICE TO REFILE

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

SIR:

Settle, Discontinue and End the above-captioned matter upon the records of the Court without prejudice to refile and mark the costs paid.

WELTMAN, WEINBERG & REIS CO., L.P.A.

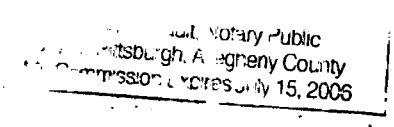
By:   
Attorney for Plaintiff  
2718 Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
(412) 434-7955  
WWR#03389120

SWORN TO AND SUBSCRIBED

before me this 12 day

of October, 2004.

  
NOTARY PUBLIC

  
Notary Public  
Pittsburgh, Allegheny County  
Commission Expires July 15, 2006

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

**CIVIL DIVISION**

**Citicapital Commercial Corp.**

**Vs.**

**No. 2004-00337-CD**

**Joseph A. Owens**

**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 October 14, 2004, marked:

Discontinued, Settled and Ended.

Record costs in the sum of \$125.00 have been paid in full by Atty. Molczan.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of October A.D. 2004.

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William A. Shaw, Prothonotary