

04-385-CD
BARBARA EVANS, et al. vs. CONTINENTAL CONSTRUCTION, INC. et al

Barbara Evans et al vs. Continental Constr.
2004-385-CD

Date: 10/31/2005

Time: 08:59 AM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

Case: 2004-00385-CD

Current Judge: Fredric Joseph Ammerman

Barbara Evans, Shawn Evans vs. Continental Construction, Inc., Sweetland Engineering & Associates Inc.,
Pennsylvania American Water

User: LBENDER

District Justice Appeal

Date		Judge
03/19/2004	X Filing: District Justice Appeals Paid by: Burns, White & Hickton Receipt number: 1875750 Dated: 03/19/2004 Amount: \$85.00 (Check) 2 CC to Atty. Certificate of Service, October 25, 2004 by 1st class mail, to Timothy E. Durant, Esquire; Julia R. Cronin, Esquire; and John M. Steidle, Esquire.	No Judge
03/24/2004	X Affidavit of Service of Rule To File Complaint. filed by, s/John M. Steidle, Esquire no cc	No Judge
- 04/12/2004	X Complaint. filed by, s/Timothy E. Durant, Esquire Verification s/Shawn Evans s/Barbara Evans no cc	No Judge
06/03/2004	X Sheriff Return, Papers served on Defendant, Sweetland Engineering & Associates, Inc. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
09/20/2004	X Preliminary Objections to Plaintiffs' Complaint, filed on behalf of Continental Construction, Inc. by s/John M. Steidle, Esq. No CC	No Judge
10/05/2004	X 1st Amended Complaint, on behalf of Plaintiffs, filed by s/Timothy E. Durant, Esq. 5 CC atty. Durant	No Judge
10/06/2004	X Certificate of Service, Oct. 5, 2004, by 1st class mail 1st Amended Complaint on behalf of the Plaintiffs. Sent to: Counsel for PA American Water Co., Counsel for Continental Construction, and Sweetland Engineering & Associates, INC. Filed by s/Michael Luongo. No CC.	No Judge
10/21/2004	X Praecipe For Entry of Appearance, filed on behalf of Defendant Sweetland Engineering & Associates, Inc. Filed by s/ Paul M. Mannix, Esquire. No CC	No Judge
10/27/2004	X Preliminary Objections to First Amended Complaint, filed on behalf of Defendant Pennsylvania American Water by s/Julia R. Cronin, Esq. One CC Attorney Cronin	No Judge
	X Answer, New Matter and New Matter pursuant to Pa.R.C.P. 2252 (d), on behalf of Defendant: Sweetland Engineering & Associates, Inc. Filed by Paul M. Mannix, Esquire. no CC	Fredric Joseph Ammerman
10/28/2004	X Answer and New Matter to Plff's First Amended Complaint filed by Atty. Steidle. No cc.	No Judge
	X Notice of Service of Answer and New Matter t Plff's first Amended Complaint. filed by Atty. Steidle. No cc.	No Judge
10/29/2004	X Rule To Show Cause, NOW THIS 29th day of October, 2004, upon consideration of Defendant Pennsylvania American Water's Preliminary Objections to Plaintiffs' First Amended Complaint, a Rule is hereby issued upon the Plaintiffs to Show Cause why said Preliminary Objections should not be granted. This rule is returnable for argument on the 10th day of Dec. 2004 at 1:30 p.m. in Courtroom 1 of the Clfd. Co Courthouse. BY THE COURT/s/ Fredric J. Ammerman, Judge. 1 CC Atty Cronin.	Fredric Joseph Ammerman
11/04/2004	X Affidavit Of Service, Rule to Show Cause, on Nov. 3, 2004, by 1st class mail, served upon counsel of record for Plaintiffs and co-defendants, on behalf of Defendant Pennsylvania American Water, filed by s/ Julia R. Cronin, Esquire. No CC.	Fredric Joseph Ammerman
11/22/2004	X Pa. American Water's Reply To New Matter , filed by s/ Julia R. Cronin, Esquire. No CC	Fredric Joseph Ammerman

Civil Disposition Report
CT COMMON PLEAS,All Case Types
From 09/19/2005 to 09/23/2005
All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Date
1995-01672-CD	Commonwealth of Pennsylv Plaintiff Ninosky Trucking Defendant Ninosky, Nicholas Defendant	09/20/2005	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$2,038.79	Writ of Revival	09/20/2005
2002-01621-CD	Commonwealth of Pennsylv Plaintiff Gray, Deborah L. Defendant	09/22/2005	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment:	Satisfied	09/22/2005
2005-00626-CD	Courtesy Motor Sales, Inc. Plaintiff Marko, Sylvia M. Defendant Sovereign Bank Plaintiff	09/19/2005	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$14,644.56 Judgment Amount	Open	09/19/2005
2005-00777-CD	DuBois Regional Medical C Plaintiff Shipe, Dan Defendant Shipe, Deanna J. Plaintiff	09/19/2005	Non Pros In favor of: Defendant Judgment amount or comment:	Non Pros	09/19/2005
2005-00777-CD	Reese, S. Scott MD Plaintiff Shipe, Dan Defendant Shipe, Deanna J. Plaintiff	09/20/2005	Non Pros In favor of: Defendant Judgment amount or comment:	Non Pros	09/20/2005
2005-01042-CD	Ameriquest Mortgage Secur Plaintiff Deutsche Bank National Tru Plaintiff Mooneyham, Graham B. Defendant Mooneyham, Tarin G. Defendant	09/22/2005	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$110,020.73 Judgment Amount	Open	09/22/2005
2005-01042-CD	Ameriquest Mortgage Secur Plaintiff Deutsche Bank National Tru Plaintiff Mooneyham, Graham B. Defendant Mooneyham, Tarin G. Defendant	09/22/2005	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$110,020.73 Judgment Amount	Writ of Executio	09/22/2005

Date: 10/31/2005

Clearfield County Court of Common Pleas

User: LBENDER

Time: 08:59 AM

ROA Report

Page 2 of 2

Case: 2004-00385-CD

Current Judge: Fredric Joseph Ammerman

Barbara Evans, Shawn Evans vs. Continental Construction, Inc., Sweetland Engineering & Associates Inc.,
Pennsylvania American Water

District Justice Appeal

Date		Judge
11/29/2004	X Notice of Service of Reply to PA R.C.P. 2252(d) of Defendant Sweetland Engineering & Associates, Inc, to all counsel of record. Filed by s/ John M. Steidle, Esquire. No CC	Fredric Joseph Ammerman
	X Reply To New Matter Pursuant to Pa R.C..P. 2252(d) of Defendant Sweetland Engineering, filed by s/John M. Steidle, Esquire. No CC	Fredric Joseph Ammerman
12/13/2004	X Order: NOW this 10th day of December, 2004, this being the date set for hearing on the Preliminary Objections filed on behalf of the Defendant PA American water; counsel for the parties involved having indicated they are attempting to resolve their differences; accordingly, the Court will not issue a decision on the Preliminary Objections at this time. The matter will be rescheduled upon request of counsel for any party. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Durant, Stiedle, Mannix, Cronin	Fredric Joseph Ammerman
01/10/2005	X Notice of Service Notice of Deposition of Barbara Evans, on all counsel of record, filed by s/ John M. Steidle, Esquire. No CC	Fredric Joseph Ammerman
	X Notice of Service Notice of Deposition of Shawn Evans, upon all counsel of record, filed by s/ John M. Steidle, Esquire. No CC	Fredric Joseph Ammerman
01/24/2005	X Filing: Judgment Paid by: Mannix, Paul M. (attorney for Sweetland Engineering & Associates Inc.) Receipt number: 1894214 Dated: 01/24/2005 Amount: \$20.00 (Check)Notice to Plff. Stmt. to Def. Sweetland Engineering & Associates, Inc. Judgment of Non Pros entered against Plff.	Fredric Joseph Ammerman
03/28/2005	X Continental Construction, Inc.'s, Motion for Summary Judgment and Proposed Order, filed by Atty. Steidle 1 Cert. to Atty.	Fredric Joseph Ammerman
03/30/2005	X Order, AND NOW, this 29th day of March, 2005, it is the ORDER of the Court that argument on Atty. Steidle's Motion for Summary Judgment filed in the above-captioned matter has been scheduled for the 29th day of April, 2005 at 10:30 A.M. in Courtroom 1. BY THE COURT: /s/ Fredric J. Ammerman, Esquire. 4CC & Memo Re: service to Atty Steidle	Fredric Joseph Ammerman
04/04/2005	X Affidavit of Service, Defendant Continental Construction, Inc.'s Motion for Summary Judgment, Brief in Support and Court Scheduling Order upon all counsel of record, filed by s/John M. Steidle, Esq. No CC	Fredric Joseph Ammerman
04/05/2005	X Miscellaneous Filing, Letter addressed to Judge Ammerman from Jeffrey A. Kubay, Esquire. No CC	Fredric Joseph Ammerman
04/29/2005	X Reply to Motion for Summary Judgment, filed by s/ Timothy Durant, Esquire. 3CC Atty Durant	Fredric Joseph Ammerman
06/06/2005	X Order, NOW, this 6th day of June, 2004 after oral argument and the submission of briefs on Continental Construction, Inc.'s Motion for Summary Judgment, the Court Denies said Motion. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Duran, J. Steidle, P. Mannix, and J. Cronin.	Fredric Joseph Ammerman
07/05/2005	X Defendant Pennsylvania American Water's Answer and New Matter to Plaintiffs' First Amended Complaint, filed by s/ Julia R. Cronin, Esquire. No CC	Fredric Joseph Ammerman
07/11/2005	X Praeipce To Amend Exhibit, filed by s/ Tracey G. Benson, Esquire. No CC	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas
Civil Disposition Report
CT COMMON PLEAS,
All Case Types
From 09/19/2005 to 09/23/2005
All Judgment Types

User: LBENDER

Case	Parties	Filing date	Judgment	Disposition	Date
2005-01451-CD	Ford Motor Credit Company Plaintiff Lixey, Gary D. Defendant Lixey, Verna M. Defendant Internal Revenue Service Plaintiff Mollica, Robert J. Defendant Miller, Sharon Defendant Ridgeview Elder Care Plaintiff	09/19/2005	Foreign Judgment In favor of: Plaintiff Judgment amount or comment: \$5,606.04	Open	09/19/2005
2005-01453-CD	IRS Lien In favor of: Plaintiff Judgment amount or comment: \$39,413.36	09/19/2005	Open	09/19/2005	
2005-01465-CD	DJ Transcript In favor of: Plaintiff Judgment amount or comment: \$8,113.50	09/22/2005	Open	09/22/2005	

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

vs.

**CONTINENTAL CONSTRUCTION, INC. ,
PENNSYLVANIA AMERICAN WATER
COMPANY, and PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

Defendants.

04-385-0
Civil Action No. ~~CV-71-04~~

**DEFENDANTS NOTICE OF APPEAL
FROM DISTRICT JUSTICE JUDGMENT
and PRAECIPE TO ENTER RULE TO
FILE A COMPLAINT**

Filed on Behalf of Defendants:
Continental Construction, Inc.

Counsel of Record for Defendants:
John M. Steidle, Esquire
PA ID # 84404

Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Firm ID # 828

FILED

MAR 19 2004

**William A. Shaw
Prothonotary**

**DEFENDANTS NOTICE OF APPEAL FROM DISTRICT JUSTICE JUDGMENT
COMMON PLEAS CASE NO. AR-**

Barbara Evans, 3123 Old Erie Pike, West Decatur, PA 16878

Plaintiff(s) name and address

Continental Construction, Inc., PO Box 126, Ridgeway, PA 15853

Defendant(s) name and address

John M. Steidle, Esq. of Burns, White & Hickton on behalf of Continental
Name of appellant(s) (People or company filing this appeal) Construction, Inc.

Michael A. Rudella

Name of District Justice

CV-0000071-04

District Justice case number

3/12/04

District Justice Hearing Date

This block will be signed only when this notation is required under Pa. R.C.P.J.P. No. 1008B.

This Notice of Appeal, when received by the District Justice will operate as a SUPERSEDEAS to the judgment for possession in this case.

If Appellant was Claimant (see Pa. R.C.P.J.P. No. 1001(6)) in action before District Justice, he/she/it MUST FILE A COMPLAINT within twenty (20) days after filing his/her NOTICE OF APPEAL.

Signature of Prothonotary or Deputy

**PRAECIPE TO ENTER RULE TO FILE A COMPLAINT
TO PROTHONOTARY:**

Enter rule upon Barbara Evans

plaintiff(s)

to file a complaint in this appeal within twenty (20) days after the date of service of this rule by the Prothonotarys Office.



Signature of appellant or attorney

RULE: To Barbara Evans

plaintiff(s)

- 1. You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule.**
- 2. If you do not file a complaint within this time, A JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.**
- 3. The date of service of this rule is the MAIL DATE.**

mail date

Filing Date & Signature of Prothonotary or Deputy

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-03**
DJ Name: Hon. **MICHAEL A. RUDELLA**
Address: **131 ROLLING STONE ROAD**
P.O. BOX 210
KYLERTOWN, PA
Telephone: **(814) 345-6789** **16847-0444**

ATTORNEY DEF PRIVATE :

JOHN STEIDLE
120 FIFTH AVE. APT/STE 2400
PITTSBURGH, PA 15222

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF: **EVANS, BARBARA**
3123 OLD ERIE PIKE
WEST DECATUR, PA 16878
NAME and ADDRESS

VS.
DEFENDANT: **PA AMERICAN WATER, ET AL.**
800 W. HERSHEY PARK DR.
HERSHEY, PA 17033
NAME and ADDRESS

Docket No.: **CV-0000071-04**
Date Filed: **2/20/04**



THIS IS TO NOTIFY YOU THAT:

Judgment: **FOR PLAINTIFF**

☒ Judgment was entered for: (Name) **EVANSBARBARA**

☒ Judgment was entered against: (Name) **CONTINENTAL CONSTRUCTION, INC**

in the amount of \$ **4,126.50** on: (Date of Judgment) **3/12/04**

☐ Defendants are jointly and severally liable. (Date & Time) _____

☐ Damages will be assessed on:

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to
Attachment/42 Pa.C.S. § 8127 \$ _____

☐ Portion of Judgment for physical
damages arising out of residential
lease \$ _____

Amount of Judgment	\$ 4,000.00
Judgment Costs	\$ 126.50
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 4,126.50
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
	=====
Certified Judgment Total	\$ _____

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR DISTRICT JUSTICES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE DISTRICT JUSTICE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE DISTRICT JUSTICE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

3-12-04 Date **MA Rudella**, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

Date _____, District Justice

My commission expires first Monday of January, **2006**.

SEAL

FILED

M 11:47 AM 12 85 90
222 to Adm. Shide

MAR 19 2004

William A. Shaw
Prothonotary

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

Civil Action No. 04-385-CD

VS.

**AFFIDAVIT OF SERVICE OF RULE TO
FILE COMPLAINT**

**CONTINENTAL CONSTRUCTION, INC. ,
PENNSYLVANIA AMERICAN WATER
COMPANY, and PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

Defendants.

Filed on Behalf of Defendants:
Continental Construction, Inc.

Counsel of Record for Defendants:
John M. Steidle, Esquire
PA ID # 84404

Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Firm ID # 828

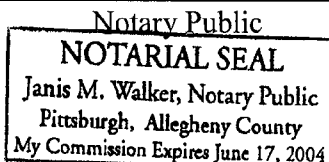
FILED

MAR 24 2004

6/10:30am
William A. Shaw

Prothonotary/Clerk of Courts

NO CFM.



2

FILED

MAR 24 2004

William A. Shaw
Prothonotary/Clerk of Courts



OFFICE OF THE
PROTHONOTARY
CLERK OF COURTS
JANUARY 2004

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or PO Box No. 3123 Old Erie Pike
City, State, ZIP+4 West Decatur, PA 16878

PS Form 3800, June 2002 See Reverse for Instructions

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IMPORTANT: Save this receipt and present it when making an inquiry.
Internet access to delivery information is not available on mail addressed to APOs and FPOs.

PS Form 3800, June 2002 (Revised)

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

SHAWN EVANS and BARBARA EVANS,
Husband and Wife

Plaintiffs,

No. 2004-385-CD

vs.

COMPLAINT

CONTINENTAL CONSTRUCTION, INC.,
and **SWEETLAND ENGINEERING &**
ASSOCIATES, INC., and **PENNSYLVANIA**
AMERICAN WATER

Defendants

Filed on behalf of:
SHAWN EVANS and BARBARA
EVANS, Plaintiffs

Counsel of Record for Plaintiffs

TIMOTHY E. DURANT, ESQ.
PA I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel For PA American
Water Co.

JULIA R. CRONIN, ESQ.
Miller, Kistler, Campbell, Miller,
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Opposing Counsel for Continental
Construction

JOHN M. STEIDLE, ESQ.
PA I.D. No. 84404
Burns, White & Hickton, LLC
120 Fifth Ave., Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Opposing Counsel for Sweetland
Engineering & Associates, Inc.

Unknown

FILED

APR 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

SHAWN EVANS and BARBARA EVANS,
Plaintiffs

No. 2004-385-CD

vs.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER**

Defendants

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TO ALL DEFENDANTS:

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 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 and for any other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

SHAWN EVANS and BARBARA EVANS,
Plaintiffs

vs.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER**
Defendants

No. 2004-385-CD

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COMPLAINT

1. Plaintiffs **SHAWN EVANS and BARBARA EVANS**, are husband and wife who currently reside in Boggs Township, Clearfield County, with an address of 3123 Old Erie Pike, West Decatur, PA 16878.

2. Defendant **CONTINENTAL CONSTRUCTION, INC.**, (hereinafter "Continental") is a corporation believed to be organized and existing under the laws of the Commonwealth of Pennsylvania having a place of business located in Elk County, Pennsylvania with a mailing address of PO Box 126, PO Box 126 Johnsonburg Road, Ridgway, PA 15853

3. Defendant **SWEETLAND ENGINEERING & ASSOCIATES, INC.**, (hereinafter "Sweetland") is a corporation believed to be organized and existing under the laws of the Commonwealth of Pennsylvania having a place of business located in Centre County, Pennsylvania with a mailing address of 600 Science Park Road State College, PA 16803

4. Defendant **PENNSYLVANIA AMERICAN WATER** (hereinafter "PA American") is a corporation believed to be organized and existing under the laws of the Commonwealth of Pennsylvania having a place of business located in Dauphin County, Pennsylvania with a mailing address of 800 West Hershey Park Drive, Hershey, PA 17033.

5. By deed dated June 26th 2000 and recorded in Clearfield County Recorder's Office as Instrument No. 2000-09009 on June 27, 2000 The Plaintiffs' became the owners of a house and two parcels of land located in Boggs Township, Clearfield County, Pennsylvania identified as tax parcel ID # 105-011-577-16 and # 105-011-577-17, a copy of said deed is attached hereto as Exhibit "A" and incorporated herein by reference as if set out in full.

6. On or about November 12, 1998 Wallaceton-Boggs Municipal Authority contracted with Sweetland to design the construction and installation of a sanitary sewer line for the Authority which ultimately crossed the plaintiffs' land and damaged their basement drain system at or about what has been designated, Manhole No. AE-5.

7. On or about June 21, 2000 Wallaceton-Boggs Municipal Authority contracted with Continental as the lowest bidder to construct and install the sanitary sewer line for the Authority.

8. On August 29, 2000 the Plaintiffs granted an easement and perpetual right-of-way to the Wallaceton-Boggs Municipal Authority for the installation of a sanitary sewer line., a copy of the Grant of Easement and Map outlining the right-of-way are attached hereto as Exhibits "B" and "C" respectively and incorporated herein as if set out in full. The Map shown as Exhibit "C" shows in the upper right corner a Manhole designated as AE-5.

9. On or about the fall of 2001 Continental installed a sanitary sewer line along the right-of-way across the land of the Plaintiffs' described in Exhibit "A" and along the road in front of the plaintiffs through and including what has been designated Manhole AE-5.

10. The said sanitary sewer line as engineered by Sweetland and constructed by Continental ultimately crossed the plaintiffs' land and damaged their basement drain system at or about what has been designated, Manhole No. AE-5 and a prior to a point where said drain empties into a small stream across from plaintiffs' house and North of SR 2024.

11. The design and construction were defective and performed in a negligent manner by Sweetland and Continental in that they failed to account for or failed to take care of the existing basement drain of plaintiffs and the construction collapsed the terra-cotta drain line and made it non-

functional such that thereafter, each time water infiltrated the plaintiff's basement it failed to drain out the front of the basement and into the stream as it was designed to do and as it had done previous to the construction.

12. Prior to the construction by Continental the water in plaintiffs' basement drained properly and adequately through the floor drain in their basement, into a terra cotta pipe and thence under SR 2024 into a small stream to the North of their house.

13. On or about 2001 or 2002 PA American installed new water lines which crossed the plaintiffs' basement drain system prior to where it empties into a small stream across from their house and North of SR 2024.

14. It is believed and therefore averred that the construction of the water lines contributed to the failure of the plaintiffs' basement drain to function as it had before such construction.

15. In the fall of 2001, as a result of heavy rains, the basement in the Plaintiffs' residence began to fill with water, to such an extent as to require them to purchase a sum pump to remove the water from the basement.

16. On December 19, 2001 Plaintiffs' hired a Roto-Rooter technician to see if the drain line from the basement could be opened,

17. The Roto-Rooter technician determined that the drain was blocked approximately 20 feet in or up (i.e. South) from the small stream and in an area near to where the sewer line was installed, in proximity to Manhole AE-5. He further determined that the terra-cotta pipe was crushed and or broken and rocks (crushed stone) would keep falling into the drain as he tried to clear it.

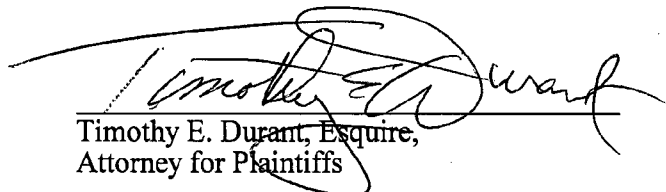
18. Attached is a copy of the determination by the Roto-Rooter technician and marked as Exhibit "D" and incorporated herein by reference as if set out in full. The cost for said evaluation was \$130.00.

19. Every heavy rain resulted in a repeat of the water build-up in plaintiffs' basement and required them to expend time and energy and on occasion required them to take a day off of work to avoid damage to their furnace.

20. After finding no relief from the water build-up plaintiffs' called Bowman Masonry (hereinafter Bowman) for assistance. Upon reviewing the situation ,Bowman determined that the solution would require a water removal system costing \$8,000.00. A copy of the Proposal from Bowman, dated January 21, 2004 is attached hereto, marked as Exhibit "E" and incorporated herein as if set out in full.

21. This complaint is filled in response to an appeal from the decision of District Magistrate Rudella by Continental. All costs incurred in District Justice matter are herein sought as additional legal costs by plaintiffs.

WHEREFORE, plaintiffs, **SHAWN EVANS** and **BARBARA EVANS**, demand judgment against defendants in the amount of \$8,130.00, plus costs at District Justice level and in this action.



Timothy E. Durant, Esquire,
Attorney for Plaintiffs

DATE:

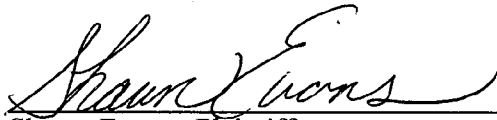
4/22/04

VERIFICATION

We, **SHAWN EVANS** and **BARBARA EVANS**, verify that the statements made in this Complaint are true and correct to the best of our knowledge, information and belief. Plaintiffs understands that false statements herein are made subject to the penalties of 18 Pa .C. S. §4904, relating to unsworn falsification to authorities.

Dated:

4/8/04



Shawn Evans, Plaintiff

Dated:

4/8/04



Barbara Evans, Plaintiff

MAIL TO:
DAVID R. THOMPSON
Attorney at Law
P.O. Box 587
Phillipsburg PA 16866

THIS DEED

MADE, this 26 day of June, in the year two thousand
(2000).

BETWEEN JAMES J. DOBO and DENISE L. DOBO, his wife, currently of
RR 1, West Decatur, Pennsylvania, 16878, **GRANTORS** and Parties of the First
Part,

A

N

D

SHAWN P. EVANS AND BARBARA A. EVANS, his wife, currently of RD 1
Box 612, Morrisdale, as Tenants by the Entireties, **GRANTEES** and Parties of the
Second Part,

W I T N E S S E T H: That for and in consideration of the sum of **SIXTY**
TWO THOUSAND DOLLARS AND NO/100 (\$62,000.00) DOLLARS, in hand
paid, the receipt whereof is hereby acknowledged, the said **GRANTORS** do hereby
grant and convey to the said **GRANTEES**, their heirs and assigns,

ALL those certain pieces or parcels of land situate in Boggs Township,
Clearfield County, Pennsylvania, bounded and described as follows, to wit:

THE FIRST THEREOF: BEGINNING at a stone corner on Erie Turnpike;

thence along land now or formerly of Alice Haines S 61 3/4° E 10' to stone corner; thence along land now or formerly of Christine Flegal S 28 1/4° W to stone corner; thence along land of now or formerly Christine Flegal N 61 3/4° W 10' to stone corner on Erie Turnpike; thence along said turnpike N 28 1/4° E to stone corner on place of beginning and containing 40 perches.

THE SECOND THEREOF: BEGINNING at the corner of land now or formerly known as Allen Kline's lot; being the northwest corner on Erie Turnpike; thence South along land now or formerly known as Allen Kline's lot one hundred sixty-five feet, more or less; thence West seventy-five feet to line of land now or formerly of William Thompson, more or less; thence North one hundred and sixty-five feet to post at a run on Erie Turnpike; more or less; thence East sixty feet to corner of land now or formerly known as Allen Kline's lot, more or less, to the place of beginning, containing about one-third acre, more or less.

BEING further identified as tax parcels 105-011-577-16 and 105-011-577-17 in the tax assessment records of Clearfield County.

BEING the same premises as vested unto the Grantors herein by deed of Dennis B. Straw and Gladys Straw, his wife, dated October 21, 1998 and recorded in Clearfield County Recorder's Office in Deed Book 1978 at Page 500.

TOGETHER, with all and singular the building and improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title and interest, property, claim and demand whatsoever of the said Grantors, their heirs and assigns, in law, equity, or otherwise, howsoever, in and to the same, and every party thereof.

TO HAVE AND TO HOLD the said lot or piece of ground above described, with the messuage and tenement thereon erected, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the Grantees, their heirs and assigns, to and for the only proper use and behoof of the said Grantees, their heirs and assigns, forever.

UNDER SUBJECT, NEVERTHELESS, to all exceptions, reservations, conditions and restrictions as containing in prior Deeds in the chain of title.

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200009009

RECORDED ON

JUN 27, 2000
1:33:56 PM

RECORDING FEES - \$13.00

RECORDER
COUNTY IMPROVEMENT FUND \$1.00

RECORDER
IMPROVEMENT FUND \$1.00

STATE TRANSFER
TAX \$620.00

STATE WRIT TAX \$0.50

BOGGS TOWNSHIP
PHILIPSBURG-OSCED \$310.00

SCHOOLS
TOTAL \$1,255.50

C. Thompson

EXHIBIT A - Pg. 2 of 4

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966" I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

x Shawn Evans
x Barbara Evans

This _____ day of _____

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL, AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This Notice is set forth pursuant to Act No. 255, approved September 10, 1965, as amended.)

AND the said Grantors will **SPECIALLY WARRANT AND FOREVER DEFEND** the property hereby conveyed.

IN WITNESS WHEREOF, said Grantors has hereunto set their hands and seals, the day and year first above written.

SEALED AND DELIVERED IN THE
PRESENCE OF:

James J. Dobo

Denise L. Dobo

CERTIFICATE OF RESIDENCE

I hereby certify that the precise residence of the Grantees herein is as follows:

FL1 Box 435
West Decatur, PA 16878

Attorney for Grantees

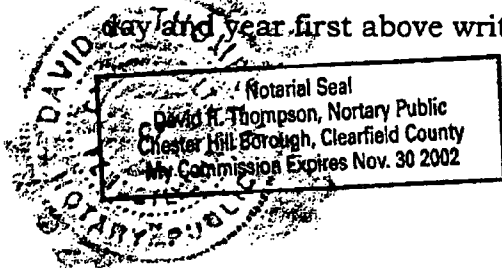
COMMONWEALTH OF PENNSYLVANIA

COUNTY OF *Clearfield*

SS:

On this, the 26 day of June, 2000, before me, a Notary Public, personally appeared **JAMES J. DOBO AND DENISE L. DOBO**, his wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Notary Public

GRANT OF EASEMENT

For good, valuable and sufficient consideration, receipt of which is acknowledged, and intending to be legally bound, the **SHAWN EVANS and BARBARA EVANS**, hereinafter singularly, jointly and/or collectively referred to as GRANTOR, does hereby grant, bargain, sell, transfer and convey unto **THE WALLACETON-BOGGS MUNICIPAL AUTHORITY**, hereinafter referred to as GRANTEE, its successors and assigns, a perpetual easement and right of way upon, under and across the real property of GRANTOR situate in **BOGGS TOWNSHIP**, Clearfield County, Commonwealth of Pennsylvania, more fully described in that deed to GRANTOR recorded in the Office of the Recorder of Clearfield County at Instrument No. 200009009.

The easement and right of way hereby conveyed shall be described as follows:

ALL those certain strips of land ten (10) feet in width on either side of the centerline of the facilities to be constructed, as is generally shown on plans thereof annexed hereto and incorporated herein by reference.

The right of way, easement, rights, and privileges herein granted shall be used for the purpose of placing, constructing, operating, repairing, maintaining, rebuilding, replacing, relocating, and removing sewage facilities over, under, across, upon and through the real property of GRANTOR.

GRANTEE shall have the right to use so much of the surface of the real property of the GRANTOR as may be reasonably necessary to construct and install within the easement and right of way granted hereby the facilities contemplated by this grant. Upon the completion of such construction and installation, and subsequent repair, GRANTEE shall restore any damage to the real property of GRANTOR. In addition, GRANTEE shall have the right to ingress and regress over the real property of GRANTOR for maintenance of the facilities within the easement and right of way granted herein.

GRANTOR shall warrant specially the easement rights and privileges herein conveyed unto GRANTEE, its successors and assigns.

GRANTOR agrees not to construct or locate any structure within the easement or otherwise restrict, obstruct, or prejudice GRANTEE'S access to the facilities within the easement.

The easement, rights, and privileges granted herein are exclusive and GRANTOR shall not convey any other easement or conflicting rights within the area covered by this grant without the consent of the GRANTEE, which consent shall not be unreasonably withheld.

The grant and other provisions of this easement shall constitute a covenant running with the land for the benefit of the GRANTEE, its successors and assigns.

IN WITNESS WHEREOF, this instrument is executed this 29th day of August, 2000.

Shawn Evans (SEAL)

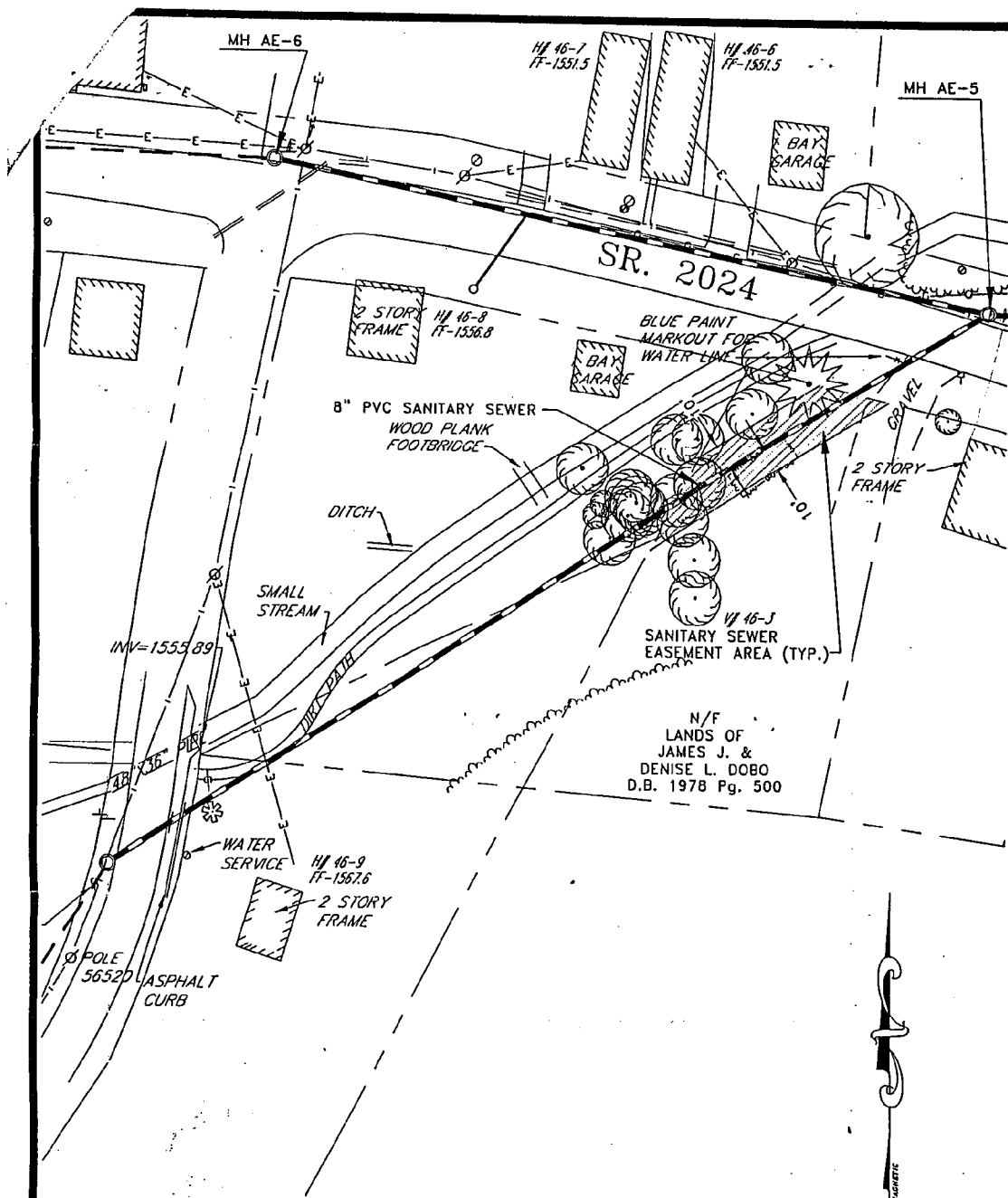
Barbara Evans (SEAL)

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF Clearfield }

On this, the 29th day of August, 2000, before me, the undersigned authority, personally appeared Shawn & Barbara Evans, known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained.

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

Bernadette C. Robbins
Notary Public



NOTE:
PROPERTY LINES SHOWN ARE APPROXIMATE.

TAX MAP NO.: 011 - ENLARG. 577
TAX PARCEL NO.: 17
DEED-898K: 200009009 RAGE:
PROPERTY OWNER(S):
Shawn and Barbara Evans
ADDRESS: R.R. #1
BOX 435
WEST DECATUR, PA 16878
EASEMENT AREA: 1,642 S.F. ±
EASEMENT LENGTH: 109 L.F. ±

LEGEND	
	PROPOSED SAN. SEWER LINE
	PROPOSED SAN. SEWER MANHOLE
	EXIST. SAN. SEWER LINE
	EXISTING DITCH/CATCH BASIN
	EXISTING WATER LINE
	EXISTING FIRE HYDRANT
	EXISTING GAS LINE
	EXISTING BUILDING/HOUSE
	PROPERTY LINE OR R.O.W. LINE
	TAX MAP/PARCEL NUMBERS
	EXISTING RETAINING WALL
	EXISTING CULVERT/STORM SEWER PIPE
	EXISTING FENCE
	EXISTING GLADE RAIL
	EXISTING SIGN
	EXISTING UTILITY POLE
	EXISTING POSTS
	EXISTING MANHOLE
	EXISTING MISC. TREES/SHRUBS/HEDGES
	EXISTING TREE LINE
	EXISTING STABILIZED/GRAVEL/STONE ROAD
	EXISTING PAVED ROADWAY

DRAFT SHOWING
PERMANENT RIGHT-OF-WAY EASEMENT
TO BE ACQUIRED BY
WALLACETON-BOGGS MUNICIPAL AUTHORITY
FROM

SHAWN & BARBARA EVANS
WALLACETON BOROUGH - BOGGS TOWNSHIP
CLEARFIELD COUNTY, PENNSYLVANIA

SWEETLAND ENGINEERING
& ASSOCIATES, INC.
Consulting Engineers & Surveyors
800 Science Park Road
State College, Pennsylvania 16803
PH: (814) 237-8510 FAX: (814) 237-1489

DRAWN BY: LDH	SCALE: 1" = 50'
CHECKED BY: THW	V#46-3
DATE: 10-15-99	PROJECT NO: 3334



MAIL TO: 212 TREASURE LAKE • DuBOIS, PA 15801

BROOKVILLE
849-4313PUNXSUTAWNEY
938-6339DuBOIS
375-5657CLEARFIELD-
PHILIPSBURG
765-8856

Saan Evans
1221, BOX 435
West Decatur

No. 6945

JOB LOCATION		(STREET)	CITY
Same			
LINE CLEANED	LOCATION		
Basement Drain	Stream across Road		
APPROX. LENGTH OF LINE	NUMBER OF FEET CLEANED		
—	20'		
DIAMETER OF LINE	BLADES USED		
4"	Nozzles		
SIZE OF CABLE	CLEAN OUT LOCATION		
1/2" Horizon Hammer	E.O.P. above Creek		
CAUSE OF STOPPAGE			
Pipe is crushed and/or broken about 20' up line. Rocks keep falling into pipe.			
CUSTOMER SIGNATURE		TELEPHONE NUMBER	
Rick 1325		342-7650	
OTHER SERVICES PERFORMED		AMOUNT \$	
Location where rocks are falling into line is marked		130.00	
DATE 12-19-01 Fred & Donald		TOTAL 130.00	

TERMS: PAYABLE UPON COMPLETION OF JOB.
FINANCE CHARGE OF 1.5% PER MONTH, OR AN ANNUAL RATE
OF 18% IS APPLIED TO PAST DUE BALANCE OVER 30 DAYS.
ORIGINAL - CUSTOMER COPY MANILLA - OFFICE COPY

FAX 343-0787

FILE

BOWMAN MASONRY

1993 Turnpike Ave. Ext. [REDACTED]
Clearfield, PA 16830
(814) 765-6095

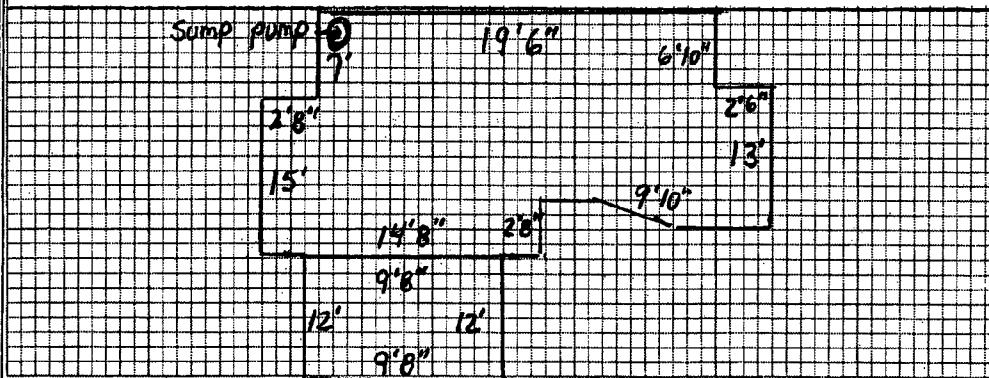
FILE

PROPOSAL SUBMITTED TO Shawn & Barb Evans	PHONE (HOME) (814) 342-7650	DATE BID Jan. 21, 2004
STREET 3123 Old Erie Pike	PHONE (WORK)	JOB NAME
CITY, STATE AND ZIP CODE West Decatur, PA. 16878	JOB LOCATION	

WE will break the concrete out all the way around the inside perimeter appx 7" from the wall and haul away. Appx 137' of Water Guard will be installed, A 1/2 H.P. sump pump and an emergency back up pump.

We hereby submit specifications and estimates

Wall Opening to cut: <input type="checkbox"/> Block Wall <input type="checkbox"/> Wood Wall <input type="checkbox"/> Other _____ Type of Wall: <input checked="" type="checkbox"/> Block <input type="checkbox"/> Pour Concrete <input type="checkbox"/> Brick <input checked="" type="checkbox"/> Other Stone	Type of Wall Finish: <input checked="" type="checkbox"/> Plain <input type="checkbox"/> Paneling <input type="checkbox"/> Plaster Board <input type="checkbox"/> Other _____ Type of Floor Finish: <input checked="" type="checkbox"/> Concrete <input type="checkbox"/> Tile <input type="checkbox"/> Carpeting <input type="checkbox"/> Other _____ Obstacles to go around: <input type="checkbox"/> Soil Pipe <input type="checkbox"/> Pilaster <input type="checkbox"/> Hot Water Heater <input checked="" type="checkbox"/> Other oil tank
System to drain into: <input checked="" type="checkbox"/> Sump Pump <input type="checkbox"/> Floor Drain <input type="checkbox"/> Sump Pump (To be installed by owner) <input type="checkbox"/> Other _____	



Qty	Material	Price
	Base Board	
	1/2 Round	
1	Sump Pump	
	Floor Crack	
Appx 137'	Water Guard	
1	Back up pump	

Installation of this system will not eliminate moisture caused by condensation, and will not eliminate seepage in floor cracks. Any leaks in the system if reported within five years of installation will be repaired without charge. Any Service Calls which are not leaks in the system, will be charged at the rate of \$50.00 minimum, and \$25.00 per man hour, plus cost of material used. Installation of the system does not include painting of the system, any finished carpentry, replacing floor tile or carpeting.

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

Eight Thousand dollars(\$ **8,000.00**)

Payment to be made as follows:

Upon Completion of job unless otherwise specified. ☒

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature _____

Cary Bowman

Note: This proposal may be withdrawn by us if not accepted within **180** days.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Signature _____

Date of Acceptance: _____

EXHIBIT "E" Pg. 1 of 1

FILED
03:58:24
APR 12 2004

William A. Shaw

Prothonotary/Clerk of Courts

1 Court to Signature

WAC

WAC

In The Court of Common Pleas of Clearfield County, Pennsylvania

EVANS, SHAWN & BARBARA

VS.

Sheriff Docket # 15436

04-385-CD

CONTINENTAL CONSTRUCTION, INC. al

COMPLAINT

SHERIFF RETURNS

NOW APRIL 14, 2004 DENNY NAU, SHERIFF OF CENTRE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON SWEETLAND ENGINEERING & ASSOCIATES, INC., DEFENDANT.

NOW APRIL 19, 2004 SERVED THE WITHIN COMPLAINT ON SWEETLAND ENGINEERING & ASSOCIATES INC., DEFENDANT BY DEPUTIZING THE SHERIFF OF CENTRE COUNTY. THE RETURN OF SHERIFF NAU IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED AGENT FOR DEFENDANT.

Return Costs

Cost	Description
30.37	SHERIFF HAWKINS PAID BY: ATTY CK# 5116
10.00	SURCHARGE PAID BY: ATTY CK# 12162
32.50	CENTRE CO. SHFF. PAID BY: ATTY CK# 5115

Sworn to Before Me This

3rd Day Of June 2004
William A. Shaw

So Answers,

Chester A. Hawkins
by Marilyn Hamer
Chester A. Hawkins
Sheriff

FILED

JUN 03 2004

0110:46 am
William A. Shaw
Prothonotary WAS

15436

SHERIFF'S OFFICE

CENTRE COUNTY

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

SHERIFF SERVICE PROCESS RECEIPT, AND AFFIDAVIT OF RETURN	INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. please type or print legibly. Do Not detach any copies.
---------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------

1. Plaintiff(s) <u>Shawn Evans + Barbara Evans</u>	2. Case Number <u>04-385-CD</u>
3. Defendant(s) <u>Sweetland Engineering & Assoc.</u>	4. Type of Writ or Complaint: <u>Complaint</u>
5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold. <u>Sweetland Engineering & Assoc.</u>	
6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code) <u>600 Science Park Rd State College PA 16801</u>	
SERVE → AT	
7. Indicate unusual service: <input type="checkbox"/> Reg Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Deputize <input type="checkbox"/> Post <input type="checkbox"/> Other	

Now, _____ 20____. I SHERIFF OF CENTRE COUNTY, PA., do hereby deputize the Sheriff of _____ County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. _____
Sheriff of Centre County

8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

9. Print/Type Name and Address of Attorney/Originator	10. Telephone Number	11. Date
12. Signature		

SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE			
13. I acknowledge receipt of the writ or complaint as indicated above.	SIGNATURE of Authorized CCSD Deputy of Clerk and Title	14. Date Filed	15. Expiration/Hearing Date

TO BE COMPLETED BY SHERIFF	
16. Served and made known to <u>Rob Radin</u> , on the <u>19</u> day of <u>April</u> , 20 <u>04</u> , at <u>11:40</u> o'clock, <u>PM</u> , at <u>600 Science Park Rd State College PA 16801</u> , County of Centre Commonwealth of Pennsylvania, in the manner described below:	
<input type="checkbox"/> Defendant(s) personally served. <input type="checkbox"/> Adult family member with whom said Defendant(s) resides(s). Relationship is _____ <input type="checkbox"/> Adult in charge of Defendant's residence. <input type="checkbox"/> Manager/Clerk of place of lodging in which Defendant(s) resides(s). <input checked="" type="checkbox"/> Agent or person in charge of Defendant's office or usual place of business. <input type="checkbox"/> _____ and officer of said Defendant company. <input type="checkbox"/> Other _____	

On the _____ day of _____, 20____, at _____ o'clock, _____ M.
Defendant not found because:
☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other _____

Remarks:

Advance Costs	Docket	Service	Sur Charge	Affidavit	Mileage	Postage	Misc.	Total Costs	Costs Due or Refund
<u>75.00</u>	<u>5.00</u>	<u>5.00</u>	<u>7.00</u>	<u>2.50</u>	<u>10.00</u>	<u>1.00</u>	<u>1.00</u>	<u>32.50</u>	<u>42.50</u>

17. AFFIRMED and subscribed to before me this <u>19</u>	So Answer.	
20. day of <u>May</u> 20 <u>04</u>	18. Signature of Dep. Sheriff <u>Ammon D. Balle</u>	19. Date <u>4/29/04</u>
23. <u>Caroline Peters</u> Notary Public	21. Signature of Sheriff	22. Date
SHERIFF OF CENTRE COUNTY		
Amount Pd. _____ Page _____		
24. I ACKNOWLEDGE RECEIPT OF THIS SHERIFF'S RETURN SIGNATURE My Commission Expires Sept. 5, 2005	25. Date Received	



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

#446
OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

ROBERT SNYDER
CHIEF DEPUTY

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 15436

SHAWN EVANS & BARBARA EVANS

TERM & NO. 04-385-CD

VS

DOCUMENT TO BE SERVED:

COMPLAINT

CONTINENTAL CONSTRUCTION INC. al

SERVE BY: 05/12/2004

MAKE REFUND PAYABLE TO: TIMOTHY E. DURANT, ESQ.

SERVE: SWEETLAND ENGINEERING & ASSOCIATES, INC.

ADDRESS: 600 SCIENCE PARK ROAD, STATE COLLEGE, PA. 16803

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF
CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF
CENTRE COUNTY, Pennsylvania to execute this writ. This
Deputation being made at the request and risk of the Plaintiff this 14th Day of
APRIL 2004

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

2691-AA
25 RV

Amended
Comp Filed

011

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

vs.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

Civil Action No. 04-385-CD

**PRELIMINARY OBJECTIONS TO
PLAINTIFFS' COMPLAINT**

Filed on Behalf of Defendant:
Continental Construction, Inc.

Counsel of Record for Defendant:
John M. Steidle, Esquire
PA ID # 84404

Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Firm ID # 828

FILED

m/9:31/10 cc
SEP 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

Civil Action No. 04-385-CD

VS.

**CONTINENTAL CONSTRUCTION, INC. ,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

PRAECIPE FOR ARGUMENT

TO: Court Administrator

Please place Defendant's, Continental Construction, Inc.'s, Preliminary Objections to
Plaintiffs' Complaint on the next available argument list.

Respectfully submitted,

BURNS, WHITE & HICKTON

BY: 

John M. Steidle, Esquire
Attorney for Defendant
Continental Construction, Inc.

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

Civil Action No. 04-385-CD

VS.

**CONTINENTAL CONSTRUCTION, INC. ,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

AND NOW, comes Defendant, Continental Construction, Inc. by and through their attorneys, Burns, White & Hickton, John M. Steidle, Esquire, and files the within Preliminary Objection to Plaintiffs' Complaint averring as follows:

**I. PRELIMINARY OBJECTION IN THE NATURE OF A MOTION TO STRIKE OR IN
THE ALTERNATIVE A MOTION FOR A MORE SPECIFIC PLEADING PURSUANT
TO Pa. R.C.P. 1028 (a)(2)**

1. Plaintiffs commenced this action by the filing of a Complaint in the Magistrate's District Court 46-3-03 in Clearfield County, State of Pennsylvania, Docket No. CV-0000071-04.
2. A hearing was held before District Justice Rudella on *March 12, 2004*.
3. District Justice Rudella entered a judgment on *March 12, 2004* against Continental Construction, Inc.

4. Defendant Continental Construction, Inc. filed a Notice of Appeal and a Praecipe to Enter a Rule to File a Complaint on *March 19, 2004*.

5. In response to the Rule, Plaintiffs filed a Complaint on April 12, 2004. Plaintiffs' Complaint is attached hereto and incorporated herein as Exhibit "A".

6. Plaintiffs have named Continental Construction, Inc., Sweetland Engineering and Associates, Inc., and Pennsylvania American Water as Defendants.

7. Paragraph 10 of Plaintiffs' Complaint provides as follows:

*The said sanitary sewer line as **engineered by Sweetland and constructed by Continental** ultimately crossed the plaintiffs' land and damaged their basement drain system at or about what has been designated, Manhole No. AE-5 and prior to a point where said drain empties into a small stream across from plaintiffs' house and North of SR 2024.*

8. Paragraph 11 of Plaintiffs' Complaint provides as follows:

*The **design and construction were defective and performed in a negligent manner by Sweetland and Continental** in that they failed to account for or failed to take care of the existing basement drain of plaintiffs and the construction collapsed the terra-cotta drain line and made it non-functional such that thereafter, each time water infiltrated the plaintiff's basement it failed to drain out the front of the basement and into the stream as it was designed to do and as it had done previous to the construction.*

9. Rule 1028 (a)(2) of the Pennsylvania Rules of Civil Procedure provides that Preliminary Objections are warranted if a pleading fails to conform to law or Rule of Court.

10. Rule 1022 of the Pennsylvania Rules of Civil Procedure provides that each paragraph shall concern as far as practical only one material allegation.

11. The purpose of Rule 1022 of the Pennsylvania Rules of Civil Procedure is to make certain that the Complaint is clear enough for the Defendant(s) to prepare their defense(s) based upon accurate information, the specific basis upon which recovery is sought.

12. Consequently, the Complaint's failure to comply with the requirements of Rule 1022 of the Pennsylvania Rules of Civil Procedure mandates that all such paragraphs be stricken or, in the alternative, the Plaintiffs ordered to amend their Complaint to assert only one material allegation in each paragraph.

WHEREFORE , for the reasons set forth herein, Defendant Continental Construction, Inc. hereby respectfully requests this Honorable Court enter the attached Order striking the Plaintiffs' Complaint pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2) or, in the alternative, ordering the Plaintiffs to amend their Complaint to comply with Pennsylvania Rule of Civil Procedure 1022 setting forth averments of negligence against each defendant in separate counts.

Respectfully submitted,

BURNS, WHITE & HICKTON

BY: 

John M. Steidle, Esquire
Attorneys for Defendant,
Continental Construction, Inc.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD

SHAWN and BARBARA EVANS

Plaintiffs,

Civil Action No. 04-385-CD

vs.

CONTINENTAL CONSTRUCTION, INC. ,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER

Defendants.

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____, 2004, upon
consideration of the foregoing Preliminary Objections of Defendant, Continental Construction,
Inc., it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

BY THE COURT:

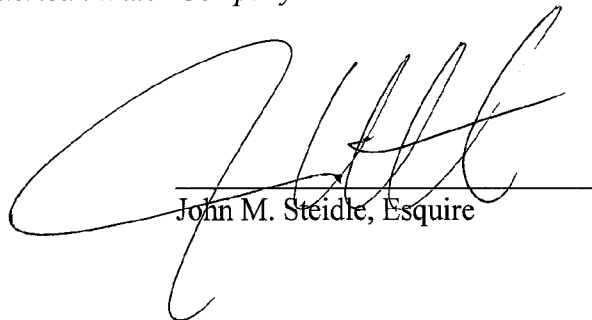
_____. J.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Preliminary Objections to Plaintiffs' Complaint was served on all counsel of record by depositing a copy of same in the U.S. Mail, postage prepaid, this the 16th day of September, 2004.

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Counsel for Plaintiffs

Julia R. Cronin, Esquire
Miller, Kistler, Campbell, Miller
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
*Counsel for Pennsylvania
American Water Company*



John M. Steidle, Esquire

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

SHAWN EVANS and **BARBARA EVANS**,
Husband and Wife

Plaintiffs,

No. 2004-385-CD

vs.

1st AMENDED COMPLAINT

CONTINENTAL CONSTRUCTION, INC.,
and **SWEETLAND ENGINEERING &
ASSOCIATES, INC.**, and **PENNSYLVANIA
AMERICAN WATER**

Defendants

Filed on behalf of:
SHAWN EVANS and **BARBARA
EVANS**, Plaintiffs

Counsel of Record for Plaintiffs

TIMOTHY E. DURANT, ESQ.
Pa. I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel For PA American
Water Co.

JULIA R. CRONIN, ESQ.
Miller, Kistler, Campbell, Miller,
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Opposing Counsel for Continental
Construction

JOHN M. STEIDLE, ESQ.
Pa. I.D. No. 84404
Burns, White & Hickton, LLC
120 Fifth Ave., Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Opposing Counsel for Sweetland
Engineering & Associates, Inc.

Unknown

FILED
OCT 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

SHAWN EVANS and BARBARA EVANS,
Plaintiffs

No. 2004-385-CD

vs.

CONTINENTAL CONSTRUCTION, INC.,
and **SWEETLAND ENGINEERING &**
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER

Defendants

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TO ALL DEFENDANTS:

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 First Amended Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint and for any other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

SHAWN EVANS and BARBARA EVANS,
Plaintiffs

vs.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER**

Defendants

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No. 2004-385-CD

FIRST AMENDED COMPLAINT

NOW come the plaintiffs by their counsel Timothy E. Durant, Esq. and in response to Preliminary Objections filed by Continental Construction, Inc., on September 16, 2004 alleging more than one material allegation in two paragraphs of the original Complaint (as filed on April 12, 2004) Plaintiffs do file this their First Amended Complaint averring the following:

1. Plaintiffs **SHAWN EVANS and BARBARA EVANS**, are husband and wife who currently reside in Boggs Township, Clearfield County, with an address of 3123 Old Erie Pike, West Decatur, PA 16878.

2. Defendant **CONTINENTAL CONSTRUCTION, INC.**, ("Continental") is a corporation believed to be organized and existing under the laws of the Commonwealth of Pennsylvania having a place of business located in Elk County, Pennsylvania with a mailing address of PO Box 126, PO Box 126 Johnsonburg Road, Ridgway, PA 15853

3. Defendant **SWEETLAND ENGINEERING & ASSOCIATES, INC.**, ("Sweetland") is a corporation believed to be organized and existing under the laws of the Commonwealth of Pennsylvania having a place of business located in Centre County, Pennsylvania with a mailing address of 600 Science Park Road State College, PA 16803

4. Defendant **PENNSYLVANIA AMERICAN WATER** ("PA American") is a corporation

believed to be organized and existing under the laws of the Commonwealth of Pennsylvania having a place of business located in Dauphin County, Pennsylvania with a mailing address of 800 West Hershey Park Drive, Hershey, PA 17033.

5. By deed dated June 26th 2000 and recorded in Clearfield County Recorder's Office as Instrument No. 2000-09009 on June 27, 2000 The Plaintiffs' became the owners of a house and two parcels of land located in Boggs Township, Clearfield County, Pennsylvania identified as tax parcel ID # 105-011-577-16 and # 105-011-577-17, a copy of said deed is attached to the original Complaint as Exhibit "A" and is incorporated herein by reference as if set out in full.

6. On or about November 12, 1998 Wallaceton-Boggs Municipal Authority contracted with Sweetland to design and set out the terms for the construction and installation of a sanitary sewer line for the said Authority.

7. The said sewer line as designed ultimately crossed the plaintiffs' land.

8. As a consequence of the design and/or the installation of the said sewer line, plaintiffs' existing basement drain system was damaged and rendered useless.

9. The point of damage to plaintiffs' basement drain system is at or about what has been designated on the relevant maps as Manhole No. AE-5.

10. On or about June 21, 2000 Wallaceton-Boggs Municipal Authority contracted with Continental as the lowest bidder to construct and install the sanitary sewer line for the Authority.

11. On August 29, 2000 the Plaintiffs granted an easement and a perpetual right-of-way to the Wallaceton-Boggs Municipal Authority for the installation of a sanitary sewer line., a copy of the Grant of Easement and the Map outlining the right-of-way are attached to the original Complaint as Exhibits "B" and "C" respectively and are incorporated herein by reference as if set out in full. The Map (Exhibit "C"), shows in the upper right corner a Manhole designated as "AE-5".

12. On or about the fall of 2001 Continental installed a sanitary sewer line along the right-of-way across the land of the Plaintiffs' described in Exhibit "A" and along the road in front of the plaintiffs through and including what has been designated Manhole AE-5.

13. It is believed, and therefore averred, that the relevant parts of the construction of the sanitary sewer line were constructed in accordance with the engineering plans as designed and according to the specifications as prepared by Sweetland.

14. The said sanitary sewer line as constructed by Continental ultimately crossed the plaintiffs' land and damaged their basement drain system at or about what has been designated, Manhole No. AE-5 and a prior to a point where said drain empties into a small stream across from plaintiffs' house and North of SR 2024.

15. Prior to the construction by Continental any water coming into plaintiffs' basement drained properly and adequately through the floor drain in their basement, out through a terra cotta pipe and from thence under SR 2024 into a small stream to the North of their house.

16. On or about 2001 or 2002 PA American installed new water lines which crossed the plaintiffs' basement drain system prior to where it empties into a small stream across from their house and North of SR 2024.

17. In the fall of 2001, as a result of heavy rains, the basement in the Plaintiffs' residence began to fill with water, to such an extent as to require them to purchase a sum pump to remove the water from the basement.

18. On December 19, 2001 Plaintiffs' hired a Roto-Rooter technician to see if the drain line from the basement could be opened or if in the alternative the cause of the blockage could be determined.

19. The Roto-Rooter technician determined that the drain was blocked approximately 20 feet in or up (i.e. South) from the small stream (and conversely down i.e. North from the plaintiffs' house) and in an area near to where the sewer line was installed, in proximity to Manhole "AE-5".

20. The Roto-Rooter technician further determined that the terra cotta pipe was crushed or broken and rocks (comprised of crushed stone) would keep falling into the drain even as he tried to clear it.

21. Attached to the original Complaint is a copy of the determination by the Roto-Rooter

technician which determination is marked as Exhibit "D" and incorporated herein by reference as if set out in full. The cost for said evaluation was \$130.00.

COUNT I

Shawn Evans and Barbara Evans vs. Continental Construction, Inc.

Paragraphs 1-21 above are incorporated herein by reference as if set out in full

22. The relevant section of the sanitary sewer construction was defective and performed in a negligent manner by Continental in that they failed to account for or failed to take care of the existing basement drain of plaintiffs and the construction collapsed the terra-cotta drain line and made it non-functional such that thereafter, each time water infiltrated the plaintiff's basement it failed to drain out the front of the basement and into the stream as it was designed to do and as it had done previous to the construction.

23. Plaintiffs sustained a continuing loss each time it rained and each time the snow melted. WHEREFORE plaintiffs demand judgment against Continental in the amount as set forth below.

COUNT II

Shawn Evans and Barbara Evans vs. Sweetland Engineering & Associates, Inc.

Paragraphs 1-23 above, are incorporated herein by reference as if set out in full

24. The relevant section of the sanitary sewer design was defective and prepared in a negligent manner by Sweetland in that they failed to account for or failed to take care of the existing basement drain of plaintiffs and they failed to remedy a situation where construction as designed would cause or was likely to cause a collapse of the terra-cotta drain line and make it non-functional such that thereafter, each time water infiltrated the plaintiffs' basement it failed to drain out the front of the basement and into the stream as it was designed to do and as it had done previous to the construction.

25. Plaintiffs sustained a continuing loss each time it rained and each time the snow melted.

WHEREFORE plaintiffs demand judgment against Sweetland in the amount as set forth below.

COUNT III

Shawn Evans and Barbara Evans vs. Pennsylvania American Water

Paragraphs 1-25 above are incorporated herein by reference as if set out in full

26. It is believed and therefore averred that the construction of the new water lines by PA American crossing the plaintiffs' terra cotta basement drain was negligent and the installation of such lines in a carelessness manner contributed to the failure of the plaintiffs' basement drain to function as it had functioned before such construction.

WHEREFORE plaintiffs demand judgment against PA American in the amount as set forth below.

27. After the construction of the sanitary sewer and the installation of the water line, every heavy rain resulted in a repeat of the water build-up in plaintiffs' basement and required them to expend time and energy to remove the water and on occasion even required them both to take a day off of work to avoid damage to their furnace.

28. After finding no relief from the water build-up plaintiffs' called Bowman Masonry ("Bowman") for assistance. Upon reviewing the situation, Bowman determined that the solution would require a water removal system costing \$8,000.00. A copy of the Proposal from Bowman, dated January 21, 2004 is attached to the original Complaint, marked as Exhibit "E" and is incorporated herein by reference as if set out in full.

29. This complaint is filled in response to an appeal from the decision of District Magistrate Rudella by Continental.

30. Plaintiffs expended \$126.50 in filing costs in the District Justice matter and such costs are herein sought as additional legal costs by plaintiffs.


WHEREFORE, plaintiffs, **SHAWN EVANS** and **BARBARA EVANS**, demand judgment against all the defendants jointly and severally in the amount of \$8,256.50 plus interest at the legal

VERIFICATION

We, **SHAWN EVANS** and **BARBARA EVANS**, verify that the statements made in this Complaint are true and correct to the best of our knowledge, information and belief. Plaintiffs understand that false statements herein are made subject to the penalties of 18 Pa .C. S. §4904, relating to unsworn falsification to authorities.

Dated:

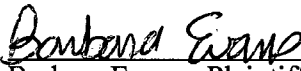
10/5/04

A handwritten signature in cursive script, appearing to read "Shawn Evans", written over a horizontal line.

Shawn Evans, Plaintiff

Dated:

10/5/04

A handwritten signature in cursive script, appearing to read "Barbara Evans", written over a horizontal line.

Barbara Evans, Plaintiff

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

SHAWN EVANS and BARBARA EVANS,
Plaintiffs

vs.

CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER
Defendants

No. 2004-385-CD

FILED *ELK*
9/10/2004 *WCC*
OCT 06 2004

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, MICHAEL LUONGO, verify that on October 5, 2004, I did
deposit in the United States First Class Mail certified copies of the **1st**
AMENDED COMPLAINT filed on behalf of the Plaintiffs. The said documents
were sent to:

Counsel For PA American Water Co.
JULIA R. CRONIN, ESQ.
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823

Counsel for Continental Construction
JOHN M. STEIDLE, ESQ.
Burns, White & Hickton, LLC
120 Fifth Ave., Suite 2400
Pittsburgh, PA 15222-3001

✶
SWEETLAND ENGINEERING ASSOCIATES, INC.
600 Science Park Road
State College, PA 16803

I understand that false statements herein are made subject to the
penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to
authorities.

Dated: October 5, 2004

Michael Luongo
Michael Luongo
201 North Second Street
Clearfield, PA 16830

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

SHAWN EVANS and BARBARA
EVANS, husband and wife,

Plaintiffs,

vs.

CONTINENTAL CONSTRUCTION,
INC., and SWEETLAND ENGINEERING
& ASSOCIATES, INC. and
PENNSYLVANIA AMERICAN WATER,

Defendants.

CIVIL DIVISION - LAW

NO.: 2004-385-CD

**PRAECIPE FOR ENTRY OF
APPEARANCE**

Filed on behalf of: Defendant Sweetland
Engineering & Associates, Inc.

Counsel for Record for this Party:

Paul M. Mannix, Esquire
PA ID #76225

WAYMAN, IRVIN & McAULEY
1624 Frick Building
Pittsburgh, PA 15219

(412) 566-2970 - Phone
(412) 391-1464 - Fax

JURY TRIAL DEMANDED

:216389.1

26K
FILED *no cc*
11/03/04
OCT 21 2004 *copy to CIA*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

SHAWN EVANS and BARBARA
EVANS, husband and wife,

CIVIL DIVISION - LAW

NO.: 2004-385-CD

Plaintiffs,

vs.

CONTINENTAL CONSTRUCTION,
INC., and SWEETLAND ENGINEERING
& ASSOCIATES, INC. and
PENNSYLVANIA AMERICAN WATER,

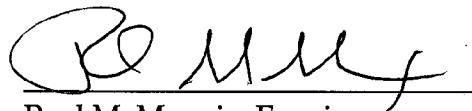
Defendants.

PRAECIPE FOR ENTRY OF APPEARANCE

TO: PROTHONOTARY

Kindly enter the Appearance of WAYMAN, IRVIN & McAULEY, LLC and PAUL
M. MANNIX, ESQUIRE, on behalf of DEFENDANT SWEETLAND ENGINEERING &
ASSOCIATES, INC. in the above-entitled lawsuit.

WAYMAN, IRVIN & McAULEY, LLC

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

Paul M. Mannix, Esquire
Counsel for Defendants

CERTIFICATE OF SERVICE

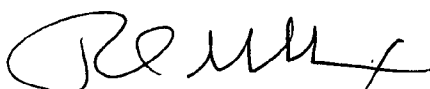
I hereby certify that a true and correct copy of the foregoing **PRAECIPE FOR ENTRY OF APPEARANCE** has been served on the following counsel of record by first-class U.S. mail, postage pre-paid, or by hand-delivery, this 19th day of October, 2004:

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

Julia R. Cronin, Esquire
MILLER, KITLER, CAMPBELL, MILLER,
WILLIAMS & BENSON, INC.
124 N. Allegheny Street
Bellefonte, PA 16823
(Counsel for Defendant Pennsylvania American Water)

John M. Steidle, Esquire
BURNS, WHITE & HICKTON, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222
(Counsel for Defendant Continental Construction, Inc.)

WAYMAN, IRVIN & McAULEY, LLC

BY: 
Paul M. Mannix, Esquire

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

SHAWN EVANS AND BARBARA
EVANS, HUSBAND AND WIFE,

Plaintiff,

vs.

CONTINENTAL CONSTRUCTION, INC.,
AND SWEETLAND ENGINEERING &
ASSOCIATES, AND PENNSYLVANIA
AMERICAN WATER,

Defendants

CIVIL DIVISION

No. 2004-385-CD

**ANSWER, NEW MATTER AND NEW
MATTER PURSUANT TO Pa.R.C.P.
2252 (d)**

Filed on behalf of Defendant:
Sweetland Engineering & Associates, Inc.

Counsel of Record for this Party:

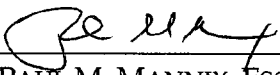
PAUL M. MANNIX, ESQUIRE
PA ID No. 76225

WAYMAN, IRVIN & MCAULEY, LLC
Firm #583
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219

412-566-2970
412-391-1464 (fax)

NOTICE TO PLEAD:

You are hereby notified to file a
written response to the enclosed **NEW
MATTER AND NEW MATTER PURSUANT
TO Pa.R.C.P. 2252(d)** within 20 days
from service hereof or a judgment may
be entered against you.

By: 
PAUL M. MANNIX, ESQUIRE
Attorney for Defendant Sweetland
Engineering & Associates, Inc.

FILED ^{EBK}
NO ^{CC}
OCT 27 2004
m/j 11:48/301

William A. Shaw
Prothonotary Clerk of Courts

SHAWN EVANS AND BARBARA) CIVIL DIVISION
EVANS, HUSBAND AND WIFE,)
) No. 2004-385-CD
Plaintiff,)
)
vs.)
)
CONTINENTAL CONSTRUCTION, INC.,)
AND SWEETLAND ENGINEERING &)
ASSOCIATES, INC., AND)
PENNSYLVANIA AMERICAN WATER,)
)
Defendants)
)
)
)

-1-

ANSWER

1. With respect to Paragraph 1 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or belief as to the truth of this averment, as such all averments are denied.

2. With respect to Paragraph 2 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or belief as to the truth of this averment, as such all averments are denied.

3. Admitted.

4. With respect to Paragraph 4 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or belief as to the truth of this averment, as such all averments are denied.

5. With respect to Paragraph 5 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of this averment, as such all averments are denied. By way of a further response, the conclusions averred by the Plaintiffs' Complaint that stem from the referenced documents are conclusions of law and this Defendant demands strict proof at time of trial as to the truth and accuracy of these documents.

6. Admitted.

7. With respect to Paragraph 7 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied.

8. With respect to Paragraph 8 of the Plaintiffs' Amended Complaint, it is denied that the Plaintiffs suffered any damage as a result of the design of the sewer line system. With respect to the remaining allegations, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied.

9. With respect to Paragraph 9 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied.

10. With respect to Paragraph 10 of the Plaintiffs' Amended Complaint, it is admitted that Wallacton-Boggs Municipal Authority contracted with Continental.

11. With respect to Paragraph 11 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averment, as such all averments are denied. By way of a further response, the conclusions averred by the Plaintiffs pertaining to the referenced documents are conclusions of law and this Defendant demands strict proof at time of trial as to the truth and accuracy of these documents.

12. With respect to Paragraph 12 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averment, as such all averments are denied.

13. With respect to Paragraph 12 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied.

14. With respect to Paragraph 14 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied

15. With respect to Paragraph 15 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied

16. With respect to Paragraph 16 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied

17. With respect to Paragraph 17 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied

18. With respect to Paragraph 18 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied

19. With respect to Paragraph 19 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied

20. With respect to Paragraph 20 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied

21. With respect to Paragraph 21 of the Plaintiffs' Amended Complaint, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied. By way of a further response, the conclusions averred by the Plaintiffs pertaining to the referenced documents are conclusions of law and this Defendant demands strict proof at time of trial as to the truth and accuracy of the referenced document.

COUNT I

Paragraphs 1 through 21 above are incorporated herein by reference as if set out in full.

22. Paragraph 22 of the Plaintiffs' Amended Complaint is addressed towards a different defendant. Therefore, this defendant does not need to plead a response to this paragraph.

23. Paragraph 23 of the Plaintiffs' Complaint is a conclusion of law and this defendant is not required to provide a response. To the extent that a response may be required, all averments are denied.

COUNT II

Paragraphs 1 through 23 above are incorporated herein by reference as if set out in full.

24. Paragraph 24 of the Plaintiffs' Amended Complaint is a conclusion of law, such that no response is required. Should a response be required, the averments of Paragraph 24 are specifically denied.

25. Paragraph 25 of the Plaintiffs' Amended Complaint is a conclusion of law, such that no response is required. Should a response be required, the averments of Paragraph 25 are denied.

COUNT III

Paragraphs 1-26 above are incorporated herein by reference as if set out in full.

26. Paragraph 26 of the Plaintiffs' Amended Complaint pleads facts or legal conclusions to a different defendant. As such, this defendant is not required to provide an affirmative response. To the extent a response is deemed necessary, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied.

27. Paragraph 27 of the Plaintiffs' Amended Complaint pleads facts or legal conclusions to a different defendant. As such, this defendant is not required to provide an affirmative response. To the extent a response is deemed necessary, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied.

28. Paragraph 28 of the Plaintiffs' Amended Complaint pleads facts or legal conclusions to a different defendant. As such, this defendant is not required to provide an affirmative response. To the extent a response is deemed necessary, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied.

29. Paragraph 29 of the Plaintiffs' Amended Complaint pleads facts or legal conclusions to a different defendant. As such, this defendant is not required to provide an affirmative response. To the extent a response is deemed necessary, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied.

30. Paragraph 30 of the Plaintiffs' Amended Complaint pleads facts or legal conclusions to a different defendant. As such, this defendant is not required to provide an affirmative response. To the extent a response is deemed necessary, after a reasonable investigation, this Defendant is without information or a belief as to the truth of all averments, as such all averments are denied.

WHEREFORE, this Defendant, Sweetland Engineering & Associates, Inc., denies any and all liability in this matter and requests that judgment be entered in its favor.

NEW MATTER

AND NOW, comes the Defendant, SWEETLAND ENGINEERING & ASSOCIATES, INC., and files the following **NEW MATTER**, in support whereof it avers the following:

31. This Defendant hereby incorporates Paragraph 1-30 as if the same were set forth herein at length.

32. The Plaintiffs' Complaint filed against this Defendant fails to state a cause of action upon which relief can be granted.

33. Any and all claims against this Defendant are barred by the doctrines of laches, estoppel, statute of limitations, and/or waiver.

34. Any and all injuries and damages sustained by Plaintiffs, if any, are a result of the superseding, intervening, and/or independent cause over which this Defendant had no control for which this Defendant cannot be held be held liable.

35. Any and all claims against this Defendant are barred in whole or in part by lack of privity between this Defendant and Plaintiffs.

36. The claims against this Defendant are barred by the Economic Loss Doctrine.

37. This Defendant asserts all affirmative defenses set forth in Rule 1030 of the Pennsylvania Rules of Civil Procedure including, but not limited to, accord and satisfaction, consent, failure of consideration, justification, statute of frauds, statute of repose, and statute of limitations.

38. Plaintiffs' claims are barred or limited by its failure to mitigate damages, if any.

39. Any and all claims against this Defendant and/or any recovery by Plaintiffs is barred in whole or in part by the doctrines of recoupment and set-off.

NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d)

AND NOW, comes the Defendant, SWEETLAND ENGINEERING & ASSOCIATES, INC., and files the following **NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d)**, in support whereof it avers the following:

Sweetland Engineers vs. Pennsylvania American Water

40. This Defendant hereby incorporates Paragraph 1-40 as if the same were set forth herein at length.

41. This Defendant continues to deny any and all liability to Plaintiffs. However, if it is determined at time of trial that this Defendant is liable, this Defendant files this crossclaim pursuant to Rule 2252(d) under the Pennsylvania Rules of Civil Procedure against Pennsylvania American Water.

42. Solely for the purposes of this crossclaim, this Defendant hereby incorporates by reference, as though fully set forth herein, the averments of Plaintiffs' Complaint and avers that Pennsylvania American Water is solely liable to Plaintiffs or jointly and/or severally liable to Plaintiffs, or in the alternative, liable over to this Defendant for indemnity and/or contribution.

Sweetland Engineers vs. Continental Construction

43. This Defendant hereby incorporates Paragraph 1-42 as if the same were set forth herein at length.

44. This Defendant continues to deny any and all liability to Plaintiffs. However, if it is determined at time of trial that this Defendant is liable, this Defendant files this crossclaim pursuant to Rule 2252(d) under the Pennsylvania Rules of Civil Procedure against Continental Construction.

45. Solely for the purposes of this crossclaim, this Defendant hereby incorporates by reference, as though fully set forth herein, the averments of Plaintiffs' Complaint and avers that Continental Construction is solely liable to Plaintiffs or jointly and/or severally


liable to Plaintiffs, or in the alternative, liable over to this Defendant for indemnity and/or contribution.

46. Solely for the purposes of this crossclaim, this Defendant hereby incorporates avers that, to the extent this Defendant is held liable, Continental Construction is obligated to indemnify this Defendant in accordance with the Contract Documents for this Project, including but not limited to sections 6.20 of the General Conditions and the Hold Harmless Agreement, attached hereto as Exhibit "A". (A copy of the Contract Documents is too voluminous to attach. Continental Construction should be in possession of the relevant Contract Documents).

JURY TRIAL DEMANDED

Respectfully submitted,

WAYMAN, IRVIN & MCAULEY, LLC

A handwritten signature in dark ink, appearing to read "P. Mannix", is written over a horizontal line.

PAUL M. MANNIX, ESQUIRE

PA ID No. 76225

Attorneys for Defendant, Sweetland
Engineering & Associates, Inc.

**SECTION 00570
HOLD HARMLESS AGREEMENT**

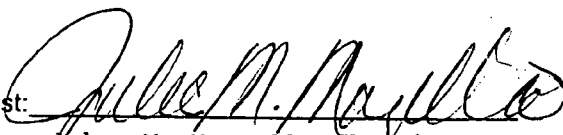
KNOW ALL MEN BY THESE PRESENTS, that Continental Construction, Inc. hereinafter called CONTRACTOR, has entered or will enter into an Agreement with the WALLACETON- BOGGS MUNICIPAL AUTHORITY, hereinafter called the OWNER for Construction Wallaceton-Boggs Sanitary Sewer Construction Project, Borough of Wallaceton and Township of Boggs, Clearfield County, Pennsylvania.

NOW, THEREFORE, in consideration of the award of said Contract to the CONTRACTOR, as well as other good and valuable consideration, CONTRACTOR, intending to be legally bound hereby, agrees to indemnify and save harmless the OWNER and the Engineer, Sweetland Engineering & Associates, Inc., from and against all claims, damages, losses and expenses (including attorney's fees) arising out or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury or destruction of property (real or personal) including loss of use resulting therefore and (b) is also caused in whole or in part by any act or omission of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed or controlled by any one of them regardless of whether or not said claim, damage, loss or expense is caused in part by any of the named parties above.

In any and all claims against any of the name parties above, or any of their agents or employees by any employee of the CONTRACTOR or any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or may one for whose acts any one or more of them may be liable, the indemnification obligation of the CONTRACTOR hereunder shall not be limited in any way by any limits on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under the Workmen's Compensation Act, or any disability benefit acts or any other employee benefit act of the Commonwealth of Pennsylvania or any other state.

CONTRACTOR:

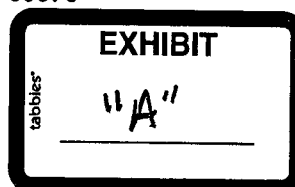
By 
Richard J. Marzella, President

Attest: 
Julie M. Marzella, Sec./Treas.

Date: 6-15-2000

SEAL

END OF SECTION 00570



No. 2004-385-CD

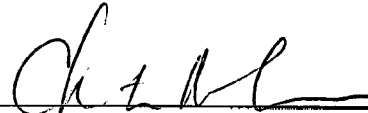
VERIFICATION

I, CHRISTINA M. FETZER, CFO, have read the foregoing **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252 (d)** and verify that the statements contained therein are true to the best of my knowledge, information and belief.

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

Date: _____

10-21-04



CHRISTINA M. FETZER, CFO
Authorized Representative of Sweetland
Engineering & Associates, Inc.

CERTIFICATE OF SERVICE

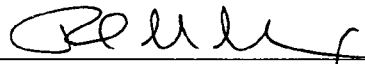
I hereby certify that a true and correct copy of the foregoing **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252 (d)** has been served on the following counsel of record by first class U.S. mail, postage pre-paid, or by hand delivery, this 25th day of October, 2004:

**Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830**

**Julia R. Cronin, Esquire
MILLER, KITLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 N. Allegheny Street
Bellefonte, PA 16823**

**John M. Steidle, Esquire
BURNS, WHITE & HICKTON, LLC
120 Fifth Avenue
Suite 2400
Pittsburgh, PA 15222**

WAYMAN, IRVIN & MCAULEY, LLC



**PAUL M. MANNIX, ESQUIRE
Attorneys for Defendant, Sweetland
Engineering & Associates, Inc.**

FILED

OCT 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

vs.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

Civil Action No. 04-385-CD

**ANSWER AND NEW MATTER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Filed on Behalf of Defendant:
Continental Construction, Inc.

Counsel of Record for Defendant:
John M. Steidle, Esquire
PA ID # 84404

Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Firm ID # 828

FILED *ncc*
m/11/02/04
OCT 27 2004
William A. Shaw
Prothonotary Clerk of Courts

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

Civil Action No. 04-385-CD

vs.

**CONTINENTAL CONSTRUCTION, INC. ,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

ANSWER and NEW MATTER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant, Continental Construction, Inc. ("CCI"), by and through its undersigned counsel, Burns, White & Hickton and John M. Steidle, Esquire, files the within Answer and New Matter Pursuant to Plaintiffs' First Amended Complaint, averring as follows:

1. The averments of Paragraph 1 of Plaintiffs' First Amended Complaint are admitted.
2. The averments of Paragraph 2 of Plaintiffs' First Amended Complaint are admitted.
3. The averments of Paragraph 3 of Plaintiffs' First Amended Complaint are admitted.
4. The averments of Paragraph 4 of Plaintiffs' First Amended Complaint are admitted.
5. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of the averments of Paragraph 5 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the Paragraph 5 of Plaintiffs' First Amended

Complaint. Moreover, and by way of further answer, the referenced document (Exhibit "A") is a document in writing and speaks for itself, and any attempt to characterize that document is improper.

6. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of the averments of Paragraph 6 of Plaintiffs' First Amended Complaint. On this basis, CCI denies Paragraph 6 of Plaintiffs' First Amended Complaint.

7. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 7 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 7 of Plaintiffs' First Amended Complaint, and strict proof thereof is demanded at the time of trial.

8. To the extent that the averments of Paragraph 8 are directed to a Defendant other than this answering Defendant, no response is necessary or appropriate. To the extent that a response is deemed necessary or appropriate, CCI specifically denies that as a consequence of the design and/or installation of said sewer line, Plaintiffs' existing basement drain system was damaged and rendered useless, and strict proof thereof is demanded at the time of trial.

9. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 9 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 9 of Plaintiffs' First Amended Complaint, and strict proof thereof is demanded at the time of trial

10. The averments of Paragraph 10 of Plaintiffs' First Amended Complaint admitted.

11. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 11 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 11 of Plaintiffs' First Amended Complaint. Moreover and by way of further response, the referenced documents, Exhibits "B" and "C", are

documents in writing, and therefore speak for themselves. Any attempt to characterize those documents is improper.

12. The averments of Paragraph 12 of Plaintiffs' First Amended Complaint are denied as stated. It is specifically denied that CCI installed a sanitary sewer line on or about the Fall of 2001. To the contrary, CCI installed the sanitary sewer line in the vicinity of Plaintiffs property in September of 2000.

13. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 13 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 13 of Plaintiffs' First Amended Complaint, and strict proof thereof is demanded at the time of trial.

14. The averments of Paragraph 14 of Plaintiffs' First Amended Complaint are denied as stated. It is specifically denied that the installation of the sanitary sewer line that was constructed by CCI damaged Plaintiffs' drain system, and strict proof thereof is demanded at the time of trial.

15. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 15 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 15 of Plaintiffs' First Amended Complaint.

16. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 16 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 16 of Plaintiffs' First Amended Complaint.

17. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 17 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 17 of Plaintiffs' First Amended Complaint.

18. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 18 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 18 of Plaintiffs' First Amended Complaint.

19. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 19 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 19 of Plaintiffs' First Amended Complaint.

20. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 20 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 20 of Plaintiffs' First Amended Complaint.

21. The averments of Paragraph 21 of Plaintiffs' First Amended Complaint refer to a document, Exhibit "D". Any attempt to characterize that document is improper.

WHEREFORE, for all the foregoing reasons, Defendant Continental Construction, Inc. denies all liabilities of Plaintiffs and respectfully requests that Plaintiffs' First Amended Complaint be dismissed, and for this Honorable Court to render a judgment in their favor and against Plaintiffs, and to award them costs, attorneys fees and other such relief this Court deems just and appropriate.

COUNT I

Shawn Evans and Barbara Evans vs. Continental Construction, Inc.

CCI incorporates herein by reference Paragraphs 1 through 21 of their Answer and New Matter as if set fully set forth herein.

22. To the extent that the averments of Paragraph 22 of Plaintiff's First Amended Complaint constitute conclusions of law, no response is necessary or appropriate. To the extent that a response is necessary or appropriate, CCI denies the averments of Paragraph 22 of Plaintiff's First Amended Complaint and strict proof thereof is demanded at the time of trial. By

way of further response, it is specifically denied that the sanitary sewer construction was defective and performed in a negligent manner. To the contrary, at all times material and relevant hereto, the sanitary sewer lines were constructed according to contracted specifications and in compliance with industry standards. Moreover, at all times CCI acted in a prudent and lawful manner.

23. To the extent that the averments of Paragraph 23 of Plaintiff's First Amended Complaint constitute conclusions of law, no response is necessary or appropriate

WHEREFORE, for all the foregoing reasons, Defendant Continental Construction, Inc. denies all liabilities of Plaintiffs and respectfully requests that Plaintiffs' First Amended Complaint be dismissed, and for this Honorable Court to render a judgment in their favor and against Plaintiffs, and to award them costs, attorneys fees and other such relief this Court deems just and appropriate.

COUNT II

Shawn Evans and Barbara Evans vs. Sweetland Engineering & Associates, Inc.

CCI incorporates herein by reference Paragraphs 1 through 23 of their Answer and New Matter as if set fully set forth herein.

24. To the extent that the averments of Paragraph 24 of Plaintiff's First Amended Complaint constitute conclusions of law, no response is necessary or appropriate. Moreover, to the extent that the averments of Paragraph 24 of Plaintiff's First Amended Complaint are directed to a defendant other than this answering defendant, no response is necessary.

25. To the extent that the averments of Paragraph 25 of Plaintiff's First Amended Complaint constitute conclusions of law, no response is necessary or appropriate. To the extent that a response is deemed necessary or appropriate, CCI specifically denies Paragraph 25 of Plaintiff's First Amended Complaint and strict proof thereof is demanded at the time of trial.

WHEREFORE, for all the foregoing reasons, Defendant Continental Construction, Inc. denies all liabilities of Plaintiffs and respectfully requests that Plaintiffs' First Amended Complaint be dismissed, and for this Honorable Court to render a judgment in their favor and against Plaintiffs, and to award them costs, attorneys fees and other such relief this Court deems just and appropriate.

COUNT III

Shawn Evans and Barbara Evans vs. Pennsylvania American Water

CCI incorporates herein by reference Paragraphs 1 through 25 of their Answer and New Matter as if set fully set forth herein.

26. To the extent that the averments of Paragraph 26 of Plaintiff's First Amended Complaint constitute conclusions of law, no response is necessary or appropriate. Moreover, to the extent that the averments of Paragraph 26 of Plaintiff's First Amended Complaint are directed to a defendant other than this answering defendant, no response is necessary.

WHEREFORE, for all the foregoing reasons, Defendant Continental Construction, Inc. denies all liabilities of Plaintiffs and respectfully requests that Plaintiffs' First Amended Complaint be dismissed, and for this Honorable Court to render a judgment in their favor and against Plaintiffs, and to award them costs, attorneys fees and other such relief this Court deems just and appropriate.

27. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 27 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 27 of Plaintiffs' First Amended Complaint.

28. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 28 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 28 of Plaintiffs' First Amended Complaint.

By way of further response, the referenced document, Exhibit "E", is a document in writing and therefore speaks for itself, and any attempt to characterize that document is improper.

29. The averments of Paragraph 29 of Plaintiffs' First Amended Complaint are admitted.

30. After reasonable investigation, CCI is without sufficient knowledge and information to determine the veracity of Paragraph 30 of Plaintiffs' First Amended Complaint. On this basis, CCI denies the averments of Paragraph 30 of Plaintiffs' First Amended Complaint, and strict proof thereof is demanded at the time of trial.

WHEREFORE, for all the foregoing reasons, Defendant Continental Construction, Inc. denies all liabilities of Plaintiffs and respectfully requests that Plaintiffs' First Amended Complaint be dismissed, and for this Honorable Court to render a judgment in their favor and against Plaintiffs, and to award them costs, attorneys fees and other such relief this Court deems just and appropriate.

NEW MATTER

CCI incorporates herein by reference paragraphs 1 through 30 of their Answer and New Matter as if set forth herein.

31. CCI incorporates herein by reference Paragraphs 1 through 21 of Answer and New Matter as if fully set forth herein.

32. Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

33. Plaintiffs' claims against CCI are barred in whole or in part by the applicable Statute of Limitations.

34. Plaintiffs' claims against CCI are barred in whole or in part by the Equitable Doctrine of Laches.

35. Plaintiffs have failed to mitigate their damages.

36. Plaintiffs' claims are barred in whole or in part because their alleged injuries or damages, if any, were proximately caused by an intervening or superceding cause.

37. Plaintiffs' claims are barred in whole or in part by Plaintiffs' own contributory or comparative negligence.

38. Plaintiffs' claims are barred in whole or in part by their failure to join necessary and indispensable parties.

39. As to all allegations in the Complaint, if the Plaintiffs suffered damages, which CCI denies, the Plaintiffs' damages were proximately caused by the actions or inactions of parties other than CCI and were not a result of any fault on the part of Continental Construction, Inc.

WHEREFORE, for all the foregoing reasons, Defendant Continental Construction, Inc. denies all liabilities of Plaintiffs and respectfully requests that Plaintiffs' Complaint be dismissed, and for this Honorable Court to render a judgment in their favor and against Plaintiffs, and to award them costs, attorneys fees and other such relief this Court deems just and appropriate.

Respectfully submitted,

BURNS, WHITE & HICKTON

BY: 

John M. Steidle, Esquire
Attorney Defendant,
Continental Construction, Inc

DATED: October 25, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer and New Matter to Plaintiffs' Amended Complaint was served on all counsel of record by depositing a copy of same in the U.S. Mail, postage prepaid, this the 25th day of

October, 2004.

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Counsel for Plaintiffs

Julia R. Cronin, Esquire
Miller, Kistler, Campbell, Miller
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
*Counsel for Pennsylvania
American Water Company*

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Sweetland Engineering


John M. Steidle, Esquire

VERIFICATION

I, Julee Marzella, verify that the statements and averments made in the foregoing Answer and New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____

10/20/04


Julee Marzella

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

VS.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

Civil Action No. 04-385-CD

**NOTICE OF SERVICE OF ANSWER AND
NEW MATTER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

Filed on Behalf of Defendant:
Continental Construction, Inc.

Counsel of Record for Defendant:
John M. Steidle, Esquire
PA ID # 84404

Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Firm ID # 828

FILED NO
M/11/02/04 CC
OCT 27 2004

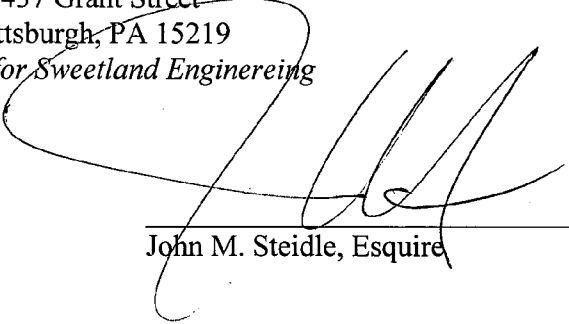
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Service of Answer and New Matter to Plaintiffs' Amended Complaint was served on all counsel of record by depositing a copy of same in the U.S. Mail, postage prepaid, this the 28th day of October, 2004.

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Counsel for Plaintiffs

Julia R. Cronin, Esquire
Miller, Kistler, Campbell, Miller
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
*Counsel for Pennsylvania
American Water Company*

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Sweetland Engineering



John M. Steidle, Esquire

GA

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

SHAWN EVANS and BARBARA EVANS,)	
Husband and Wife,)	
)	
Plaintiffs)	
)	
vs.	)	No. 2004-385-CD
)	
CONTINENTAL CONSTRUCTION, INC.,)	
and SWEETLAND ENGINEERING &)	
ASSOCIATES, INC., and PENNSYLVANIA)	
AMERICAN WATER,)	
)	
Defendants)	

RULE TO SHOW CAUSE

NOW THIS 29th day of October, 2004, upon consideration of Defendant Pennsylvania American Water's Preliminary Objections to Plaintiffs' First Amended Complaint, a Rule is hereby issued upon the Plaintiffs to Show Cause why said Preliminary Objections should not be granted. This rule is returnable for argument on the 10 day of December, 2004 at 1:30 o'clock P.m. in Courtroom # 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

NOTICE

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

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

FILED ^{EB}

63-01 P.A. 11/1/04
OCT 29 2004 *Crown*

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 1300 Or 1301

BY THE COURT:

Justin J. Arnesen
J.

William A. Shaw
Prothonotary

CA

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

SHAWN EVANS and BARBARA EVANS,
Husband and Wife,

Plaintiffs

vs.

CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER,

Defendants

)
) No. 2004-385-CD
)

) Type of Pleading: Preliminary
) Objections to First Amended
) Complaint
)

) Filed on Behalf of: Defendant
) Pennsylvania American Water
)

) Counsel of Record for this Party:

) Julia R. Cronin, Esquire
) MILLER, KISTLER, CAMPBELL,
) MILLER, WILLIAMS & BENSON, INC.
) 124 N. Allegheny Street
) Bellefonte, PA 16823
) 814-355-5474

FILED ^{icc}
m/j:06/01/04 Ally Cronin
OCT 27 2004

WAS
William A. Sraw
Prothonotary/Clerk of Courts

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

SHAWN EVANS and BARBARA EVANS,)	
Husband and Wife,)	
)	
Plaintiffs)	
)	
vs.	)	No. 2004-385-CD
)	
CONTINENTAL CONSTRUCTION, INC.,)	
and SWEETLAND ENGINEERING &)	
ASSOCIATES, INC., and PENNSYLVANIA)	
AMERICAN WATER,)	
)	
Defendants)	

PRELIMINARY OBJECTIONS TO FIRST AMENDED COMPLAINT

NOW COMES Defendant, Pennsylvania American Water, by and through its counsel, Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., and files these Preliminary Objections to Plaintiffs' First Amended Complaint, of which the following is a statement:

1. Plaintiffs commenced this action on February 20, 2004, by the filing of a Complaint in Magistrate District Court 46-3-03 in Clearfield County, Pennsylvania to Docket No. CV-0000071-04.
2. On March 12, 2004, District Justice Michael Rudella entered judgment in favor of Plaintiffs and against Defendant Continental Construction, Inc.
3. Defendant Continental Construction, Inc. filed a Notice of Appeal and Praecipe to Enter a Rule to File a Complaint on March 19, 2004.
4. On April 12, 2004, Plaintiffs filed a Complaint in the Court of Common Pleas of Clearfield County, Pennsylvania.
5. Plaintiffs filed a First Amended Complaint on October 5, 2004.

6. Plaintiffs' First Amended Complaint alleges that Defendant Sweetland Engineering & Associates, Inc. designed and set out the terms for the construction and installation of a sanitary sewer line which crossed the Plaintiffs' land, and that Defendant Continental Construction, Inc. constructed said sanitary sewer line in accordance with the specifications prepared by Defendant Sweetland Engineering & Associates, Inc.

7. In Count I of the First Amended Complaint, Plaintiffs allege that Defendant Continental Construction, Inc. was negligent in its construction of the sanitary sewer line, in that it failed to account for or to take care of Plaintiffs' existing basement drain, and the construction collapsed the Plaintiffs' terra cotta drain line and made it non-functional.

8. In Count II of the First Amended Complaint, Plaintiffs allege that Defendant Sweetland Engineering & Associates, Inc. was negligent in designing the sanitary sewer system, in that it failed to account for or take care of the Plaintiffs' basement drain, and that it failed to remedy a situation where construction would cause or was likely to cause a collapse of the terra cotta drain line and make it non-functional.

I. DEMURRER

9. Paragraphs 1 through 8 above are incorporated herein by reference thereto as though the same were set forth at length.

10. The allegations against Defendant Pennsylvania American Water in the First Amended Complaint are minimal.

11. The First Amended Complaint alleges that “[o]n or about 2001 or 2002, PA American installed new water lines which crossed the plaintiffs’ basement drain system prior to where it empties into a small stream across from their house and North of SR 2024.” (First Amended Complaint, paragraph 16).

12. Thereafter, in Count III of the First Amended Complaint, Plaintiffs allege that “[i]t is believed and therefore averred that the construction of the new water lines by PA American crossing the plaintiffs’ terra cotta basement drain was negligent, and the installation of such lines in a careless manner contributed to the failure of the plaintiffs’ basement drain to function as it had functioned before such construction.” (First Amended Complaint, paragraph 16).

13. These allegations are not sufficient to set forth a cause of action for negligence against Defendant Pennsylvania American Water.

14. The Plaintiffs have not set forth any facts to support that Defendant Pennsylvania American Water breached any duty of care owed to the Plaintiffs.

15. The Plaintiffs have not alleged that in constructing and/or installing the water lines which crossed the Plaintiffs’ basement drain, Defendant Pennsylvania American Water committed any acts or omissions which constitute negligence or carelessness, as would be necessary to state a cause of action for negligence.

16. Plaintiffs’ allegation that Defendant Pennsylvania American Water installed new water lines which crossed the Plaintiffs’ basement drain is insufficient to set forth a basis for liability against Defendant Pennsylvania American Water.

17. Count III of the First Amended Complaint fails to state a cause of action upon which relief may be granted against Defendant PA American Water.

WHEREFORE, Defendant PA American Water prays that Count III of Plaintiffs' First Amended Complaint be dismissed with prejudice.

II. MOTION FOR MORE SPECIFIC PLEADING

18. Paragraphs 1 through 17 above are incorporated herein by reference thereto as though the same were set forth at length.

19. Plaintiffs' First Amended Complaint fails to set forth material facts sufficient to support a cause of action against Defendant Pennsylvania American Water for the reasons set forth above.

20. Without prejudice to the above, if Count III of Plaintiffs' First Amended Complaint is not dismissed, then Defendant Pennsylvania American Water requests that Plaintiffs be required to file a more specific pleading setting forth material allegations and facts sufficient to inform Defendant Pennsylvania American Water of the basis for which it must defend itself.

21. Pursuant to Pa. R.C.P. 1019(a), the Plaintiffs are required to plead the material facts on which a cause of action is based in a concise and summary form.

22. Plaintiffs' First Amended Complaint fails to set forth material facts pursuant to Pa. R.C.P. 1019(a) upon which Plaintiffs' cause of action is based, specifically identifying what acts or omissions were committed by Defendant Pennsylvania American Water which contributed to the failure of the Plaintiffs' basement drain to function.

WHEREFORE, Defendant Pennsylvania American Water prays that Count III of Plaintiffs' First Amended Complaint be dismissed or, in the alternative, that the Plaintiffs

be required to file a more specific pleading setting forth specific acts of negligence in accordance with Pa. R.C.P. 1019(a).

III. MOTION TO STRIKE

23. Paragraphs 1 through 22 above are incorporated herein by reference thereto as though the same were set forth at length.

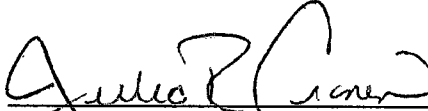
24. Pa. R.C.P. 1020(a) states that "the plaintiff may state in the complaint more than one cause of action cognizable in a civil action against the same defendant. Each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief."

25. Pursuant to Pa. R.C.P. 1020(a), the Plaintiffs are required to set forth their claims against each of the Defendants under separate counts.

26. In Count III of the First Amended Complaint, Plaintiffs seek to assert a negligence claim against Defendant Pennsylvania American Water, yet they incorporate by reference paragraphs 22 and 23 (Count I against Continental Construction, Inc.) and paragraphs 24 and 25 (Count II against Sweetland Engineering & Associates, Inc.).

27. The Plaintiffs' attempt to incorporate the allegations of negligence raised against the other Defendants into the claims against Defendant Pennsylvania American Water is prejudicially confusing, unduly complicating and improper and violative of Pa. R.C.P. 1020(a).

WHEREFORE, Defendant Pennsylvania American Water prays that Count III of Plaintiffs' First Amended Complaint be dismissed or, in the alternative, that the incorporation paragraph in Count III be stricken.



Julia R. Cronin, Esquire

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 N. Allegheny Street
Bellefonte, PA 16823
814-355-5474

Counsel for PA American Water

Dated: 10/26/04

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

SHAWN EVANS and BARBARA EVANS,
Husband and Wife,

Plaintiffs

vs.

No. 2004-385-CD

CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER,

Defendants

CERTIFICATE OF SERVICE

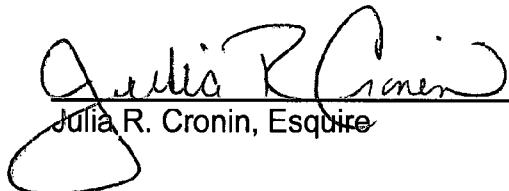
I, Julia R. Cronin, Esquire, of the law firm of MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC., hereby certify that the foregoing Preliminary
Objections to First Amended Complaint was served this 26th day of
October, 2004 by mailing same first class United States mail,
postage prepaid, addressed to:

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

John M. Steidle, Esquire
Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222
(Counsel for Defendant Continental
Construction)

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley
1624 Frick Building
Pittsburgh, PA 15219
(Counsel for Defendant Sweetland
Engineering & Associates, Inc.)

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.


Julia R. Cronin, Esquire

FILED

OCT 27 2004

William A Shaw
Plaintiff vs. Clerk of Courts

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

SHAWN EVANS and BARBARA EVANS,
Husband and Wife,

Plaintiffs

vs.

CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER,

Defendants

)
) No. 2004-385-CD
)
) Type of Pleading: Affidavit of Service
)
)
) Filed on Behalf of: Defendant
) Pennsylvania American Water
)
) Counsel of Record for this Party:
)
) Julia R. Cronin, Esquire
) MILLER, KISTLER, CAMPBELL,
) MILLER, WILLIAMS & BENSON, INC.
) 124 N. Allegheny Street
) Bellefonte, PA 16823
) 814-355-5474

FILED ^{E6K}
m/11/26/04 ^{NO}
NOV 04 2004 ^{CC}

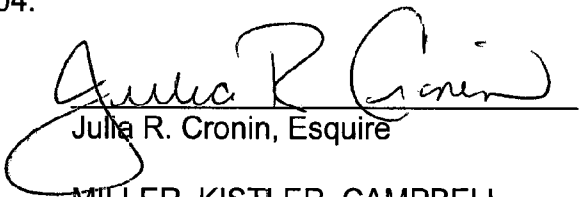
William A. Shaw
Prothonotary/Clerk of Courts

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

SHAWN EVANS and BARBARA EVANS,)
Husband and Wife,)
Plaintiffs)
vs.) No. 2004-385-CD
CONTINENTAL CONSTRUCTION, INC.,)
and SWEETLAND ENGINEERING &)
ASSOCIATES, INC., and PENNSYLVANIA)
AMERICAN WATER,)
Defendants)

AFFIDAVIT OF SERVICE


Julia R. Cronin, Esquire, attorney for Defendant Pennsylvania American Water in the above-referenced action, being duly sworn according to law, deposes and says that she served the Rule to Show Cause dated October 29, 2004 with reference to Defendant Pennsylvania American Water's Preliminary Objections to Plaintiffs' First Amended Complaint on counsel of record for Plaintiffs Shawn and Barbara Evans, Defendant Sweetland Engineering & Associates, Inc. and Defendant Continental Construction, Inc. by first class United States mail, postage prepaid in Bellefonte Centre County, Pennsylvania on November 3, 2004.


Julia R. Cronin, Esquire

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 N. Allegheny Street
Bellefonte, PA 16823
814-355-5474


Attorney for Defendant
Pennsylvania American Water

Sworn to and subscribed
before me this 3
day of Nov.,
2004.


COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Dorothy J. Davidson, Notary Public
Bellefonte Boro. Centre County
My Commission Expires Aug. 26, 2006

Member, Pennsylvania Association of Notaries


Julia R. Cronin, Esquire

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

SHAWN EVANS and BARBARA EVANS,
Husband and Wife,

Plaintiffs

vs.

CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER,

Defendants

)
) No. 2004-385-CD
)
) Type of Pleading: Pennsylvania
) American Water's Reply to New
) Matter Pursuant to Pa. R.C.P. 2252(d)
) Filed by Defendant Sweetland
) Engineering & Associates, Inc.
)
) Filed on Behalf of: Defendant
) Pennsylvania American Water
)
) Counsel of Record for this Party:
)
) Julia R. Cronin, Esquire
) MILLER, KISTLER, CAMPBELL,
) MILLER, WILLIAMS & BENSON, INC..
) 124 N. Allegheny Street
) Bellefonte, PA 16823
) 814-355-5474

FILED

NOV 22 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

SHAWN EVANS and BARBARA EVANS,)	
Husband and Wife,)	
)	
Plaintiffs)	
)	
vs.	)	No. 2004-385-CD
)	
CONTINENTAL CONSTRUCTION, INC.,)	
and SWEETLAND ENGINEERING &)	
ASSOCIATES, INC., and PENNSYLVANIA)	
AMERICAN WATER,)	
)	
Defendants)	

**DEFENDANT PENNSYLVANIA AMERICAN WATER'S
REPLY TO NEW MATTER PURSUANT TO Pa. R.C.P. 2252(d)
FILED BY DEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.**

NOW COMES the Defendant, Pennsylvania American Water, by and through its counsel, Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., and files the following Reply to New Matter Pursuant to Pa. R.C.P. 2252(d) filed by Defendant Sweetland Engineering & Associates, Inc., and in support thereof avers as follows:

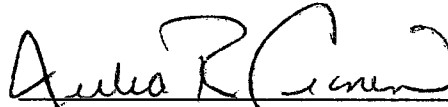
40. Defendant Pennsylvania American Water incorporates by reference herein its pleadings in response to Plaintiffs' First Amended Complaint, as though the same were set forth herein at length.

41. The allegations contained in paragraph 41 are conclusions of law to which no responsive pleading is required. To the extent a response is deemed to be required, Defendant Pennsylvania American Water denies that it is liable, in any manner, for all or any part of the damages asserted in the Plaintiffs' First Amended Complaint.

42. Defendant Pennsylvania American Water incorporates by reference herein its pleadings in response to Plaintiffs' First Amended Complaint. By way of further response, Defendant Pennsylvania American Water specifically denies that it is solely

liable to the Plaintiffs. Defendant Pennsylvania American Water further denies that it is jointly and/or severally liable to the Plaintiffs and/or liable over to Defendant Sweetland Engineering & Associates, Inc. for indemnity and/or contribution. In further response, Defendant Pennsylvania American Water denies the allegations contained in paragraph 42 pursuant to Pa. R.C.P. 1029(e).

WHEREFORE, Defendant Pennsylvania American Water prays that judgment be entered in its favor, and that the Court would order the dismissal, with prejudice, of Defendant Sweetland Engineering & Associates, Inc.'s New Matter Pursuant to Pa. R.C.P. 2252(d) as directed to Defendant Pennsylvania American Water.



Julia R. Cronin, Esquire

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 N. Allegheny Street
Bellefonte, PA 16823
814-355-5474

Counsel for PA American Water

Dated: 11/18/04

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

SHAWN EVANS and BARBARA EVANS,)	
Husband and Wife,)	
)	
Plaintiffs)	
)	
vs.	)	No. 2004-385-CD
)	
CONTINENTAL CONSTRUCTION, INC.,)	
and SWEETLAND ENGINEERING &)	
ASSOCIATES, INC., and PENNSYLVANIA)	
AMERICAN WATER,)	
Defendants)	

VERIFICATION

I, Brian Hassinger, representative of Pennsylvania American Water, verify that the statements contained in the foregoing Reply to New Matter Pursuant to Pa. R.C.P. 2252(d) filed by Defendant Sweetland Engineering & Associates, Inc. are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

Brian Hassinger

Dated: 11-16-04

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

SHAWN EVANS and BARBARA EVANS,)
Husband and Wife,)
Plaintiffs)
vs.) No. 2004-385-CD
CONTINENTAL CONSTRUCTION, INC.,)
and SWEETLAND ENGINEERING &)
ASSOCIATES, INC., and PENNSYLVANIA)
AMERICAN WATER,)
Defendants)

CERTIFICATE OF SERVICE

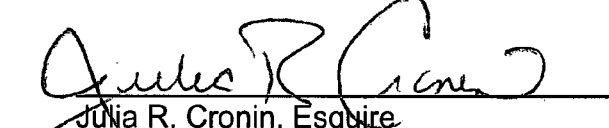
I, Julia R. Cronin, Esquire, of the law firm of MILLER, KISTLER, CAMPBELL, MILLER, WILLIAMS & BENSON, INC., hereby certify that the foregoing Defendant Pennsylvania American Water's Reply to New Matter Pursuant to Pa. R.C.P. 2252(d) filed by Defendant Sweetland Engineering & Associates, Inc. was served this 18th day of November, 2004 by mailing same first class United States mail, postage prepaid, addressed to:

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

John M. Steidle, Esquire
Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222
(Counsel for Defendant Continental Construction)

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley
1624 Frick Building
Pittsburgh, PA 15219
(Counsel for Defendant Sweetland Engineering & Associates, Inc.)

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.


Julia R. Cronin, Esquire

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

vs.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

Civil Action No. 04-385-CD

**REPLY TO NEW MATTER PURSUANT
TO PA R.C.P. 2252(d) OF DEFENDANT
SWEETLAND ENGINEERING**

Filed on Behalf of Defendant:
Continental Construction, Inc.

Counsel of Record for Defendant:
John M. Steidle, Esquire
PA ID # 84404

Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Firm ID # 828

FILED
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NOV 29 2004
12/8/30/0
William A. Shaw
Prothonotary/Clerk of Courts
NO CEN.

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

Civil Action No. 04-385-CD

vs.

**CONTINENTAL CONSTRUCTION, INC. ,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

**REPLY TO NEW MATTER PURSUANT TO PA R.C.P. 2252(d) OF DEFENDANT
SWEETLAND ENGINEERING**

AND NOW comes Defendant, Continental Construction, Inc., by and through its counsel, Burns, White & Hickton and John M. Steidle, Esquire, and files the following Reply to New Matter Pursuant to Pa.R.C.P. 2252(d) of Defendant Sweetland Engineering, averring as follows:

1. The allegations contained in Paragraphs numbered 1 through 39 of the Answer and New Matter of Defendant, Sweetland Engineering & Associates, are responsive to allegations contained in the Plaintiffs' Complaint, requiring no further answer thereto in this pleading from Defendant, Continental Construction, Inc. (hereinafter "CCI").

NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d)

Sweetland Engineering & Associates vs. Pennsylvania American Water

40. CCI incorporates herein by reference Paragraphs 1 through 39 of their Reply to New Matter pursuant to 2252(d) of Sweetland Engineering as if set fully set forth herein.

41. The averments of Paragraph 41 of Defendant Sweetland Engineering and Associates (hereinafter "Sweetland") New Matter Pursuant to 2252(d) is directed to a Defendant other than CCI, and therefore no response is deemed necessary or appropriate.

42. The averments of Paragraph 42 of Defendant Sweetland's New Matter Pursuant to Pa.R.C.P. 2252(d) is directed to a Defendant other than CCI, and therefore no response is deemed necessary or appropriate.

Sweetland Engineering & Associates vs. Continental Construction, Inc.

43. CCI incorporates herein by reference Paragraphs 1 through 42 of their Reply to New Matter pursuant to Pa.R.C.P. 2252(d) of Sweetland Engineering as if set fully set forth herein.

44. The averments of Paragraph 44 of Defendant Sweetland's New Matter pursuant to Pa.R.C.P. 2252(d) are denied for the reasons more particularly set forth in the Answer and New Matter of Defendant, CCI, which is incorporated herein by reference as though fully set forth here at length.

45. The averments of Paragraph 45 of Defendant Sweetland's New Matter to Pa.R.C.P. 2252(d) are denied for the reasons more particularly set forth in the Answer and New Matter of Defendant, CCI, which is incorporated herein by reference as though fully set forth here at length.

46. The averments of Paragraph 46 of Defendant Sweetland's New Matter to Pa.R.C.P. 2252(d) are denied for the reasons more particularly set forth in the Answer and New Matter of Defendant, CCI, which is incorporated herein by reference as though fully set forth here at length. By way of further response, to the extent the averments constitute conclusions of law, no response is deemed necessary or appropriate. Moreover and by way of further response,

the referenced document, Exhibit "A", is a document in writing and speaks for itself, and any attempt to characterize that document is improper.

WHEREFORE, for all the foregoing reasons, Defendant Continental Construction, Inc. denies all liability and respectfully requests this Honorable Court to dismiss the New Matter pursuant to Pa. R.C.P. 2252(d) of Defendant Sweetland Engineering Associates, Inc. and to render a judgment in their favor and to award CCI costs, attorneys fees and other such relief this Court deems just and appropriate.

Respectfully submitted,

BURNS, WHITE & HICKTON

BY: 

John M. Steidle, Esquire
Attorney Defendant,
Continental Construction, Inc

DATED: November 23, 2004.

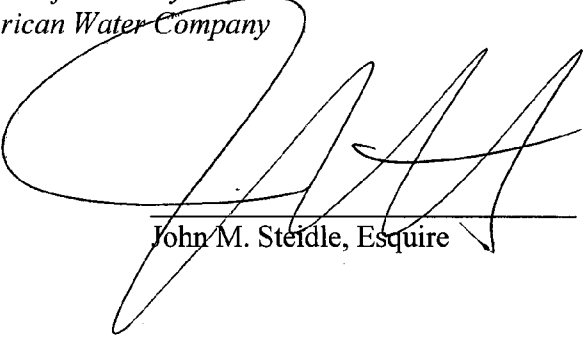
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Reply to New Matter Pursuant to Pa.R.C.P. 2252(d) of Defendant Sweetland Engineering* was served on all counsel of record by depositing a copy of same in the U.S. Mail, postage prepaid, this the 23rd day of November, 2004.

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Counsel for Plaintiffs

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Sweetland Engineering

Julia R. Cronin, Esquire
Miller, Kistler, Campbell, Miller
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
*Counsel for Pennsylvania
American Water Company*



John M. Steidle, Esquire

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

vs.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

Civil Action No. 04-385-CD

**NOTICE OF SERVICE OF REPLY TO
NEW MATTER PURSUANT TO PA
R.C.P. 2252(d) OF DEFENDANT
SWEETLAND ENGINEERING &
ASSOCIATES, INC.**

Filed on Behalf of Defendant:
Continental Construction, Inc.

Counsel of Record for Defendant:
John M. Steidle, Esquire
PA ID # 84404

Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Firm ID # 828

FILED

EBK

NOV 29 2004

W. A. Shaw

Prothonotary/Clerk of Courts

NO CENT

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD

SHAWN and BARBARA EVANS

Plaintiffs,

Civil Action No. 04-385-CD

vs.

CONTINENTAL CONSTRUCTION, INC. ,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER

Defendants.

**NOTICE OF SERVICE OF REPLY TO NEW MATTER PURSUANT TO PA R.C.P.
2252(d) OF DEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.**

Please be advised that the Defendant, Continental Construction, Inc., has served its *Reply*
to New Matter Pursuant to Pa.R.C.P. 2252(d) of Defendant Sweetland Engineering &
Associates, Inc. on all counsel of record.

Respectfully submitted,

BURNS, WHITE & HICKTON

By: 

John M. Stedle, Esquire

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Notice of Service of Reply to New Matter Pursuant to Pa.R.C.P. 2252(d) of Defendant Sweetland Engineering & Associates, Inc.* was served on all counsel of record by depositing a copy of same in the U.S. Mail, postage prepaid, this the 23rd day of November, 2004.

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Counsel for Plaintiffs

Julia R. Cronin, Esquire
Miller, Kistler, Campbell, Miller
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
*Counsel for Pennsylvania
American Water Company*

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Sweetland Engineering & Associates Inc.



John M. Stedle, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

SHAWN EVANS, et al

:

VS.

: NO. 04-385-CD

CONTINENTAL CONSTRUCTION, INC., :

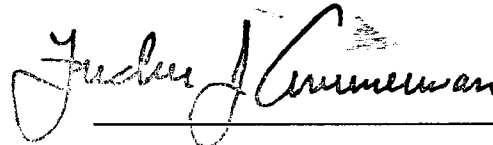
et al

:

O R D E R

NOW this 10th day of December, 2004, this being the date set for hearing on the Preliminary Objections filed on behalf of the Defendant PA American Water; counsel for the parties involved having indicated they are attempting to resolve their differences; accordingly, the Court will not issue a decision on the Preliminary Objections at this time. The matter will be rescheduled upon request of counsel for any party.

BY THE COURT:



President Judge

FILED
DEC 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

EOK
ICC. Atty. S.
Surant
Stedle
Mannix
Cronin

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

vs.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

Civil Action No. 04-385-CD

**NOTICE OF SERVICE NOTICE OF
DEPOSITION OF BARBARA EVANS**

Filed on Behalf of Defendant:
Continental Construction, Inc.

Counsel of Record for Defendant:
John M. Steidle, Esquire
PA ID # 84404

Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Firm ID # 828

FILED ¹⁰
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JAN 10 2005

William A. Shaw
Prothonotary/Clerk of Courts

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

Civil Action No. 04-385-CD

vs.

**CONTINENTAL CONSTRUCTION, INC. ,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

NOTICE OF SERVICE OF NOTICE OF DEPOSITION OF BARBARA EVANS

Please be advised that the Defendant, Continental Construction, Inc., has served its
Notice of Deposition of Barbara Evans on all counsel of record.

Respectfully submitted,

BURNS, WHITE & HICKTON

By: 

John M. Steidle, Esquire

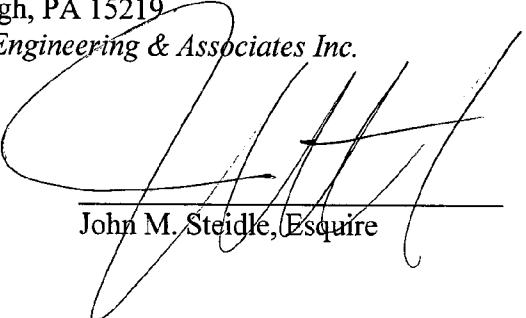
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Notice of Service of Notice of Deposition of Barbara Evans* was served on all counsel of record by depositing a copy of same in the U.S. Mail, postage prepaid, this the ____ day of January, 2005.

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Counsel for Plaintiffs

Julia R. Cronin, Esquire
Miller, Kistler, Campbell, Miller
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
*Counsel for Pennsylvania
American Water Company*

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Sweetland Engineering & Associates Inc.



John M. Steidle, Esquire

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

vs.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

Civil Action No. 04-385-CD

**NOTICE OF SERVICE NOTICE OF
DEPOSITION OF SHAWN EVANS**

Filed on Behalf of Defendant:
Continental Construction, Inc.

Counsel of Record for Defendant:
John M. Steidle, Esquire
PA ID # 84404

Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Firm ID # 828

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JAN 10 2005

William A. Shaw
Prothonotary/Clerk of Courts

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CLEARFIELD**

SHAWN and BARBARA EVANS

Plaintiffs,

Civil Action No. 04-385-CD

vs.

**CONTINENTAL CONSTRUCTION, INC. ,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER**

Defendants.

NOTICE OF SERVICE OF NOTICE OF DEPOSITION OF SHAWN EVANS

Please be advised that the Defendant, Continental Construction, Inc., has served its
Notice of Deposition of Shawn Evans on all counsel of record.

Respectfully submitted,

BURNS, WHITE & HICKTON

By:

John M. Steidle, Esquire

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Notice of Service of Notice of Deposition of Shawn Evans* was served on all counsel of record by depositing a copy of same in the U.S. Mail, postage prepaid, this the 7th day of January, 2005.

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Counsel for Plaintiffs

Julia R. Cronin, Esquire
Miller, Kistler, Campbell, Miller
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
*Counsel for Pennsylvania
American Water Company*

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Sweetland Engineering & Associates Inc.



John M. Steidle, Esquire

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

SHAWN EVANS and BARBARA
EVANS, husband and wife,

CIVIL DIVISION - LAW

Plaintiffs,

NO.: 2004-385-CD

vs.

CONTINENTAL CONSTRUCTION,
INC., and SWEETLAND ENGINEERING
& ASSOCIATES, INC. and
PENNSYLVANIA AMERICAN WATER,

**PRAECIPE FOR ENTRY OF
JUDGMENT OF NON PROS
PURSUANT TO RULE 1042.6**

Defendants.

Filed on behalf of: Defendant Sweetland
Engineering & Associates, Inc.

Counsel for Record for this Party:

Paul M. Mannix, Esquire
PA ID #76225

Jeffrey A. Kubay, Esquire
PA ID #76378

WAYMAN, IRVIN & McAULEY
1624 Frick Building
Pittsburgh, PA 15219

(412) 566-2970 - Phone
(412) 391-1464 - Fax

JURY TRIAL DEMANDED

:219469.1

FILED
*M. 1:24 Noted to aff
start to act*
JAN 24 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

SHAWN EVANS and BARBARA
EVANS, husband and wife,

CIVIL DIVISION - LAW

NO.: 2004-385-CD

Plaintiffs,

vs.

CONTINENTAL CONSTRUCTION,
INC., and SWEETLAND ENGINEERING
& ASSOCIATES, INC. and
PENNSYLVANIA AMERICAN WATER,

Defendants.

**PRAECIPE FOR ENTRY OF
JUDGMENT OF NON PROS PURSUANT TO RULE 1042.6**

TO: PROTHONOTARY

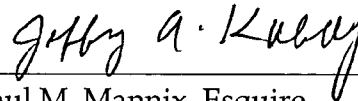
Please enter judgment of non pros against Plaintiffs Shawn Evans and Barbara Evans in the professional liability claim against Defendant Sweetland Engineering & Associates in the Complaint and First Amended Complaint filed in the above-captioned matter.

I, the undersigned, certify that the Plaintiffs named above have asserted a professional liability claim against Defendant Sweetland Engineering & Associates, Inc.

named above who is a licensed professional, that no Certificate of Merit has been filed within the time required by Pa.R.C.P. 1042.3(a) and (c)(1) and that there is no motion to extend the time for filing the Certificate pending before the Court.

Respectfully submitted,

WAYMAN, IRVIN & McAULEY, LLC

A handwritten signature in cursive script, reading "Jeffrey A. Kubay". The signature is written in dark ink and is positioned above a horizontal line.

Paul M. Mannix, Esquire

Jeffrey A. Kubay, Esquire

Attorneys for Defendant, Sweetland
Engineering & Associates, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PRAECIPE FOR ENTRY OF JUDGMENT OF NON PROS PURSUANT TO RULE 1042.6** has been served on the following counsel of record by first- class U.S. mail, postage pre-paid, or by hand-delivery, this 18th day of Jan, 2005:

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(*Counsel for Plaintiffs*)

Julia R. Cronin, Esquire
MILLER, KITLER, CAMPBELL, MILLER,
WILLIAMS & BENSON, INC.
124 N. Allegheny Street
Bellefonte, PA 16823
(*Counsel for Defendant Pennsylvania American Water*)

John M. Steidle, Esquire
BURNS, WHITE & HICKTON, LLC
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(*Counsel for Defendant Continental Construction, Inc.*)

WAYMAN, IRVIN & McAULEY, LLC

Jeffrey A. Kubay
Jeffrey A. Kubay, Esquire

Attorney for Defendant, Sweetland
Engineering & Associates, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
NON PROS

Barbara Evans
Shawn Evans

Plaintiff

Vs.

No. 2004-00385-CD

Continental Construction, Inc.
Sweetland Engineering & Associates Inc.
Pennsylvania American Water

Defendant

TO: Shawn and Garbara Evans :

Notice is hereby given that a judgment of non-pros has been entered in the above captioned matter pursuant to Praeipie dated January 24, 2005. A copy of said document is hereto attached.

Judgment entered of record January 24, 2050.

Sincerely,

William A. Shaw
Prothonotary

Enclosures

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

Barbara Evans
Shawn Evans
Plaintiff(s)

No.: 2004-00385-CD

Real Debt: \$

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Sweetland Engineering & Associates Inc.
Defendant(s)

Entry: \$20.00

Instrument: Judgment Non Pros

Date of Entry: January 24, 2005

Expires: January 24, 2010

Certified from the record this 24th day of January , 2005

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

CA

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

SHAWN and BARBARA EVANS

Plaintiffs,

vs.

**CONTINENTAL CONSTRUCTION, INC., and
SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER**

Defendants.

Civil Action No. 04-385-CD

**CONTINENTAL CONSTRUCTION,
INC.'S, MOTION FOR SUMMARY
JUDGMENT AND PROPOSED
ORDER**

Filed on Behalf of Defendant:
Continental Construction, Inc.

Counsel of Record for Defendant:
John M. Steidle, Esquire
PA ID # 84404

Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Firm ID # 828

FILED

MAR 28 2005

h/8:30/w
William A. Shaw

Prothonotary/Clerk of Courts

1 copy to Mr

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

SHAWN and BARBARA EVANS,

Plaintiffs,

Civil Action No. 04-385-CD

vs.

CONTINENTAL CONSTRUCTION, INC., and
SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER,

Defendants.

**DEFENDANT CONTINENTAL CONSTRUCTION, INC.'S MOTION FOR
SUMMARY JUDGMENT**

AND NOW comes Defendant, Continental Construction, Inc. (hereinafter "CCI"), by and through its attorneys Burns, White & Hickton LLC and John M. Steidle, Esquire, and files the within Motion for Summary Judgment, and respectfully submits as follows:

1. Plaintiffs purport to have sustained damage to an underground drain during the construction of a municipal sanitary sewer project.
2. On February 20, 2004, Plaintiffs initiated an action at the District Justice level against CCI, Pennsylvania American Water ("PAW") and PennDot. *See Exhibit "A"*.
3. The matter came before District Justice Michael A. Rudella for hearing on March 12, 2004. At the conclusion of the hearing, judgment was entered against CCI and PAW. PennDot was dismissed from the action.
4. On March 19, 2004, CCI filed a Notice of Appeal and a Rule was issued directing the Plaintiffs to file a Complaint within twenty (20) days. *See Exhibit "B"*.

6. On or about September 20, 2004, CCI filed Preliminary Objections to Plaintiff's Complaint.

7. On or about October 5, 2004, Plaintiffs filed a First Amended Complaint. (*See Exhibit "C"*).

8. Under Pennsylvania law, a cause of action for trespass to real property must be commenced within two years from the date of a cause of the action first occurred. (*See 42 PA §5524*).

9. In the fall of 2001, Plaintiff's began to experience problems with their basement drain.

10. On December 19, 2001, Plaintiffs hired a Roto-Rooter technician to determine why the drain line servicing their basement was not properly draining. *See Exhibit C ("Plaintiffs' First Amended Complaint") at ¶ 18; Exhibit D ("Deposition of Shawn Evans") at pp. 15, 17-18; Exhibit E ("Deposition of Barbara Evans") at pp. 13-14.*

11. As a result of the Roto-Rooter inspection, Plaintiffs determined that the drain line was blocked at the area where the Sewer Line had been installed, *See Exhibit C at ¶ 19 and 20, and attached exhibit "D" to 1st Amended Complaint; Exhibit D at pp. 25-26, 29; Exhibit E at pp. 13-14.*

12. Plaintiffs initiated the District Justice Action on or about February 20, 2004, more than two (2) years after the Roto-Rooter inspection.

13. Under Pennsylvania law, a cause of action for trespass to real property must be commenced within two years from the day the cause of action first accrued. *See 42 Pa. § 5524.*

14. A cause of action for trespass to land is deemed to have accrued at the time the trespass was committed unless (a) the injured party could not, in exercising reasonable diligence, ascertain the fact of a cause of action, *see Pocono International Raceway v. Pocono Produce*, 468 A.2d 468, 471 Pa. (1983), or (b) the action involves a continuing trespass. *See Dombrowski v. Gould Electronics, Inc.*, 954 F.Supp. 1006, 1011, (M.D. Pa. 1996).

15. Because December 19, 2001, (*i.e.*, the date of the Roto-Rooter inspection), has unequivocally been established as the date Plaintiffs discovered the damage to the Drain Pipe, *see Exhibit D at pp. 26, 29; Exhibit E at pp. 13-14*, and because the alleged injury constitutes a permanent trespass under Pennsylvania law, Continental submits that the Statute of Limitations for Plaintiffs' claim began to run at the time of the Roto-Rooter inspection on December 19, 2001.

16. Under Pennsylvania law, "a continuing trespass must be distinguished from a trespass that effects a permanent change in the condition of the land. The latter, while resulting in a continuing harm, does not subject the trespasser to a liability for a continuing trespass." *Sustrik v. Jones & Laughlin Steel Corp.*, 197 A.2d 44, 46 (Pa. 1964) (citations omitted).

17. As the alleged injury caused a permanent change in the condition of Plaintiffs' land, Plaintiffs' cause of action clearly must be considered a permanent trespass rather than a continuing trespass.

18. Continental now moves for Summary Judgment on the grounds that Plaintiffs failed to comply with the two-year statute of limitations set forth at 42 PA § 5524.

WHEREFORE, Continental respectfully requests that this Honorable Court grant its Motion for Summary Judgment and dismiss Plaintiffs' case with prejudice.

Respectfully submitted,

BURNS WHITE & HICKTON LLC

By: _____

John M. Steidle

Pa. I.D. No. 84404

(Attorney for Movant/Defendant,
Continental Construction, Inc.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Continental Construction, Inc.'s Motion for Summary Judgment and Proposed Order were served upon counsel for Plaintiff on this 23rd day of March, 2005 via U.S. Mail addressed as follows:

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Counsel for Plaintiffs

Julia R. Cronin, Esquire
Miller, Kistler, Campbell, Miller
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
*Counsel for Pennsylvania
American Water Company*

Jeffrey A. Kubay, Esq.
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Sweetland Engineering & Associates Inc.

By: 

John M. Steidle, Esq.
Pa. I.D. No. 84404
Attorney for Movant/Defendant,
Continental Construction, Inc.

Proposed
Scheduling Order

Order
of Court

FILED
MAR 28 2005
William A. Shaw
Prothonotary/Clerk of Courts

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

SHAWN and BARBARA EVANS,

Plaintiffs,

Civil Action No. 04-385-CD

vs.

CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER,

Defendants.

ORDER

AND NOW, this ____ day of _____ 2005, upon consideration of Defendant Continental Construction, Inc.'s Motion for Summary Judgment, it is hereby ORDERED, ADJUDGED and DECREED that said Defendant Continental Construction, Inc.'s Motion is GRANTED and Plaintiffs' cause of action against Defendant Continental Construction, Inc. is dismissed with PREJUDICE.

BY THE COURT:

_____/J.

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

SHAWN and BARBARA EVANS

vs.

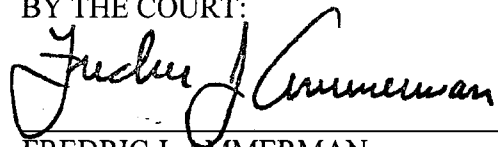
No. 04-385-CD

CONTINENTAL CONSTRUCTION, INC.
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER

ORDER

AND NOW, this 29th day of March, 2005, it is the Order of the
Court that argument on Attorney Steidle's Motion for Summary Judgment filed
in the above-captioned matter has been scheduled for the 29 day of
April, 2005, at 10:30 A.M, in Courtroom No. 1,
Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED 4cc & memo.
09:21:01 Re: service to
MAR 30 2005 Atty Steidle
William A. Shaw
Prothonotary/Clerk of Courts



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

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

SHAWN and BARBARA EVANS

Plaintiffs,

vs.

**CONTINENTAL CONSTRUCTION, INC., and
SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER**

Defendants.

Civil Action No. 04-385-CD

AFFIDAVIT OF SERVICE

Filed on Behalf of Defendant:
Continental Construction, Inc.

Counsel of Record for Defendant:
John M. Steidle, Esquire
PA ID # 84404

Burns, White & Hickton, LLC
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

(412) 995-3000

Firm ID # 828

FILED

REC-1
APR 04 2005
W 18:30/C
William A. Shaw
Prothonotary/Clerk of Courts
W 18:30/C

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Janis M. Walker, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires June 17, 2008
Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Continental Construction, Inc.'s Affidavit of Service was served on all counsel of record on this 31st day of March, 2005 via U.S.

Mail addressed as follows:

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
Counsel for Plaintiffs

Julia R. Cronin, Esquire
Miller, Kistler, Campbell, Miller
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
*Counsel for Pennsylvania
American Water Company*

Jeffrey A. Kubay, Esq.
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Sweetland Engineering & Associates Inc.

By: 

John M. Steidle, Esq.
Pa. I.D. No. 84404
Attorney for Defendant,
Continental Construction, Inc.

LAW OFFICES OF

WAYMAN, IRVIN & McAULEY, LLC

SUITE 1624 FRICK BUILDING

437 GRANT STREET

PITTSBURGH, PA 15219-6101

(412) 566-2970



Washington County Office
29 East Beau Street
Washington, PA 15301

Of Counsel
W. Arch Irvin, Jr.
Bernard J. McAuley

FAX: (412) 391-1464

www.waymanlaw.com

TAX ID: 25-1151153

IN REPLY PLEASE REFER TO FILE

MICHAEL L. MAGULICK
MARK J. GESK
KATE J. FAGAN
FRANCIS X. MCTIERNAN, JR.
WARREN L. SIEGFRIED
DALE K. FORSYTHE ◊ +
JOHN C. BOGUT, JR. +
PAUL M. MANNIX +
JAMES W. GREENAN
SCOTT W. STEPHAN
GREGORY T. WEIS
RICHARD L. MCMILLAN
JEFFREY A. KUBAY
GREGORY S. KNIGHT
MATTHEW S. WARD
MARLA N. PRESLEY +
KEVIN M. EDDY

◊ ALSO ADMITTED IN OHIO
+ ALSO ADMITTED IN WEST VIRGINIA

Writer's E-mail: jkubay@waymanlaw.com

April 1, 2005

315894

JAK

Honorable Fredric J. Ammerman
Court of Common Pleas of Clearfield County
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

FILED ^(GP) Filed per
01/12:50/34 Judge Ammerman
APR 05 2005
William A. Shaw No CC
Prothonotary/Clerk of Courts

RE: *Shawn and Barbara Evans v. Sweetland Engineering, et al*
No. 2004-385-CD (Clearfield County)
Oral Argument on Continental Construction, Inc.'s Motion for Summary Judgment

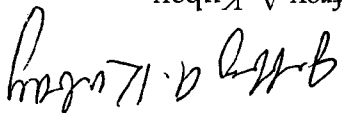
Dear Judge Ammerman:

I represent co-Defendant Sweetland Engineering & Associates, Inc. in the above-captioned matter. I am in receipt of Defendant Continental Construction, Inc.'s Motion for Summary Judgment and this Court's Order dated March 29, 2005 scheduling argument thereon. Please note that Judgment of Non Pros was entered in favor of Sweetland and against Plaintiffs on January 24, 2005 based upon Plaintiffs' failure to file the requisite Certificate of Merit under Pa.R.C.P. 1042.1 et seq. Accordingly, it is Defendant Sweetland's intention not to appear at the Oral Argument scheduled for April 29, 2005 at 10:30 a.m. Defendant Sweetland does not oppose Continental Construction, Inc.'s Motion for Summary Judgment and submits this letter, with the Court's indulgence, in lieu of a formal brief.

:222117.1

Thank you for your attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Jeffrey A. Kubay

JAK:pmt

cc: Mr. David S. Meholick, Court Administrator
Timothy E. Durant, Esquire
Julia R. Cronin, Esquire
John M. Steidle, Esquire
Ms. Judy Kelley
Claim No. AE200815

PROTHON.

FILE

THIS

~~THANK YOU,~~
DORIS FOLMAN

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

SHAWN EVANS and BARBARA EVANS,
Husband and Wife

Plaintiffs,

No. 2004-385-CD

vs.

REP
CONTINENTAL CONSTRUCTION, INC.,
and **SWEETLAND ENGINEERING &**
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER

Defendants

**REPLY TO MOTION FOR
SUMMARY JUDGMENT**

Filed on behalf of:
SHAWN EVANS and BARBARA
EVANS, Plaintiffs

Counsel of Record for Plaintiffs

TIMOTHY E. DURANT, ESQ.
Pa. I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel For PA American Water Co.

JULIA R. CRONIN, ESQ.
Miller, Kistler, Campbell, Miller,
Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Opposing Counsel for Continental Construction

JOHN M. STEIDLE, ESQ.
Pa. I.D. No. 84404
Burns, White & Hickton, LLC
120 Fifth Ave., Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Opposing Counsel for Sweetland Engineering & Associates, Inc.

JEFFREY A. KUBAY, ESQ.
Wayman, Irvin & McAuley, LLC
1624 Frick Building,
437 Grant Street
Pittsburgh, PA 15219

FILED

3cc
d/10:25 AM by Durant
APR 29 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

SHAWN EVANS and BARBARA EVANS,
Plaintiffs

vs.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER**

Defendants

*
*
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No. 2004-385-CD

REPLY TO MOTION FOR SUMMARY JUDGMENT

NOW come the plaintiffs by their counsel Timothy E. Durant, Esq. and in reply to Motion for Summary Judgment filed by Continental Construction, Inc., in March 2005 do respond as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. On April 12, 2004 Plaintiffs filed their initial complaint.
6. Admitted.
7. Admitted.

8. Denied, on the contrary, the rule does not say "...from the date of a cause of the action first occurred.". Section 5524 of the Judicial Code (42 Pa.C.S. §5524) provides, in full as follows:

>>§ 5524. Two year limitation

The following actions and proceedings must be commenced within two years:

- (1) An action for assault, battery, false imprisonment, false arrest, malicious prosecution or malicious abuse of process.
- (2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another.

(3) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof.

(4) An action for waste or trespass of real property.

(5) An action upon a statute for a civil penalty or forfeiture.

(6) An action against any officer of any government unit for the nonpayment of money or the nondelivery of property collected upon on execution or otherwise in his possession.

(7) Any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud, except an action or proceeding subject to another limitation specified in this subchapter.

For further answer the plaintiffs' reply to paragraph 13 (*infra*) is incorporated herein as if set out in full.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Denied, on the contrary the law of Pennsylvania is that suit can be brought within two years of the last injury occurring under the doctrine of "continuing trespass" as explained in the seminal case of Graybill v. Providence Township, et al. 140 Pa.Cmwlth. 505, 593 A.2d 1314 (1991) and affirmed Per Curiam by the Supreme Court in 533 Pa. 61, 618 A.2d 392 (1993).

The court in Graybill, reversed the dismissal of Graybill's action by the lower court and found as follows,

"The allegations of the present case concern acts of construction by the defendant Findleys upon their *own* land. Those acts did not directly and immediately cause any injury to Graybill's land; rather, those acts, coupled with the effects of rainfall, allegedly resulted in *consequential* damage to Graybill. That distinction prevents the straightforward application of the Section 162 commentary to cases such as this.

The material facts of *Leggieri* are indistinguishable from those of the present case. In our view, *Leggieri* represents a misapplication of *Sustrik* and an incorrect analysis of cases involving overflow

of water.

In the annotation, *When Statute of Limitation Commences to Run Against Damage from Overflow of Land Caused by Artificial Construction or Obstruction*, 5 A.L.R.2d 302 (1949), the annotator noted that courts have frequently stated that the subject under annotation is one "beset with extreme difficulties, on which the authorities are in greatest conflict and exhibit a good deal of confusion." *Id.* at 309-10 (footnotes omitted). Courts have uniformly based their holdings, concerning when the statute began to run, on the distinction between permanent change (sometimes called "original injury" or damage resulting from structures "necessarily injurious") versus **continuing trespass** (also referred to as "temporary", "transient" or "recurring" injury, *see id.* at 310). However, the cases reveal that determination of that question usually involves the close analysis of many factors. [Emphasis mine]

Among the factors that courts have considered for this purpose are the closely related questions of the ascertainability or predictability of the injury involved (i.e., whether it is possible for the plaintiff to calculate all of his future *511 damages in one action), and the question of the regularity **1317 of the incidents of overflow (i.e., whether the incidents happen frequently and predictably or only intermittently).

In *Naylor v. Eagle*, 227 Ark. 1012, 303 S.W.2d 239 (1957), plaintiffs alleged continuing injury to cropland three miles upstream from the point where the defendant had obstructed the flow of a watercourse. The Supreme Court of Arkansas held that, if the nature of the structure causing the overflow is such that damage to the plaintiff must necessarily result, and the nature and extent of this damage may be reasonably ascertained and estimated at the time of its construction, then there can be but a single recovery, and the statute of limitations against such cause of action is set in motion on the completion of the obstruction. However, if it is known merely that damage is probable or that, even though some damage is certain, the nature and extent of that damage cannot reasonably be known and fairly estimated, but is only speculative and conjectural, then the statute of limitation does not begin to run until the injury occurs, and there may be as many successive recoveries as there are injuries.

In *Clawson v. Garrison*, 3 Kan.App.2d 188, 592 P.2d 117 (1979), a landowner had leveled and irrigated cropland that naturally drained onto neighboring land, increasing the runoff from that land onto the neighbor's. The landowner then created an obstruction in the form of an elevated roadway

with culverts at the point where the water discharged onto the adjacent property, increasing the amount and the velocity of the discharged water. The court held that damage to the neighboring property was a temporary injury, because the flooding was an infrequent and virtually unpredictable occurrence, and the amount of both present and future damages could not reasonably be determined in a single action. The statute of limitations, the court determined, started to run at the time of each successive flow.

By considering the ascertainability of the plaintiff's damages, or the intermittent nature of the injury, we keep the focus of our analysis on the factor that the Restatement *512 commentary, quoted in *Sustrik*, regards as crucial, namely, the permanence of the change *to the physical condition of the plaintiff's land*, rather than on the permanence of the defendant's structure that allegedly causes the injury.

In *Archer v. J.S. Compton, Inc.*, 238 Iowa 1182, 30 N.W.2d 92 (1947), a plaintiff claimed damages for intermittent flooding of his land allegedly due to the defendant's construction of a dike along its side of a creek running between the properties. The Supreme Court of Iowa held that

[T]he term 'permanent,' as here used, 'has reference not alone to the character of the structure or thing which produces the alleged injury, but also to the character of the injury produced by it. In other words, the structure or thing producing the injury may be as permanent and enduring as the hand of man can make it; yet if the resulting injury be temporary or intermittent, depending on future conditions which may or may not arise, the damages are continuing, and successive actions will lie for successive injuries.'

Id. at 1190-91, 30 N.W.2d at 96 (quoting *Harvey v. Mason City & Ft. Dodge Railway Co.*, 129 Iowa 465, 474, 105 N.W. 958, 961 (1906)).

In the present case, Graybill has not alleged, contrary to the assertion in Findleys' brief, that he suffers flooding after every rain. Rather, as his response to interrogatories from the Findleys indicates, he alleges fewer than ten incidents of flooding over a period of almost four years, each at a time when he believes that the amount of rainfall was over one inch. (Brief for Appellee Providence Township, Exhibit A.) Graybill has not alleged that the defendants' actions resulted in permanently submerging his land, or even that they caused such regular flooding as to have the same effect as submergence,

causing him to abandon his house and to seek damages for its full value.

The damages that Graybill has enumerated include the replacement of appliances such as furnace, hot water heater and washer and dryer. In a single action to recover all *513 damages, past, present and future, **1318 it is impossible to calculate how many such replacements should be alleged. Under these facts, it is impossible to know exactly how many incidents of flooding would occur, and the severity of them. The effect of the holding in *Leggieri* is to compel a plaintiff to seek recovery in one action for future damages based on pure speculation, because of the intermittent and unpredictable nature of the injury involved. These cases assume that the construction of a permanent structure such as a house by a defendant on his own land necessarily creates a permanent change to the condition of the plaintiff's land, for which an accurate assessment of all damages is possible, without a close examination of the factual circumstances. Such a blanket assumption could have the effect of placing an impossible burden on a plaintiff.

In the instant case plaintiff Shawn Evans stated in his deposition at page 34 that the water backs up in his basement , “only when there’s a substantial rain” (pg. 34 ln 20) and “melting snow” (pg. 34 ln 22-24).

Furthermore in the case of Miller v. Stroud Township, et al., 804 A.2d 749, Pa.Cmwlt., (2002) the Commonwealth Court recently reversed the lower courts dismissal of a claim based upon the passage of the two year statute and found in a case similar to ours that,

“Appellants' complaint, however, does set forth a **continuing trespass** claim. The complaint alleges that the Township constructed a sanitary sewer line on, near or about Appellants' property. The construction, coupled with the effects of rainfall, resulted in a **continuing trespass** of water and fecal matter, which caused damage to Appellants' property and an unhealthy concentration of fungi, mold and bacteria. (See complaint.) Under section 161 of the Restatement, because the Township failed to remove the water and fecal matter resulting from the sewer installation, Appellants may maintain a succession of actions against the Township based on the theory of **continuing trespass**, or Appellants may treat the continuance of water, fecal matter, fungi, mold and bacteria on the land as an aggravation of the original trespass.”

[Emphasis mine].

14. Admitted. For more complete answer, in this case, the plaintiffs have alleged and suffered a continuing trespass.

15. Denied. On the contrary, this allegation is a conclusion of law, but to the extent that an answer is required the plaintiffs aver that they have incurred a continuing trespass in that when their neighborhood has substantial rain falls and large snow melts their drain backs up and they incur new damages or damages anew. These damages are new damages on a re-occurring basis dependent upon the severity of the rain or snow melt.

16. Denied. On the contrary, this allegation is a conclusion of law, but to the extent that an answer is required the plaintiffs aver that they have incurred a continuing trespass for the reasons and according to the legal reasoning set out in paragraph 13 (supra) which is incorporated herein as if set out in full.

17. Denied. On the contrary, this allegation is a conclusion of law, but to the extent that an answer is necessary the damage alleged was not to the plaintiffs' land but on the contrary it was to their drain as it passed through the PennDot highway right-of-way where the defendant Continental was digging the ground and laying the sewer line.

18. Denied. On the contrary, this allegation is a conclusion of law, but to the extent that an answer is necessary the plaintiffs aver that they are within the protection of the statute as interpreted by the Commonwealth Court and approved by the Supreme Court of Pennsylvania.

WHEREFORE, plaintiffs, **SHAWN EVANS** and **BARBARA EVANS**, ask that this Honorable Court dismiss the Motion for Summary Judgment.



Timothy E. Durant, Esquire,
Attorney for Plaintiffs

DATE: April 29, 2005

1A

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

SHAWN AND BARBARA EVANS
Plaintiffs

v.

CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and
PENNSYLVANIA AMERICAN WATER
Defendants.

No. 04-385-CD

ORDER

NOW, this 6th day of June, 2004 after oral argument and the submission of briefs on Continental Construction, Inc.'s Motion for Summary Judgment, and in consideration of the legal authority set forth in Miller v. Stroud Township, 804 A.2d 749 (Pa.Cmwlt. 2002), the Court HEREBY DENIES said Motion.

By the Court


President Judge

FILED
JUN 06 2005

William A. Shaw
Prothonotary/Clerk of Courts

Attys: Durant
J. Steidle
P. Mannix
J. Cronin

GP

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

SHAWN EVANS and BARBARA EVANS,
Husband and Wife,

Plaintiffs

vs.

CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER,

Defendants

)
) No. 2004-385-CD
)
) Type of Pleading: Defendant
) Pennsylvania American Water's
) Answer and New Matter to Plaintiffs'
) First Amended Complaint
)
)
) Filed on Behalf of: Defendant
) Pennsylvania American Water
)
) Counsel of Record for this Party:
) Julia R. Cronin, Esquire
) MILLER, KISTLER, CAMPBELL,
) MILLER, WILLIAMS & BENSON, INC.
) 124 N. Allegheny Street
) Bel efcnte, PA 16823
) 814-355-5474

FILED ^{NO} ^{CC}
m/11:26/51
JUL 05 2005 @
William A. Shaw
Prothonotary/Clerk of Courts

Dated: 7/1/05

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

SHAWN EVANS and BAREARA EVANS,)	
Husband and Wife,)	
)	
Plaintiffs)	
)	
vs.	)	No. 2004-385-CD
)	
CONTINENTAL CONSTRUCTION, INC.,)	
and SWEETLAND ENGINEERING &)	
ASSOCIATES, INC., and PENNSYLVANIA)	
AMERICAN WATER,)	
)	
Defendants)	

ANSWER AND NEW MATTER TO
PLAINTIFFS' FIRST AMENDED COMPLAINT

NOW COMES Defendant Pennsylvania American Water, by and through its counsel, Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., and files this Answer and New Matter to Plaintiffs' First Amended Complaint of which the following is a statement:

1. The identity of the Plaintiffs is admitted. The remaining averments of paragraph 1 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

2. The averments of paragraph 2 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

3. The averments of paragraph 3 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

4. Admitted.

5. It is admitted that a copy of a deed dated June 26, 2000 and recorded in Clearfield County Recorder's Office as instrument no. 2000-09009 on June 27, 2000 is attached to Plaintiffs' original Complaint as Exhibit "A." The remaining averments of paragraph 5 of Plaintiffs' Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same. Moreover, the referenced deed is a document in writing and speaks for itself. Any conclusions averred in Plaintiffs' Amended Complaint pertaining to interpretation of the deed are denied as conclusions of law.

6. The averments of paragraph 6 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

7. The averments of paragraph 7 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

8. To the extent the averments of paragraph 8 of Plaintiffs' First Amended Complaint are directed to a Defendant other than this answering Defendant, no response is necessary. To the extent that a response is deemed to be necessary, this Defendant denies that Plaintiffs' existing basement drain system was damaged and/or rendered useless due to any actions or inactions by this Defendant.

9. The averments of paragraph 9 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

10. The averments of paragraph 10 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

11. The averments of paragraph 11 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same. The referenced documents, Exhibit "B" and "C," speak for themselves. Any characterizations by Plaintiffs of those documents are denied as conclusions of law.

12. It is admitted that Continental installed a sanitary sewer line in the vicinity of Plaintiffs' property. The remaining allegations of paragraph 12 of Plaintiffs' First Amended Complaint are denied that in after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

13. The averments of paragraph 13 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

14. It is admitted that the sanitary sewer line constructed by Continental crossed the Plaintiffs' land, and that this Defendant's findings have supported that the Plaintiffs' drain sustained damage in the area where the sewer line work was performed. The remaining allegations of paragraph 14 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

15. The averments of paragraph 15 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

16. Admitted. However, it is denied that Pennsylvania American Water's installation of water lines caused any damage to Plaintiffs' basement drain system.

17. The averments of paragraph 17 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

18. The averments of paragraph 18 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

19. The averments of paragraph 19 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

20. The averments of paragraph 20 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

21. It is admitted that a statement from Roto-Rooter is attached to Plaintiffs' original Complaint as Exhibit "D." Any conclusions averred by Plaintiffs pertaining to the referenced document are conclusions of law. This Defendant demands strict proof at time of trial as to the truth and accuracy of the referenced document.

COUNT I

Shawn Evans and Barbara Evans vs. Continental Construction, Inc.

Paragraphs 1 through 21 above are incorporated herein by reference thereto as though the same were set forth at length.

22. Paragraph 22 of Plaintiffs' First Amended Complaint is directed to a different Defendant. Therefore, no response is required by this Defendant.

23. Paragraph 23 of Plaintiffs' First Amended Complaint is directed to a different Defendant. Therefore, no response is required by this Defendant. Furthermore, to the extent that the averments of paragraph 23 of Plaintiffs' First Amended Complaint constitute conclusions of law, no response is required.

WHEREFORE, Defendant Pennsylvania American Water prays that Plaintiffs' First Amended Complaint be dismissed with prejudice.

COUNT II

Shawn Evans and Barbara Evans vs. Sweetland Engineering & Associates, Inc.

Paragraphs 1 through 23 above are incorporated herein by reference thereto as though the same were set forth at length.

24. Paragraph 24 of Plaintiffs' First Amended Complaint is directed to a different Defendant. Therefore, no response is required by this Defendant.

25. Paragraph 25 of Plaintiffs' First Amended Complaint is directed to a different Defendant. Therefore, no response is required by this Defendant. Furthermore, to the extent that the averments of Paragraph 23 of Plaintiffs' First Amended Complaint constitute conclusions of law, no response is required.

WHEREFORE, Defendant PENNSYLVANIA American Water prays that Plaintiffs' First Amended Complaint be dismissed with prejudice.

COUNT III

Shawn Evans and Barbara Evans vs. Pennsylvania American Water

Paragraphs 1 through 25 above are incorporated herein by reference thereto as though the same were set forth at length.

26. To the extent that the averments of Paragraph 26 of Plaintiffs' First Amended Complaint constitute conclusions of law, no response is required. To the extent that a response is deemed to be required, the averments of Paragraph 26 of Plaintiffs' First Amended Complaint are specifically denied. It is specifically denied that the construction of new water lines by Pennsylvania American Water was negligent. It is specifically denied that Pennsylvania American Water's installation of water lines was done in a careless manner. It is specifically denied that any water line work done by Pennsylvania American Water contributed to failure of the Plaintiffs' basement drain to function as it had functioned before construction. Pennsylvania American Water acted in a reasonable, careful, and prudent manner at all times.

WHEREFORE, Defendant Pennsylvania American Water prays that Plaintiffs' First Amended Complaint be dismissed with prejudice.

27. The averments of paragraph 27 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of same.

28. The averments of paragraph 28 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or

information sufficient to form a belief as to the truth of same. It is admitted that a document from Bowman Masonry is attached to Plaintiffs' original Complaint as Exhibit "E." Said document speaks for itself, and any attempt by Plaintiffs to characterize said document is denied as a conclusion of law.

29. Admitted.

30. The averments of paragraph 30 of Plaintiffs' First Amended Complaint are denied in that after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as the truth of same.

WHEREFORE, Defendant Pennsylvania American Water prays that Plaintiffs' Complaint be dismissed with prejudice.

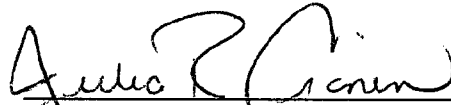
NEW MATTER

31. The allegations set forth in paragraphs 1 through 30 above incorporated herein by reference thereto as though the same were set forth at length.

32. On December 24, 2004, Plaintiffs Shawn Evans and Barbara Evans executed a pro-rata Joint Tortfeasor Release under the terms of which Pennsylvania American Water was discharged and released from any and all past, present and future liability in connection with the claims asserted in Plaintiffs' First Amended Complaint. A true and correct copy of said Joint Tortfeasor Release is attached hereto, marked Exhibit "A," and incorporated by reference.

33. Defendant Pennsylvania American Water hereby asserts all rights and limitations on liability provided by the Joint Tortfeasor Release executed by Plaintiffs on December 24, 2004 and attached hereto as Exhibit "A."

WHEREFORE, Defendant Pennsylvania American Water prays that Plaintiffs' First Amended Complaint be dismissed with prejudice and that judgment be entered in its favor.



Julia R. Cronin, Esquire

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 N. Allegheny Street
Bellefonte, PENNSYLVANIA 16823
814-355-5474

Counsel for Defendant
Pennsylvania American Water

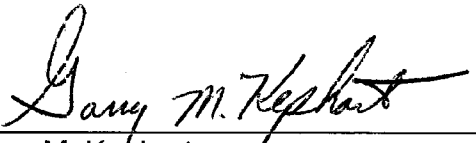
Dated: 7/1/05

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

SHAWN EVANS and BARBARA EVANS,)	
Husband and Wife,)	
)	
Plaintiffs)	
)	
vs.	)	No. 2004-385-CD
)	
CONTINENTAL CONSTRUCTION, INC.,)	
and SWEETLAND ENGINEERING &)	
ASSOCIATES, INC., and PENNSYLVANIA)	
AMERICAN WATER,)	
)	
Defendants)	

VERIFICATION

I, Garry M. Kephart, verify that the statements contained in the foregoing Answer and New Matter to Plaintiffs' First Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.



Garry M. Kephart
Authorized Representative of
Pennsylvania American Water

Dated: 6/30/05

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

SHAWN EVANS and BARBARA EVANS,)	
Husband and Wife,)	
)	
Plaintiffs)	
)	
vs.	)	No. 2004-385-CD
)	
CONTINENTAL CONSTRUCTION, INC.,)	
and SWEETLAND ENGINEERING &)	
ASSOCIATES, INC., and PENNSYLVANIA)	
AMERICAN WATER,)	
)	
Defendants)	

CERTIFICATE OF SERVICE

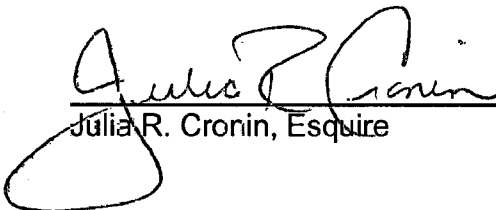
I, Julia R. Cronin, Esquire, of the law firm of MILLER, KISTLER, CAMPBELL, MILLER, WILLIAMS & BENSON INC., hereby certify that the foregoing Answer and New Matter to Plaintiffs' First Amended Complaint served this 1st day of July, 2005 by mailing same first class United States mail, postage prepaid, addressed to:

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

John M. Steidle, Esquire
Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222
(Counsel for Defendant Continental Construction)

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley
1624 Frick Building
Pittsburgh, PA 15219
(Counsel for Defendant Sweetland Engineering & Associates, Inc.)

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.


Julia R. Cronin, Esquire

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

SHAWN EVANS and BARBARA EVANS,
Husband and Wife,

Plaintiffs

vs.

CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER,

Defendants

)
) No. 2004-385-CD
)
) Type of Pleading: Praecipe to Amend
) Exhibit
)
)
)
) Filed on Behalf of: Defendant
) Pennsylvania American Water
)
) Counsel of Record for this Party:
)
) Julia R. Cronin, Esquire
) Tracey G. Benson, Esquire
) MILLER, KISTLER, CAMPBELL,
) MILLER, WILLIAMS & BENSON, INC.
) 124 N. Allegheny Street
) Bellefonte, PA 16823
) 814-355-5474

FILED *NO cc*
mld:ora
JUL 11 2005 *@*

William A. Shaw
Prothonotary/Clerk of Courts

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

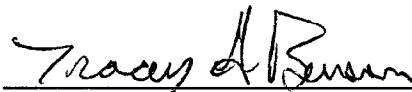
SHAWN EVANS and BARBARA EVANS,)	
Husband and Wife,)	
)	
Plaintiffs)	
)	
vs.	)	No. 2004-385-CD
)	
CONTINENTAL CONSTRUCTION, INC.,)	
and SWEETLAND ENGINEERING &)	
ASSOCIATES, INC., and PENNSYLVANIA)	
AMERICAN WATER,)	
)	
Defendants)	

PRAECIPE TO AMEND EXHIBIT

TO THE PROTHONOTARY:

Attached hereto is the Joint Tortfeasor Release identified in Defendant Pennsylvania American Water's Answer and New Matter to Plaintiff's First Amended Complaint as Exhibit "A," which was inadvertently not attached to the Answer and New Matter when filed.

Please append the Joint Tortfeasor Release to Defendant Pennsylvania American Water's Answer and New Matter to Plaintiff's First Amended Complaint as Exhibit "A."



Julia R. Cronin, Esquire
Tracey G. Benson, Esquire

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 N. Allegheny Street
Bellefonte, PA 16823
814-355-5474

Counsel for PA American Water

Dated: 7/11/05

JOINT TORTFEASOR RELEASE

KNOW ALL MEN BY THESE PRESENTS, that we, **SHAWN EVANS and BARBARA EVANS**, being of full legal age and of sound mind, for and in consideration of the sum of **ONE AND 00/100 (\$1.00) DOLLAR**, lawful money of the United States of America, to us in hand paid by **PENNSYLVANIA AMERICAN WATER COMPANY and TRAVELERS PROPERTY CASUALTY**, the receipt whereof is hereby acknowledged, do hereby release and forever discharge, and by these presents do for ourselves, our heirs, executors, successors and assigns, release and forever discharge the said **PENNSYLVANIA AMERICAN WATER COMPANY and TRAVELERS PROPERTY CASUALTY**, from any and all liability, claims, causes of action, damages, demands and controversies of any kind whatsoever, in law or in equity, which against the said **PENNSYLVANIA AMERICAN WATER COMPANY and TRAVELERS PROPERTY CASUALTY**, their agents, servants, insurers and representatives, we ever had, now have or which we may have in the future, or which our heirs, executors, successors or assigns hereinafter can or may have by reason of any property damage, trespass of real property, or personal injury and the consequences thereof, known or unknown, foreseen or unforeseen, arising or which may arise as a result of or any way connected with water line work done by Pennsylvania American Water Company and D. J. Wisor & Sons in the years 2001 and 2002 in Boggs Township, Clearfield County, Pennsylvania, including but not limited to a cause of action filed to No. 2004-385 in the Court of Common Pleas of Clearfield County, Pennsylvania.

It is understood that other than as may be recited herein, no claims or demands are being released which the undersigned may have against any other corporation or person in connection with any currently pending or contemplated lawsuits pertaining to the damages sustained by the undersigned. In the event that it is judicially determined that any of the released parties are jointly liable with any other person or entity, then the damages against such other person or entity shall be reduced by the greater of:

- A. The amount paid as consideration for this Release; or
- B. The pro-rata share of the parties released herein as to the total liability.

This reduction shall occur only if it is judicially determined that the parties released hereunder and other persons or entities are jointly and/or severally liable.

It is expressly understood that this Release is executed pursuant to the provisions of the "Uniform Contribution Among Joint Tortfeasors Act," 42 Pa.C.S.A. Section 8321 et seq. and the Comparative Negligence Statute 42 Pa.C.S.A. Section 7102.

The undersigned further acknowledge that demands may hereafter be made against **PENNSYLVANIA AMERICAN WATER COMPANY and TRAVELERS PROPERTY CASUALTY** for contribution and/or indemnity by other persons or corporations arising from the undersigned's claims, for injury connected with the subject matter forming the basis for the litigation being ended through this Release. It is the purpose and intention of this Release to indemnify and hold harmless **PENNSYLVANIA AMERICAN WATER COMPANY and TRAVELERS PROPERTY CASUALTY** from any loss, claim, liability, cost or expenses growing out of any claim for contribution and/or indemnity. If a verdict, judgment or other determination in the undersigned's favor results in a claim, verdict or judgment for contribution or indemnity against **PENNSYLVANIA AMERICAN WATER COMPANY and TRAVELERS PROPERTY CASUALTY**, then the undersigned agree that they will not enforce any right to collect the claim, verdict or judgment to the extent that such enforcement creates liability against the parties released herein. In such event, the undersigned agree to reduce the claim or satisfy the verdict or judgment to the extent necessary to eliminate the claim of liability of the parties released herein, either to the undersigned or to any persons or corporations claiming contribution and/or indemnity. Further, the undersigned agree to hold **PENNSYLVANIA AMERICAN WATER COMPANY and TRAVELERS PROPERTY CASUALTY** harmless from any and all claims for contribution and/or indemnity which have accrued or may accrue as a result of settlements made between the undersigned and other persons or corporations prior to, or subsequent to, the execution of this Release.

It is expressly understood and agreed that the acceptance of the consideration set forth herein is in full accord and satisfaction of the disputed claim against **PENNSYLVANIA AMERICAN WATER COMPANY and TRAVELERS PROPERTY CASUALTY**, and same is not an admission of liability, liability being expressly denied.

It is understood and agreed that this is a complete release agreement, and that there are no written or oral understandings or agreements, directly or indirectly, connected with this release and settlement that are not set forth and/or incorporated herein.

This agreement shall be construed that wherever applicable, the use of the singular number shall include the plural number, the masculine gender shall be construed to include the feminine or neuter gender, and shall be binding upon and inure to the successors, assigns, heirs, executors, administrators and legal representatives of the respective parties hereto.

WE HAVE READ THE ABOVE AND UNDERSTAND THE SAME TO BE
LEGALLY BINDING UPON US BY ALL THE TERMS OF THIS RELEASE
AGREEMENT.

IN WITNESS WHEREOF, we have hereunto set their hands and seals this 24th
day of December, 2004.

Witness:

Raggy C Durant

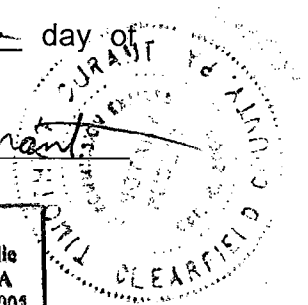
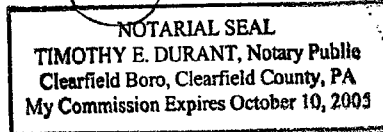
Shawn Evans (SEAL)
SHAWN EVANS

Raggy C Durant

Barbara Evans (SEAL)
BARBARA EVANS

SWORN TO AND SUBSCRIBED before me this 24th day of
December, 2004.

Timothy E Durant
Notary Public



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

SHAWN EVANS and BARBARA EVANS,)	
Husband and Wife,)	
)	
Plaintiffs)	
)	
vs.	)	No. 2004-385-CD
)	
CONTINENTAL CONSTRUCTION, INC.,)	
and SWEETLAND ENGINEERING &)	
ASSOCIATES, INC., and PENNSYLVANIA)	
AMERICAN WATER,)	
)	
Defendants)	

CERTIFICATE OF SERVICE

I, Tracey G. Benson, Esquire, of the law firm of MILLER, KISTLER, CAMPBELL, MILLER, WILLIAMS & BENSON, INC., hereby certify that the foregoing Praecipe to Amend Exhibit was served this 11th day of July, 2005 by mailing same first class United States mail, postage prepaid, addressed to:

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

John M. Steidle, Esquire
Burns, White & Hickton, LLC
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222
(Counsel for Defendant Continental Construction)

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley
1624 Frick Building
Pittsburgh, PA 15219
(Counsel for Defendant Sweetland Engineering & Associates, Inc.)

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.



Tracey G. Benson, Esquire

FILED

JUL 11 2005

**William A. Shaw
Prothonotary/Clerk of Courts**

FILED

JUN 18 2007

W/10:30 W
William A. Shaw
Prothonotary/Clerk of Courts
no C/C *(W)*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SHAWN and BARBARA EVANS,

CIVIL DIVISION

Plaintiffs,

No. 04-385-CD

vs.

CONTINENTAL CONSTRUCTION,
INC., and SWEETLAND
ENGINEERING & ASSOCIATES,
INC., and PA AMERICAN WATER,

**NOTICE OF SERVICE OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS DIRECTED TO PA
AMERICAN WATER**

Defendants.

Filed on behalf of Defendant,
Continental Construction, Inc.

Counsel of Record for this party:

John M. Steidle, Esquire
PA ID No. 84404

Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

(412) 995-3136

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SHAWN and BARBARA EVANS,	)	CIVIL DIVISION
)	
Plaintiffs,)	
)	
vs.	)	No. 04-385-CD
)	
CONTINENTAL CONSTRUCTION,)	
INC., and SWEETLAND)	
ENGINEERING & ASSOCIATES,)	
INC., and PA AMERICAN WATER,)	
)	
Defendants.)	

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS DIRECTED TO PA AMERICAN WATER**

TO: PROTHONOTARY OF CLEARFIELD COUNTY

I hereby certify that on the 15TH day of July, 2007, Defendant, Continental Construction, Inc., served Interrogatories and Requests for Production of Documents upon Defendant, Pennsylvania American Water, by mailing the same to its counsel of record as follows:

Julia R. Cronin, Esquire
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830

BURNS, WHITE & HICKTON, LLC

BY: 

John M. Steidle, Esquire
Attorneys for Defendant
Continental Construction, Inc.

FILED

JUN 18 2007

m/10:20/
William A. Shaw
Prothonotary/Clerk of Courts
no 4/c *(610)*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SHAWN and BARBARA EVANS,

CIVIL DIVISION

Plaintiffs,

No. 04-385-CD

vs.

CONTINENTAL CONSTRUCTION,
INC., and SWEETLAND
ENGINEERING & ASSOCIATES,
INC., and PA AMERICAN WATER,

**NOTICE OF SERVICE OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS DIRECTED TO
PLAINTIFFS**

Defendants.

Filed on behalf of Defendant,
Continental Construction, Inc.

Counsel of Record for this party:

John M. Steidle, Esquire
PA ID No. 84404

Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

(412) 995-3136

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SHAWN and BARBARA EVANS,	)	CIVIL DIVISION
)	
Plaintiffs,)	
)	
vs.	)	No. 04-385-CD
)	
CONTINENTAL CONSTRUCTION,)	
INC., and SWEETLAND)	
ENGINEERING & ASSOCIATES,)	
INC., and PA AMERICAN WATER,)	
)	
Defendants.)	

**NOTICE OF SERVICE OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS**

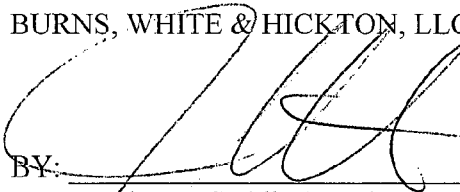
TO: PROTHONOTARY OF CLEARFIELD COUNTY

I hereby certify that on the 15th day of June, 2007, Defendant, Continental Construction, Inc., served Interrogatories and Requests for Production of Documents upon Plaintiffs by mailing the same to their counsel of record as follows:

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830

Julia R. Cronin, Esquire
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823

BURNS, WHITE & HICKTON, LLC

BY: 

John M. Steidle, Esquire
Attorneys for Defendant
Continental Construction, Inc.

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

SHAWN EVANS and BARBARA EVANS,
Husband and Wife

Plaintiffs,

No. 2004-385-CD

vs.

**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER**

Defendants

**PRAECIPE TO SETTLE,
DISCONTINUE AND END**

Filed on behalf of:
**SHAWN EVANS and BARBARA
EVANS, Plaintiffs**

Counsel of Record for Plaintiffs

TIMOTHY E. DURANT, ESQ.
Pa. I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel For PA American Water Co.

JULIA R. CRONIN, ESQ.
Miller, Kistler, Campbell, Miller, Wil-
liams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Opposing Counsel for Continental Construction

JOHN M. STEIDLE, ESQ.
Pa. I.D. No. 84404
Burns, White & Hickton, LLC
120 Fifth Ave., Suite 2400
Pittsburgh, PA 15222-3001
(412) 394-2500

Opposing Counsel for Sweetland Engineering & Associates, Inc.

JEFFREY A. KUBAY, ESQ.
Wayman, Irvin & McAuley, LLC
1624 Frick Building,
437 Grant Street
Pittsburgh, PA 15219

FILED

08:45a.m. GK
OCT 04 2007

William A. Shaw
Prothonotary/Clerk of Courts

4 CC TO ATTY
+ 1 Cert. of Discontinuation

(GK)

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

SHAWN EVANS and BARBARA EVANS,
Plaintiffs

No. 2004-385-CD

vs.

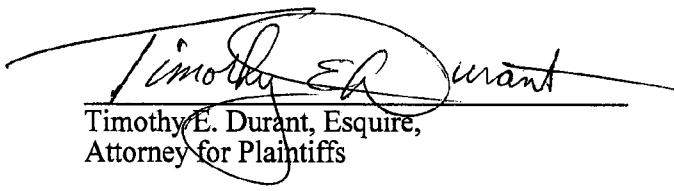
**CONTINENTAL CONSTRUCTION, INC.,
and SWEETLAND ENGINEERING &
ASSOCIATES, INC., and PENNSYLVANIA
AMERICAN WATER**
Defendants

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PRAECIPE TO SETTLE, DISCONTINUE AND END

Please mark the above-captioned action, discontinued, settled and ended for all time.

DATE: *October 4, 2007*


Timothy E. Durant, Esquire,
Attorney for Plaintiffs

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

CIVIL DIVISION

COPY

**Barbara Evans
Shawn Evans**

Vs.

No. 2004-00385-CD

**Continental Construction, Inc.
Sweetland Engineering & Associates Inc.
Pennsylvania American Water**

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 the 4th Day of October, 2007, marked:

Settled, Discontinued And Ended

Record costs in the sum of \$105.00 have been paid in full by: \$85.00, Burns, White & Hickton and \$20.00, Paul M. Mannix, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 4th day of October A.D. 2007.

A handwritten signature in cursive script, appearing to read 'William A. Shaw', followed by the initials 'GK'.

William A. Shaw, Prothonotary