

04-606-CD  
E. M. BROWN, INC. vs. R. J. CORMAN RAILROAD CO., et al.

E.M. Brown vs R. J. Corman Railroad et al  
2004-606-CD

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

E.M. BROWN, INC.,  
Plaintiff

vs.

R.J. CORMAN RAILROAD COMPANY/  
PENNSYLVANIA LINES, INC.,

and

POHL CORPORATION,  
Defendants

: No. 2004-606-CD  
:  
: Type of Case: Civil  
:  
: Type of Pleading: Praeclipe for Entry of  
: Appearance  
:  
: Filed on Behalf of: Defendant R.J. Corman  
: Railroad Company/Pennsylvania  
: Lines, Inc.  
:  
: Attorney for this Party:  
: Kim C. Kesner, Esquire  
: Supreme Ct. I.D. No. 28307  
:  
: 23 North Second Street  
: Clearfield, PA 16830  
: 814-765-1706  
:  
: Attorney for Plaintiff:  
:  
: Peter F. Smith, Esquire  
: 30 South Second Street  
: P.O. Box 130  
: Clearfield, PA 16830  
: 814-765-5595  
:  
:

**FILED**

**MAY 20 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

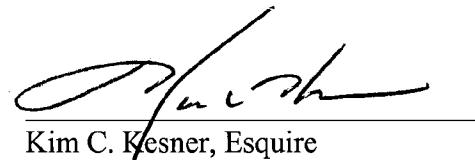
E.M. BROWN, INC., : No. 2004-606-CD  
Plaintiff :  
vs. :  
R.J. CORMAN RAILROAD COMPANY/ :  
PENNSYLVANIA LINES, INC., :  
and :  
POHL CORPORATION, :  
Defendants :  
:

**PRAECIPE FOR ENTRY OF APPEARANCE**

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly enter my appearance in this action as counsel for Defendant, R.J. Corman  
Railroad Company/Pennsylvania Lines, Inc.

Date: 5/20/04

  
\_\_\_\_\_  
Kim C. Kesner, Esquire  
Supreme Court I.D. #28307  
23 North Second Street  
Clearfield, PA 16830  
(814) 765-1706

cc: Peter F. Smith, Esquire

FILED

400 Amy Koenig

1/23/04  
MAY 28 2004  
600

William A. Shaw  
Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania

E.M. BROWN, INC.

VS.

R.J. CORMAN RAILRAOD COMPANY/PENNSYLVANIA LINES, INC. a1

COMPLAINT

Sheriff Docket # 15514

04-606-CD

**SHERIFF RETURNS**

NOW MAY 6, 2004 AT 10:30 AM SERVED THE WITHIN COMPLAINT ON R.J. CORMAN, DEFENDANT AT EMPLOYMENT, CLEARFIELD RAILROAD YARD, 4TH WARD, CLEARFIELD BOROUGH, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JOHN J. VISNIESKY, TRAIN DISPATCHER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: NEVLING/HUNTER

NOW MAY 3, 2004 BARRY JOZWIAK, SHERIFF OF BERKS COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON POHL CORPORATION, DEFENDANT.

NOW MAY 12, 2004 SERVED THE WITHIN COMPLAINT ON POHL CORPORATION, DEFENDANT BY DEPUTIZING THE SHERIFF OF BERKS COUNTY. THE RETURN OF SHERIFF JOZWIAK IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED Meryle Knoll, vp.

**Return Costs**

Cost	Description
36.00	SHERIFF HAWKINS PAID BY: PLFF. CK# 28630
20.00	SURCHARGE PAID BY: PLFF CK# 28631
28.50	BERKS COUNTY SHFF. PAID BY: PLFF.

Sworn to Before Me This

3rd Day Of June 2004

**FILED**

JUN 09 2004  
010:47 a.m  
William A. Shaw  
Prothonotary

So Answers,

*Chester Hawkins  
by Marley Hager*  
Chester A. Hawkins  
Sheriff



# SHERIFF OF BERKS COUNTY

633 Court Street, Reading, PA 19601

Phone: 610-478-6240 Main Fax: 610-478-6222 Sheriff Fax: 610-478-6072

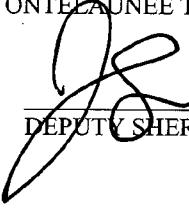
*Barry Jozwiak, Sheriff*

*Eric J. Weaknecht, Chief Deputy*

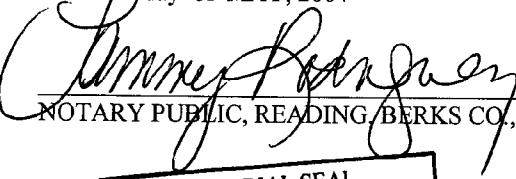
## AFFIDAVIT OF SERVICE

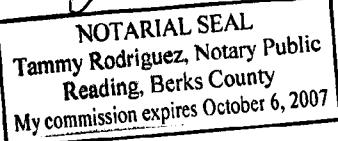
DOCKET NO. 04-606-CD  
COMMONWEALTH OF  
PENNSYLVANIA:  
COUNTY OF BERKS

Personally appeared before me, JOSEPH SMERKO, Deputy for Barry J. Jozwiak, Sheriff of Berks County, 633 Court Street, Reading, Pennsylvania, who being duly sworn according to law, deposes and says that on MAY 12, 2004 at 1:35 PM, he served the annexed COMPLAINT IN CIVIL ACTION upon POHL CORPORATION, within named defendant, by handing a copy thereof to MERYLE KNOLL, VICE PRESIDENT, at 5662 LEESPORT AVENUE, LEESPORT, ONTOLAUNEE TOWNSHIP, Berks County, Pa., and made known to defendant the contents thereof.

  
DEPUTY SHERIFF OF BERKS CO., PA

Sworn and subscribed before me  
this 25<sup>th</sup> day of MAY, 2004

  
NOTARY PUBLIC, READING, BERKS CO., PA



Service made as set forth above.

So Answers,

  
SHERIFF OF BERKS COUNTY, PA

### Sheriff's Costs in Above Proceedings

\$ 75.00	DEPOSIT
\$ 28.50	ACTUAL COST OF CASE
\$ 46.50	AMOUNT OF REFUND

All Sheriff's Costs shall be due and payable when services are performed, and it shall be lawful for him to demand and receive from the party instituting the proceedings, or any part liable for the costs thereof, all unpaid sheriff's fees on the same before he shall be obligated by law to make return thereof.

Sec. 2, Act of June 20, 1911, P.L. 1072



# Sheriff's Office Clearfield County

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

CHESTER A. HAWKINS  
SHERIFF

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

ROBERT SNYDER  
CHIEF DEPUTY

MARILYN HAMM  
DEPT. CLERK

CYNTHIA AUGHENBAUGH  
OFFICE MANAGER

PETER F. SMITH  
SOLICITOR

## DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
PAGE 15514

E.M. BROWN INC.

TERM & NO. 04-606-CD

VS

DOCUMENT TO BE SERVED:

R.J. CORMAN RAILROAD CO. al

COMPLAINT

SERVE BY:

05/30/2004

SEARCHED  
INDEXED  
SERIALIZED  
FILED

2004 MAY - 9 P.M.  
119

COURT OF COMMON PLEAS  
SHERIFF'S OFFICE

MAKE REFUND PAYABLE TO:

E.M. BROWN, INC. PO Box 767, Clearfield PA 16830

SERVE: POHL CORPORATION

ADDRESS: RD#2 LEESPORT AVE., READING, PA. 19605

926-5400

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF OF BERKS COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 3RD Day of MAY 2004

Respectfully,

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY

PETER F. SMITH  
ATTORNEY  
30 SOUTH SECOND STREET  
P.O. BOX 130  
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-5595  
FAX (814) 765-6662

E-mail  
pfsatty@uplink.net

April 28, 2004

Barry Jozwiak  
Berks County Sheriff  
Berks County Courthouse  
633 Court Street  
Reading, PA 19601

Re: E. M. Brown, Inc. v. R. J. Corman and Pohl Corporation

Dear Sheriff Jozwiak:

I filed a Complaint in the matter above with the Clearfield County Prothonotary in Clearfield, Pennsylvania.

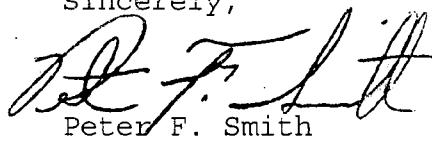
The Sheriff of Clearfield County has been directed to deputize you. He will forward one certified copy of the Complaint to you for service on the Pohl Corporation, Defendant, at the following address:

Pohl Corporation  
R.R 3 Leesport Avenue  
Reading, PA 19605

I enclose a check for your costs of service.

If you have any questions or additional information is needed, please do not hesitate to contact my office.

Sincerely,



Peter F. Smith

PFS/hab

Enclosure

cc: E. M. Brown, Inc.

RECEIVED  
APR 29 2004  
SHERIFF OF BERKS COUNTY

2004 MAY - 5 P 1:49

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

E.M. BROWN, INC.,

Plaintiff

vs.

R.J. CORMAN RAILROAD COMPANY/  
PENNSYLVANIA LINES, INC.,

and

POHL CORPORATION,

Defendants

: No. 2004-606-CD

: Type of Case: Civil

: Type of Pleading: Answer of R.J. Corman  
Railroad Company/Pennsylvania  
Lines, Inc.

: Filed on Behalf of: Defendant R.J. Corman  
Railroad Company/Pennsylvania  
Lines, Inc.

: Attorney for this Party:  
Kim C. Kesner, Esquire  
Supreme Ct. I.D. No. 28307

: 23 North Second Street  
Clearfield, PA 16830  
814-765-1706

: Attorney for Plaintiff:

: Peter F. Smith, Esquire  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830  
814-765-5595

**FILED**

**JUN 04 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

E.M. BROWN, INC., : No. 2004-606-CD  
Plaintiff :  
: vs. :  
: R.J. CORMAN RAILROAD COMPANY/ :  
: PENNSYLVANIA LINES, INC., :  
: and :  
: POHL CORPORATION, :  
: Defendants :  
:

**ANSWER OF R.J. CORMAN RAILROAD**  
**COMPANY/PENNSYLVANIA LINES, INC.**

AND NOW comes, R. J. Corman Railroad Company/Pennsylvania Lines, Inc. (RJCP) by its attorney Kim C. Kesner, Esquire and files the following Answer to Plaintiff's Complaint:

1. Admitted.
2. Admitted.
3. No response is required by RJCP as to the averments contained in Paragraph 3 of Plaintiff's Complaint as to Plaintiff's designation of the second defendant.
4. Admitted.
5. RJCP is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 5 of Plaintiff's Complaint. Proof thereof is therefore demanded.
6. The averments contained in Paragraph 6 of Plaintiff's Complaint constitute conclusions of law and construction of a document to which no response is required. To the

extent that a response is required and is relevant, it is specifically denied that Plaintiff's installation of any railroad siding is confirmed or "was memorialized" in the document annexed to Plaintiff's Complaint as Exhibit 1. By way of further answer RJCP is without sufficient knowledge or information to form a belief as to the authenticity, materiality or relevancy to Plaintiff's claims of the photocopy of the document annexed to Plaintiff's Complaint as Exhibit 1.

7. RJCP objects to Plaintiff's attachment to its Complaint of purported documentary evidence which is in violation of the Rules of Civil Procedure. By way of further answer, RJCP is without sufficient knowledge or information to form a belief as to the authenticity, materiality and relevance to Plaintiff's claims of the photocopy annexed to Plaintiff's Complaint as Exhibit 2.

8. It is admitted that on or about September 9, 2002 RJCP entered into a Railroad Track Removal Agreement with Pohl Corporation for removal of 2.1 miles of RJCP's track on RJCP's Winburne Branch and that thereafter Pohl Corporation fully performed the Agreement. It is specifically denied that any of the rail removed was Plaintiff's property.

9. Admitted.

10. It is admitted that on or about September 9, 2002 RJCP entered into a Railroad Track Removal Agreement with Pohl Corporation for removal of 2.1 miles of RJCP's track on RJCP's Winburne Branch and that thereafter Pohl Corporation fully performed the Agreement. It is specifically denied that any of the rail removed was Plaintiff's property.

11. Admitted.

12. The averments contained in Paragraph 12 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent that a response is required

and is relevant, RJCP specifically denies that any rail removed by Pohl Corporation under its Agreement with RJCP was the property of Plaintiff and/or that either Defendant committed a conversion and/or trespass of Plaintiff's property.

13. It is specifically denied that the fair market value of the portion of RJCP's rail claimed by Plaintiff exceeded \$25,000.00.

WHEREFORE, Defendant R.J. Corman Railroad Company/Pennsylvania Lines, Inc. respectfully requests this Honorable Court to enter Judgment in its favor dismissing Plaintiff's Complaint.

Date: 6/3/04



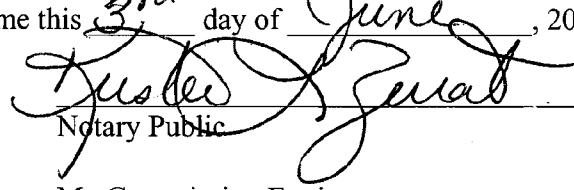
Kim C. Kesner, Esquire  
Supreme Court I.D. #28307  
23 North Second Street  
Clearfield, PA 16830  
(814) 765-1706

COMMONWEALTH OF PENNSYLVANIA :  
: S. S.  
COUNTY OF CLEARFIELD :  
:

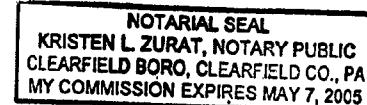
Before me the undersigned authority personally appeared, Timothy M. Potts, who being duly sworn according to law deposes and says that he is the Division Manager of R.J. Corman Railroad Company/Pennsylvania Lines, Inc. and that as such officer, he is authorized and empowered to execute this affidavit and that the facts and averments set forth in the foregoing Complaint are true and correct to the best of his knowledge, information, and belief.

  
Timothy M. Potts

Sworn to and subscribed before me this 3<sup>rd</sup> day of June, 2004.

  
Kristen L. Zurat  
Notary Public

My Commission Expires:

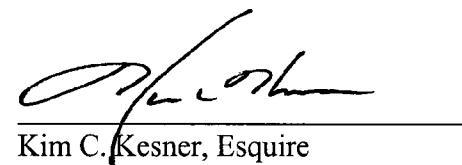


**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on the 4<sup>th</sup> day of June, 2004, I caused to be served a certified copy of the Answer of R.J. Corman Railroad Company/Pennsylvania Lines, Inc. on the following by United States First Class Mail, Postage Prepaid:

Peter F. Smith, Esquire  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830

Date: June 4, 2004



\_\_\_\_\_  
Kim C. Kesner, Esquire

FILED *cc*  
JUN 10 2004 *AK* Amy Kasner  
JUN 04 2004 *AK*

William A. Shaw  
Prothonotary/Clerk of Courts

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

FILED

APR 30 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

E. M. BROWN, INC. :  
Plaintiff :  
: vs. : No. 2004-  
: :  
R.J. CORMAN RAILROAD COMPANY/ :  
PENNSYLVANIA LINES, INC., :  
: :  
and :  
: :  
POHL CORPORATION :  
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 or for any other claim or relief requested by the Plaintiff. You may lose money or other rights important to you.

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

Clearfield County Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641

## **AMERICANS WITH DISABILITIES ACT OF 1990**

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990.

For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641

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

E. M. BROWN, INC. :  
Plaintiff : No. 2004-  
vs. :  
R.J. CORMAN RAILROAD COMPANY/ :  
PENNSYLVANIA LINES, INC., :  
and :  
POHL CORPORATION :  
Defendants :

COMPLAINT

COMES NOW, E.M. BROWN, INC., by its attorney, Peter F. Smith, who states in support of this complaint:

1. E.M. BROWN, INC. is the Plaintiff. It is a Pennsylvania business corporation with principal office on Mt. Joy Road, Lawrence Township, Clearfield, Pennsylvania 16830. It has a mailing address of P.O. Box 767 Clearfield, Pennsylvania 16830.

2. The first Defendant is R.J. CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES, INC., which is a Pennsylvania corporation, with principal office and mailing address at P.O. Box 788, Nicholasville, Kentucky 40356.

3. The second Defendant is POHL CORPORATION, which is believed to be a Pennsylvania corporation with principal office at RD #2 Leesport Avenue, Reading, Pennsylvania 19605.

4. R.J. CORMAN maintains an office at the Clearfield Railroad Yard, 4<sup>th</sup> Ward of Clearfield Borough, Clearfield, Pennsylvania. Further R.J. CORMAN owns and operates railroad lines throughout Clearfield County, and it conducts substantial business here.

5. On or about July 1, 1978 E.M. BROWN, INC. installed 10,696 lineal feet of rail on a railroad siding which connected its coal tipple in Winburne, Clearfield County, Pennsylvania with the Winburne Branch of what was then the Penn Central Transportation Company's railroad system.

6. The installation of this rail was memorialized in an Agreement of Lease between Penn Central Transportation Company and E.M. BROWN, INC. entered on or about June 1, 1974. A true and correct copy of said agreement is attached hereto and incorporated herein by reference as Plaintiff's Exhibit 1.

7. The installation of this rail and 38 crossties cost E.M. BROWN, INC. \$53,204.16. A true and correct copy of the invoice which it paid for this installation issued to it by Harry A. Siravo & Sons, Inc. is attached hereto and incorporated herein and by reference as Plaintiff's Exhibit 2.

8. In May of 2003 E.M. BROWN, INC's rail was removed by Defendant POHL CORPORATION.

9. Said removal was without the consent of E.M. BROWN, INC.

10. E.M. BROWN, INC. believes and therefore avers that Defendant POHL CORPORATION was acting on the instructions and under an agreement with R.J. CORMAN. E.M. BROWN, INC. has no copy of their agreement if it was in writing.

11. Written and oral demand have been made upon the Defendants to either restore E.M. BROWN, INC's property or to compensate E.M. BROWN, INC., for it.

12. The wrongful removal of E.M. BROWN, INC's rail constitutes a trespass and entitles it to recover damages for the wrongful conversion of its property.

13. E.M. BROWN, INC believes that the fair market value of the rail on the date it was converted by the Defendants exceeded \$25,000.

WHEREFORE, E.M. BROWN, INC. prays this Honorable Court to enter a judgment in its favor and against the Defendants, jointly and severely, in an amount in excess of \$25,000 together with interest and costs.

Respectfully submitted,

Dated: 4/28/04



Peter F. Smith  
Attorney for Plaintiff

## AFFIDAVIT

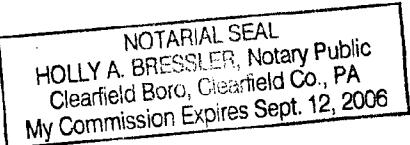
STATE OF PENNSYLVANIA :  
: SS  
COUNTY OF CLEARFIELD :

ROBERT E. BROWN, being duly sworn according to law, deposes and says that he is the President for E.M. BROWN, INC. and, as such, is duly authorized to make this Affidavit, and further, that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Robert E. Brown Pres.  
Robert E. Brown, President

SWORN TO AND SUBSCRIBED  
before me this 29<sup>th</sup>  
day of April, 2004.

Holly A. Bressler  
Notary Public



THIS AGREEMENT OF LEASE made the day of 19<sup>74</sup>  
 George P. Baker, Robert W. Blanchette and Richard C. Bond, Trustees of  
 the works and property of the Beech Creek Railroad Company, day of  
 WITNESSETH: That the Property of PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR, Lessor of  
 PARTIES hereinafter called Lessor, hereby leases to E. M. BROWN, INCORPORATED, a corporation of the Commonwealth of Pennsylvania, (Address: P. O. Box 767, Clearfield, Pennsylvania, 16830), hereinafter called Lessee, in consideration of the rents to be paid and of the covenants and agreements hereinafter mentioned on the part of Lessee to be paid, kept and performed, the following described premises:

PREMISES ALL THAT CERTAIN use of Lessor's sidetrack and underlying land known as Lessor's Winburne Branch extending from Station 1+000 northwardly to Station 9+698 a distance of Eight Thousand Six Hundred Ninety-eight (8, 698) lineal feet located at Winburne in the Township of Cooper, County of Clearfield and Commonwealth of Pennsylvania as shown in solid red on Valuation Plans V 131/ Sheets 5 and 6, dated June 4, 1974 marked Exhibit "A" attached hereto and made a part hereof.

**IMPROVEMENTS** TOGETHER with the privilege of maintaining thereon, at Lessee's sole cost and expense, but in all respects satisfactory to Lessor, the following improvements, upon the condition that Lessee shall not construct any other improvements or make any additions or alterations to the improvements constructed on the demised land without the prior written consent of Lessor:

**EXISTING IMPROVEMENTS OWNED AND MAINTAINED THEREON BY LESSEE:**

**Portion of Steel tipple - Ogle #9**

The above described premises, together with any and all buildings or other structures and improvements thereon owned by Lessee, are hereinafter referred to as the demised premises.

**LESSOR'S FACILITIES** Lessor hereby reserves unto itself and its licensees the right and easement to construct, use, operate, maintain, repair and renew any pipe, conduit or tunnel, and any electric, communication or signal transmission lines, together with poles and guys therefor, and any other facilities of like character, as may now exist or may hereafter be placed upon, under or over the demised premises, it being agreed that this lease is subject and subordinate to any and all such rights, easements and uses. Lessee shall occupy and use the demised premises in a careful, safe and orderly manner so as not to interfere in any way with the maintenance or operation of the business of Lessor or of its licensees or with any structures or facilities appurtenant to the business of Lessor or of its licensees.

**TERM** TO HOLD the demised premises for and during the term of one (1) year from June 1, 1974 and  
**RENT** ending May 31, 1975, unless sooner terminated as hereinafter provided) for the rent or sum of One Thousand Two Hundred Eighty and no/100

Dollars (\$ 1,280.00) for said term, payable without any previous demand therefor in equal payments of

Dollars (\$ ), in advance, on the first day of each  
 at Post Office Box 8333, Philadelphia, Pennsylvania, 19101, during the term and each continued term, if any, of this lease, and at the additional rents hereinafter provided,  
 at such place as Lessor may from time to time designate.

**ADDITIONAL RENTS -** Lessee shall pay the following additional costs, charges and expenses as additional rents hereunder:  
**TAXES AND WATER**

TAXES - Lessee shall pay to Lessor, within thirty (30) days after bill rendered therefor, all taxes and assessments, general, special or otherwise, which may be charged, assessed, imposed or payable upon the demised premises during the term or any continued term hereof. If the demised premises are not taxed separately but as a part of a larger tract or parcel or in connection therewith, then Lessee shall pay a reasonable and equitable portion of the taxes and assessments upon the whole tract or parcel based upon the relation of the market value of the parcel leased to the market value of the whole tax parcel; the apportionment shall be fixed and determined by Lessor and if not protested by Lessee in writing within 30 days of receipt of the apportionment, Lessor's determination shall be binding and conclusive. Lessee shall also pay to Lessor, within thirty (30) days after bill rendered therefor, all taxes and assessments, general, special or otherwise, which during the term of any continued term hereof, may be levied, assessed or imposed upon any improvements of Lessee now located or hereafter placed upon the demised premises, or, if such taxes and assessments are billed or charged directly to Lessee, then Lessee shall pay the same directly to the taxing authorities on or before the date the same are due and produce tax receipts to Lessor, for examinations, within thirty (30) days after payment thereof.

WATER - Lessee shall also pay to Lessor all charges for water and sewer rates, rents or taxes, whether by meter or otherwise, and all sprinkling and other specific charges or assessments with respect to the demised premises, within thirty (30) days after bill rendered therefor.

Lessee hereby covenants and agrees with Lessor as follows:

**COVENANT TO PAY RENT** 1. Lessee will pay all rent and additional rents when due.

**DEFAULT AND RE-ENTRY (TO BE USED IN ALL STATES EXCEPT PENNSYLVANIA)** 2. If default shall be made in Lessee's covenants herein to pay rent or additional rents, or if default shall be made in any other covenants and agreements herein contained on the part of Lessee to be kept or performed, and if any such default shall not be cured within thirty (30) days after Lessee has been given written notice by Lessor to do so, or if the demised premises shall not be used by Lessee for the purposes herein authorized for a period of more than thirty (30) days, or if the demised premises should at any time be used for purposes other than as herein permitted, or if Lessee shall file or suffer to be filed against it a petition in bankruptcy, or if Lessee shall be declared bankrupt or insolvent according to law, or if a receiver or trustee be appointed for the property of Lessee, or if Lessee shall make a general assignment for the benefit of creditors, then, in any of such cases, Lessor may by written notice to Lessee immediately declare this lease terminated, and in such event, in addition to any other action or remedy which Lessor may have at law or in equity to recover damages or otherwise by reason of a breach by Lessee of provisions of this lease, Lessor shall have the right to remove Lessee by summary proceedings and thereafter Lessor may re-enter upon and take possession of the demised premises and every part thereof, either by force or otherwise, without being liable to any prosecution, action or damages therefor and have and enjoy the demised premises as of its former estate free, clear and discharged of this lease and of all rights of Lessee hereunder; and all buildings, structures, improvements, materials and personal property owned, erected or placed upon the demised premises by Lessee shall thereupon be and become the property of Lessor and may be sold or retained by Lessor or may be removed or demolished by Lessor at the sole cost and expense of Lessee, which cost and expense Lessee shall pay to Lessor upon demand; and Lessor also shall pay to Lessor upon demand all fees and expenses, including reasonable attorney's fees, incurred in connection with and in obtaining possession of the demised premises as aforesaid.

Upon termination of this lease by Lessor under the provisions of the foregoing paragraph, the whole rent for the remainder of the term of this lease, or for the remainder of any continued term hereof, shall be due and payable forthwith and Lessor may proceed according to law to collect the same and may relet the demised premises and receive and retain the rent therefor and Lessee shall pay to Lessor any deficiency between the rents hereby reserved, including additional rents, and the rents collected for each month of the period which would otherwise have constituted the balance of the term of this lease or of any continued term hereof.

Lessee hereby waives and relinquishes unto and in favor of Lessor the operation of all laws which do now or hereafter may exempt any property on the demised premises or any property in any way belonging to Lessee, whether on the demised premises or elsewhere, from levy and sale upon distress for rent or upon execution of any judgment obtained in an action brought for nonpayment of any rent or additional rents hereunder or for breach of any other provisions hereof. The parties hereto shall and do hereby waive trial by jury in any action, proceeding or counter-claim brought by either party against the other on any matter whatsoever arising out of or in any way connected with this lease or Lessee's use of and occupancy of the demised premises or arising out of or in any way connected with any claim of injury or damage arising out of or in connection with this lease or such use or occupancy. Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Lessee being evicted or dispossessed for any cause or in the event of Lessor obtaining possession of demised premises by reason of the violation by Lessee of any of the covenants and conditions of this lease or otherwise.

If Lessee does not pay rent or any additional rent hereunder on the day when the same shall become due and payable and such failure to pay rent or any additional rent shall continue for a period of thirty (30) days, Lessee shall pay to Lessor a service charge in the amount of six percent (6%) of the amount of such rent or any additional rent or all of them for each month or portion of a month that the same shall remain unpaid; provided, however, that such service charge shall, in no event, be less than Twenty-Five Dollars (\$25.00) for any month or portion of a month that rent or any additional rent shall remain unpaid.

**LESSEE TO MAINTAIN** 3. Lessee has inspected and accepts the demised premises in their present condition and agrees that no representations or warranties with regard to condition, fitness for use or zoning of the demised premises have been made that are not specifically expressed herein; and further agrees, at Lessee's sole cost and expense, to put and keep the demised premises in constant good order, repair and safe condition, both inside and outside, structural or otherwise, including but not limited to yards or other open areas, fences, railings, sidewalks, driveways and curbs therein or thereon; and further agrees, upon the expiration or other termination of this lease, to peaceably quit and deliver possession of the demised premises to Lessor in like good order, repair, and safe condition, reasonable wear and tear excepted.

**LESSEE'S IMPROVEMENTS** Lessee shall keep its buildings and improvements constructed or placed upon the demised premises, in good order, repair and safe condition, it being understood and agreed that all such buildings and all such improvements made by Lessee as are removable without damage to the demised premises are the personal property of Lessee and shall be removed by Lessee upon expiration or other termination of this lease, except as herein otherwise provided.

**SIDEWALK** Lessee shall also keep sidewalks on or abutting the demised premises in good order, repair and safe condition, unobstructed and free from snow and ice.

**PURPOSE** 4. Lessee shall not use or occupy the demised premises for any other purpose whatsoever than: **use of Lessor's sidetrack and underlying land for coal unit train.**

**ASSIGNING, UNDERLETTING** 5. Lessee shall not assign or transfer this lease in whole or in part, or sublet the demised premises or any part thereof, without the prior written consent of Lessor; and Lessee shall not mortgage or otherwise encumber or permit to be encumbered the term or any continued term hereof, or any part thereof, or any structures now or hereafter placed on the demised premises, without the prior written consent of Lessor, and written consent to assign or transfer this lease in whole or in part, or to sublet the whole or any part of the demised premises, or to mortgage or otherwise encumber the term or any continued term hereof, or any part thereof, or any structures now or hereafter placed on the demised premises, shall not be deemed as waiving this restriction except to the extent of Lessor's said written consent, or as giving assent to any other or further assignment, subletting, mortgaging or encumbering. Any assignment or transfer by merger, consolidation, operation of law or proceedings in equity, bankruptcy, insolvency or reorganization, or any transfer of a controlling interest of the stock of Lessee to persons not now in control, shall be deemed to be an assignment within the meaning of this provision.

**RIGHT TO INSPECT, PLACE SIGNS, ETC.** 6. Lessee shall permit Lessor or its authorized agents to enter the demised premises for the purpose of inspecting the same at any reasonable time or times during the term or any continued term of this lease. Lessee shall permit Lessor, during the period of ninety (90) days prior to the expiration or other termination of the term or any continued term hereof, to post in a conspicuous place on the demised premises the usual notices of "For Rent" or "For Sale," which shall not be obstructed or mutilated by Lessee or by anyone acting for Lessee or at Lessee's direction and to permit Lessor to show the demised premises to persons interested in leasing or purchasing the same; and Lessee will not, in either event, make demand on Lessor for refund or reduction of rent or additional rents.

**ADVERTISING** 7. No advertising shall be placed upon the demised premises except to advertise Lessee's own business. All such advertising must have the prior written consent of Lessor.

**ORDINANCES** 8. Lessee, at its sole cost and expense, shall comply with and obey all laws, ordinances, rules, regulations and requirements of all Federal, State, Municipal, County, Town, Village or other governmental authorities and the various departments thereof now existing or hereafter created, so far as the same may affect the demised premises or the neighboring streets, roadways, sidewalks, alleys, areas or yards, or the use thereof.

**EXTRA HAZARDOUS USE** 9. Lessee shall comply with all regulations, recommendations, rules and requirements of the local board of fire underwriters and any insurance company which insures or participates in insuring the demised premises and Lessee shall not knowingly permit any article to be brought upon or any act to be done upon or about the demised premises that will cause cancellation of any policy of insurance thereon or increase rates for such insurance beyond those usually charged for similar properties used for the purpose herein authorized.

Without limiting the generality of the foregoing, Lessee shall not use or keep gasoline in any form upon the demised premises, except such as may be in the tanks of automotive equipment, or bring upon, store or allow to be stored upon the demised premises any materials of a dangerous or highly flammable nature or of such nature as to cause an extra fire risk or hazard, unless otherwise specifically provided herein.

**INDEMNIFICATION** 10. Lessee will be responsible for and will indemnify, save harmless and defend Lessor against and from any and all claims and suits for, and any and all liability, loss or expense arising from or incidental to or in connection with, damage to or loss of property of Lessor, Lessee, or of agents, servants or employees of either, or of any other person, and against and from any and all claims and suits for, and any and all liability, loss or expense arising from or incidental to or in connection with, injury to or death of persons, including agents, servants, or employees of Lessor or of Lessee, or any other person (including Lessee if a natural person), which said damage, loss, injury or death shall arise in any manner, directly or indirectly, out of or incidental to or in connection with, this lease or the demised premises, or the use or occupation thereof, including any appurtenant sidewalks or driveways.

Lessee specifically agrees to relieve Lessor of any and all liability for damage to contents of the demised premises owned by or in the custody of Lessee, or improvements therein owned by Lessee, whether damaged by fire and extended coverage perils or other casualty.

**INSURANCE** 11. Lessee shall provide and maintain in effect during the term and any continued term of this lease, a policy of public liability insurance, including contractual liability covering liability assumed by Lessee under the provisions of the foregoing Section 10 of lessor's covenants herein. Said insurance shall be in limits of not less than \$ 250,000.00 / 500,000.00 bodily injury and \$ 100,000.00 property damage, and shall be in companies and form acceptable to Lessor.

Lessee, if requested by Lessor at any time or times, shall provide and maintain in effect during the term and any continued term hereof, fire and extended coverage insurance on any and all structures and improvements of Lessor on the demised premises, protecting Lessor in limits, companies and form acceptable to Lessor; and Lessee shall also provide and maintain in effect during the term and any continued term hereof, coverage against such other hazards as Lessor may from time to time require.

Policy or policies of fire, extended coverage or other insurance on property of Lessee or in Lessee's care and custody shall contain a waiver of subrogation against Lessor.

Lessee shall furnish to Lessor complete copies of all such insurance policies with evidence of payment of premiums therefor upon request of Lessor. All such policies shall be endorsed to provide not less than ten (10) days' notice to Lessor of any cancellation thereof and of any material change in coverage.

The providing of said insurance coverages shall not be deemed a limitation on the liability of Lessee as provided in this lease, but shall be additional security therefor.

**PAYMENT IN LIEU OF INSURANCE** 12. Lessee, may in lieu of providing insurance herein required, pay to Lessor the annual sum of \$ \_\_\_\_\_, whereupon the first paragraph of Section 10 of this lease shall have no application insofar as Lessee's obligation to indemnify and defend Lessor is concerned. Notwithstanding anything herein to the contrary, however, payment of said annual sum shall not relieve Lessee of loss or damage for which Lessee is held liable, nor shall it waive in any way the conditions of the second paragraph of Section 10 of this lease or the third paragraph of Section 11 of this lease.

**ALTERATIONS** 13. Lessee shall not make any alterations, additions or improvements on or to the demised premises without the prior written consent of Lessor, and all alterations, additions or improvements which may be made by either Lessor or Lessee upon the demised premises, unless herein otherwise provided, and except the personal property of Lessee as defined in Section 3 of Lessee's covenants herein, shall be property of Lessor and shall remain upon and be surrendered with the demised premises as part thereof at expiration or other termination of this lease without disturbance, molestation or injury.

**RESPONSIBILITY OF LESSEE TO ITS EMPLOYEES** 14. Lessee, in the performance of any and all work by Lessee under the terms of this lease or otherwise, upon or adjacent to the demised premises, will furnish all labor and supervisory forces of every kind and Lessee shall employ, pay from Lessee's own funds and have the right to discharge all persons engaged in the performance of such work and all such persons shall be and remain the sole employees of Lessee and subject to Lessee's exclusive supervision, direction and control.

**LIENS AND CHARGES** 15. Lessee, within sixty (60) days after completion of any construction, alteration, repair or improvement in or upon the demised premises, shall furnish to Lessor a certified statement that all charges for labor and materials furnished have been paid, together with releases of liens.

The creation or imposition of any lien or charge upon the demised premises through acts or omissions of Lessee, its agents, contractors or sub-contractors, shall be deemed a default under the provisions of this lease.

In the event any such lien or charge shall not be paid or bonded by Lessee within fifteen (15) days after the lien or charge accrues, Lessor shall have the right to pay such lien or charge and Lessee shall repay the cost to Lessor, as additional rent hereunder, with interest at six percent (6%) per annum from the date of payment by Lessor, promptly upon rendition of bill therefor. Nothing in this paragraph or in any other paragraph of this lease shall be construed as authority to Lessee to create any lien on the Lessor's interest in the demised premises.

**UTILITIES** 16. Lessee, at its sole cost and expense, shall arrange for and obtain necessary heat, water, electricity and other utility services required for its use. In the event it is impossible or impracticable to secure any of such services other than through facilities owned by Lessor, Lessee shall install at its expense necessary connections, supply lines and (where permitted by law) meters to measure Lessee's consumption of such services and shall pay to Lessor upon demand, as additional rent, any costs incurred by Lessor for any such installation and, further, shall pay for such services, upon demand, as additional rent, at reasonable rates as determined by Lessor. Lessor shall not be liable for any temporary suspension of any such services.

IT IS HEREBY MUTUALLY COVENANTED AND AGREED THAT:

**REMOVAL** 1. Upon the expiration of the term or any continued term hereof, or upon any other termination of this lease for reasons other than default on the part of Lessee, Lessee, at Lessee's sole cost and expense, shall remove from the demised premises any materials, buildings and structures, including foundations, not owned by Lessor, and all waste, rubbish and debris; fill in all holes and depressions; level off the surface of the land; and restore the demised premises to as good condition as they were in before such property was erected or placed thereon; and all such work of removal and restoration shall be completed on or before the expiration or other termination of this lease. Should Lessee fail, neglect or refuse to so remove such property and make the aforesaid restoration, then and in such event Lessor shall have the following rights, which are hereby expressly given it, viz.: to remove such property and to make the aforesaid restoration, all at the expense of Lessee, which expense Lessee hereby expressly agrees to pay promptly upon demand, or to sell any of such property and retain the proceeds of such sale and to deliver such property to the purchaser or purchasers thereof free and clear of any right, title or interest therein of Lessee or of any person or corporation claiming through or under Lessee and without any liability whatsoever to Lessee or to any other person or corporation; or, if Lessor so elects, in lieu of such sale or removal of any of such property, Lessor may retain and use the same for any purpose whatsoever free and clear of any right, title or interest therein of Lessee or of any person or corporation claiming through or under Lessee and without any liability whatsoever to Lessee or to any other person or corporation.

**FIRE AND DAMAGE** II. In case any building of Lessor on the demised premises shall be partially damaged by fire or any other casualty but not rendered untenable thereby, the same shall be repaired by Lessee promptly upon receiving Lessor's approval of estimated costs furnished by Lessee for restoration of the demised premises to their former condition; and, Lessor will reimburse Lessee to the extent of any insurance proceeds received by Lessor but not, however, to exceed the cost to Lessee of the repairs as made.

In case any such damage shall be so extensive as to completely destroy such building or render it untenable and the demised premises without the use of such building are substantially useless to Lessee, then the rent shall be apportioned up to the time of such damage and such building shall be rebuilt or put in repair by Lessor, but Lessor may elect not to rebuild or repair such building and may retain all insurance proceeds; and upon being notified by Lessor that Lessor elects not to rebuild or repair, Lessee shall have the option to surrender this lease and thereupon this lease shall cease, terminate and come to an end. If Lessor elects to rebuild or repair such building, Lessee shall be under no obligation to pay rent until such time as rebuilding or repairing is completed to an extent making such building tenable.

The provisions of the foregoing two (2) paragraphs of this Section II shall be operative only if such damage or destruction was not caused by carelessness, negligence or improper conduct of Lessee or of agents, servants or employees of Lessee. If such damage or destruction is caused by carelessness, negligence or improper conduct of Lessee or of agents, servants or employees of Lessee, this lease shall continue in full force and effect and Lessee shall continue to pay the rent reserved without diminution, reduction or abatement and Lessee shall have no option to surrender this lease. In such case Lessee shall promptly repair or rebuild such building and restore the demised premises to their former condition, but Lessor will reimburse Lessee to the extent of proceeds received by Lessor from insurance paid for by Lessee, but not to exceed the cost to Lessee of the repairs as made.

For purposes of this Section II, the word "building" shall be read in plural where there is more than one building on the demised premises and for purposes of this paragraph the word "building" shall be construed as including any and all improvements now or hereafter constructed or placed upon the demised premises by Lessor. If any improvements made by Lessee shall be damaged or destroyed by fire or other casualty, there shall be no abatement or diminution of rent or additional rents. **Either party hereto**

**TERMINATION** III. Lessor shall have the right to terminate this lease at any time during the term or any continuance term hereof by giving to Lessee at least thirty (30) days' written notice of intention to terminate this lease and upon the date of termination specified in such notice this lease shall cease, terminate and come to an end. In the event of the expiration or termination of this lease, whether under the provisions of this Section III or otherwise, Lessee shall quit and deliver possession of the demised premises to Lessor on or before such date of expiration or termination.

**TERMINATION IN EVENT OF CONDEMNATION** IV. If the whole or any substantial part of the demised premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose then in that event the term of this lease shall cease from the date of title vesting in such proceeding and Lessee shall have no claim for the value of any unexpired term of the lease.

**HOLDOVER CLAUSE** V. If Lessee, with consent of Lessor, holds over and remains in possession of demised premises after expiration of said term, this lease shall be considered as renewed, and shall continue in effect from month to month upon the same terms and conditions as are herein contained, until terminated by Lessor by giving to Lessee at least thirty (30) days' written notice of intention to terminate same, in the manner herein provided and with like effect. In case Lessee without written consent of Lessor vacates demised premises before expiration of said term, full rent for the current term shall then and thereupon become at once due and payable as if originally so provided herein as liquidated damage and not as a penalty.

**AMICABLE ACTION, IN EJECTMENT, ETC.** VI. If default shall be made in Lessee's covenants herein to pay rent or additional rents, or if default shall be made in any other covenants and agreements herein contained on the part of Lessee to be kept or performed, and if any such default shall not be cured within thirty (30) days after Lessee has been given written notice by Lessor to do so, or if the demised premises shall not be used by Lessee for the purposes herein authorized for a period of more than thirty (30) days, or if the demised premises shall at any time be used for purposes other than as herein permitted, or if Lessee shall file or suffer to be filed against it a petition in bankruptcy, or if Lessee shall be declared bankrupt or insolvent according to law, or if a receiver or trustee be appointed for the property of Lessee, or if Lessee shall make a general assignment for the benefit of creditors, then in any of such cases, this lease may, at the option of Lessor, forthwith be terminated by Lessor without any right on the part of Lessee or those claiming under Lessee to save the forfeiture by payment of rent or additional rents due or by performance of the other covenants, terms and conditions thus violated; and thereupon any attorney, as attorney for Lessee, at the request of Lessor, immediately thereafter may sign an agreement for entering in any competent court an amicable action and judgment in ejectment to any term then past or present (without any stay of execution or appeal) against Lessee and all persons claiming under Lessee for recovery by Lessor of possession of the demised premises and also may sign and confess judgment for all arrearages of rent or additional rents, damages, costs and charges payable by Lessee, if any without any liability on the part of said attorney, for which this shall be a sufficient warrant; and thereupon a writ of possession with a clause of execution for such arrearages of rent, or additional rents, damages, costs and charges payable by Lessee, if any, and the costs according to law, as in cases of ejectment, may issue forthwith without any prior writ or proceeding whatsoever and so from time to time as often as any breach by Lessee of any of the covenants, terms and conditions of this lease shall occur; and Lessee hereby releases to Lessor all errors and mistakes whatsoever in entering such action or judgment, or causing such writ of possession to be issued, or in any proceeding thereon or concerning the same, and hereby agrees that no writ of error or objection or exception shall be made or taken thereto; and a copy of this lease, with any modification thereof, being filed in said action, it shall not be necessary to file the original as a warrant of attorney, any law or rule of court to the contrary notwithstanding. No such termination of this lease, nor taking or recovering possession of the demised premises shall deprive Lessor of any other action against Lessee for possession, for rent or additional rents or for damages, costs and charges as herein provided, nor shall any distress or suit for rent or additional rents or damages prevent Lessor from proceeding to recover possession on any breach by Lessee of any of the covenants, terms or conditions hereof and Lessor shall have the further right in the event of any subsequent default or defaults to bring one or more further amicable actions in the manner as hereinbefore set forth to recover possession of the demised premises for such subsequent default.

**REFUND** VII. In the event of termination of this lease by Lessor for any cause other than default or failure to comply with the terms of this lease by Lessee and if rent shall have been paid by Lessee in advance to a day subsequent to the date of such termination of this lease, then Lessor shall refund and repay to Lessee and Lessee shall receive and accept as full payment for all loss, damages and demands occasioned by such termination of this lease, the apportioned amount of rent so paid by Lessee in advance for that portion of the term or continued term so avoided, except that no refund will be made of any amount less than Ten Dollars (\$10.00). Lessee shall remain liable for the payment of real estate taxes and other charges assessed or imposed upon Lessee's buildings or improvements or in connection therewith which may have accrued to date of such termination, and other taxes and assessments which Lessee is obligated to pay as additional rent hereunder shall be prorated to the date of termination.

Lessor shall not be obligated to reimburse Lessee for any expenditure by Lessee for construction of improvements, or for alterations, on or to the demised premises and Lessee hereby expressly waives any claim against Lessor for such reimbursement.

**SUBORDINATION** VIII. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which the demised premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagee; however, in confirmation of such subordination, Lessee shall execute promptly any certificate to that effect upon request by Lessor. Lessee hereby constitutes and appoints Lessor as Lessee's attorney-in-fact to execute any such certificate or certificates for and on behalf of Lessee.

**INABILITY TO PERFORM** IX. This lease and obligation of Lessee to pay rent or additional rents hereunder and to keep and perform all other covenants and agreements hereunder on part of Lessee to be kept or performed shall in no wise be affected, impaired or excused because Lessor is unable to fulfill any of its obligations under this lease, or is unable to supply, or because Lessor is delayed in supplying, any service expressly or impliedly to be supplied by Lessor, or is unable to perform, or because Lessor is delayed in performing, any work or service for which it is liable hereunder, if Lessor is prevented or delayed from so doing by reason of labor troubles or any outside cause beyond control of Lessor including, but not limited to, governmental action or preemption, act of God, war or civil commotion.

**LOSS OR DAMAGE TO PERSON OR PROPERTY** X. Lessor shall not be liable to Lessee for any loss, injury or damage which may happen to the person (if Lessee is a natural person) or property of Lessee, of Lessee's employees or of persons claiming under Lessee, while on or about the demised premises, caused by theft, fire, or by the handling of electrical installations, or by accident to or breakage of any of the machinery, piping or plumbing, fixtures or other appurtenances connected with any building upon the demised premises, or by water, rain or snow which may leak into, issue or overflow from any part of any such building.

**DEFAULT REMEDIES** XI. The actions and remedies provided in this lease in case of default shall not be deemed exclusive but shall be in addition to all other actions and remedies at law or in equity in case of any such default; and no action or remedy taken or omitted by Lessor in case of default shall be deemed a waiver of such default and waiver of a particular default shall not be deemed a waiver of any other default or a waiver of the same default again occurring, nor shall any failure on the part of Lessor to compel a fulfillment of any one or more of the covenants, terms and conditions herein contained be held to be a waiver of its right to enforce the same at any time thereafter during the term or any continued term of this lease.

**NOTICES** XII. Notices given under the terms of this lease shall be deemed sufficiently served if, in the case of notice to Lessee, such notice is mailed to Lessee by certified or registered United States Mail, or is delivered personally to Lessee, at Lessee's address set forth on the first page hereof, or at such other place as Lessee may from time to time designate in writing to Lessor, or if such notice is posted on the demised premises; and, if, in the case of notice to Lessor, such notice is mailed to Lessor by certified or registered United States Mail, or is delivered personally to Lessor, at Lessor's Real Estate Department office at

Room 509 Penn Central Station, Pittsburgh, Pennsylvania, 15222, or at the office of Lessor where rental payments hereunder are to be made by Lessee, or at such other place as Lessor may from time to time designate in writing to Lessee. In computing the number of days specified in any notice given hereunder, the date of mailing or personal service or of posting, as the case may be, shall be counted as the first day.

**LESSEE DEFINED** XIII. The word "Lessee" as used herein shall be construed to include the plural as well as the singular and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other forms of business association or to an individual or individuals, masculine or feminine, in all cases shall be assumed as having been made herein as though herein fully expressed.

No change or modification of any of the covenants, terms or provisions hereof shall be valid unless in writing and signed by the parties hereto. There are no understandings or agreements of any kind between the parties hereto, verbal or otherwise, other than as set forth in this lease.

The covenants and agreements herein contained shall inure to the benefit of and be binding upon the successors, heirs, executors, administrators and assigns of the parties hereto respectively; provided, however, that this lease shall not be assigned by Lessee without the written consent of Lessor.

It is expressly understood that nothing herein contained shall imply or import a covenant on the part of Lessor for quiet enjoyment.

**SEPARABILITY** The provisions of this lease are severable and it is the intention of the parties hereto that if this lease cannot take effect in its entirety because of the final judgment of any court of competent jurisdiction holding invalid any part or parts thereof, the remaining provisions of the lease shall be given full force and effect as completely as if the part or parts held invalid had not been included therein.

Marginal notes used herein are placed for reading convenience and shall not have any other meaning, implication or purpose, legal or otherwise. All additions, changes or deletions herein were made prior to execution by either party, except that additions, changes or deletions made after execution by one party and before execution by the other shall be marginally initialled by both parties.

If the demised premises are located either in the states of Illinois or New Jersey this lease shall be subject to the approval, if necessary, of the Illinois Commerce Commission or the New Jersey Board of Public Utility Commissioners, as the case may be, to the extent required by law.

ADDITIONAL PROVISIONS FORMING A PART OF THIS LEASE

**SIDETRACK CLAUSE** IT BEING UNDERSTOOD AND AGREED that lessor shall have the right at all times of moving its cars and engines over Lessor's sidetrack in connection with the operation of its railroad and that Lessee's use of said sidetrack shall be subject to the rules and regulations as prescribed in Lessor's filed tariffs.

**TRACK CROSSING** As part of the consideration and inducement for the execution and delivery of this lease, on the part of the Lessor, the Lessee, hereby covenants to release and waive all right or alleged right to ask for and demand damages that may occur to persons or its property while crossing or in or upon the tracks or property of the Lessor, and whether attributable to the fault, failure or negligence of the Lessor or otherwise.

**REPAIRS** Lessee will not at any time make any claim that the demised track and underlying land are not, or were not, at the time of commencement of this lease, in suitable repair or condition for the uses and purposes of this lease, but will make, at Lessee's own cost and expense, such alterations, repairs and renewals to the demised premises as may be necessary to adapt same for Lessee's use, and during the continuance of this lease will maintain, at Lessee's own cost and expense, all the demised premises to the satisfaction of the Lessor, it being understood and agreed that such maintenance shall not only include repairs but also renewals and replacements; and that the Lessor will not reimburse Lessee for any expense incurred through such alterations, repairs and renewals.

**DRAINAGE** Lessee shall be responsible, at its own cost and expense, for all drainage along the right of way and shall not disturb any natural water courses or divert drainage of water onto adjoining properties.

**CLEARANCE** Lessee shall at all times during the continuance of this lease, comply with all clearances along the demised premises.

**WRECKS AND DERAILMENTS** Lessee hereby agrees to be responsible for, and indemnify, save harmless and defend Lessor from and against, any and all damages, liabilities, costs, loss and expenses arising from, or incidental to, wrecks or derailments occurring on, upon or in close proximity to the demised premises, caused by attributable to, or in any way connected with, Lessee's negligence, or failure to maintain the demised premises as prescribed hereunder, Lessee's failure to provide proper drainage or clearances on the demised premises, or by reason of any defect in any of the tracks, structures or appurtenant facilities comprising a part of the demised premises, or by reason of the acts, fault, omissions, negligence of the Lessee, its patrons, agents, invitees or employees. Such damages, liabilities, costs, loss and expenses shall be deemed to include, but not necessarily be limited to, the costs of destruction or damage to locomotives, cars and equipment, injury to or death of persons, loss or damage to other properties (including loss of or damage to lading), the expense of clearing such wrecks or derailments, and the expense of repairing or restoring the demised premises. Lessor may, at its option, perform all or any portion of the aforementioned work necessitated by such wrecks or derailments and Lessee agrees to reimburse Lessor the entire cost thereof, including appropriate detailed billing therefor, by Lessor. Nothing in this paragraph contained shall be construed as limiting or modifying the liability assumed by Lessee pursuant to Section 10 hereof, but not to exceed \$100,000.00.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this lease in duplicate the day and year first above written.

As to Lessor  
Witness:

W. C. Weaver

George P. Baker, Robert W. Blanchette and  
Richard C. Bond, Trustees of the Property of  
PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR,  
Lessee of the Beech Creek Railroad Company

By

J.C. Barry

Manager - Real Estate

As to Lessee  
Witness: ATTEST:

Ellen M. Brown  
Secretary

E. M. BROWN, INCORPORATED

(SEAL)

By: Earl M. Brown (SEAL)  
President

(SEAL)

# Harry A. Siravo & Sons Inc.

RAILROAD CONSTRUCTION AND REPAIRS

104 W. First Avenue - Malvern, Penna. 19355

(215) Niagara 4-6799

JULY 1, 1978

R. M. BROWN, INC.  
P. O. BOX 767  
CLEARFIELD, PENNA. 16830

RE: TRACK REPAIRS

PER: P. O. - VERBAL

JOB: #341

INVOICE: #862

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REPLACE 8542 L.F. 100 LB. RAIL @ \$5.35 L.F.....	\$43,699.70
REPLACE 2154 L.F. 105 LB. RAIL @ \$2.99 L.F.....	6,440.46
INSTALL 38 CROSS TIES @ \$28.00 EACH.....	<u>1,064.00</u>

AMOUNT DUE.....\$33,204.16

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FILED

APR 30 2004  
1CC Atty Smith  
William A. Shaw  
Prothonotary/Clerk of Courts

11/8/04  
P.D. 85.00

PETER F. SMITH  
ATTORNEY  
30 SOUTH SECOND STREET  
P.O. BOX 130  
CLEARFIELD, PA. 16830

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

E.M. BROWN, INC., : No. 2004-606-CD  
Plaintiff :  
vs. : Type of Case: Civil  
R.J. CORMAN RAILROAD COMPANY/ :  
PENNSYLVANIA LINES, INC., : Type of Pleading: Answer with New Matter  
of Defendant Pohl Corporation  
and : Filed on Behalf of: Defendant Pohl  
Corporation  
POHL CORPORATION, :  
Defendants : Attorney for this Party:  
Kim C. Kesner, Esquire  
Supreme Ct. I.D. No. 28307  
23 North Second Street  
Clearfield, PA 16830  
814-765-1706  
Attorney for Plaintiff:  
Peter F. Smith, Esquire  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830  
814-765-5595

**FILED**

**JUN 21 2004**

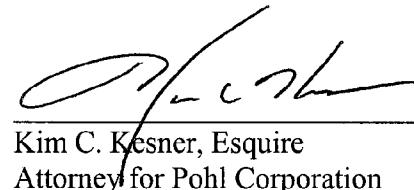
William A. Shaw  
Prothonotary/Clerk of Courts

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

E.M. BROWN, INC.,	:	No. 2004-606-CD
Plaintiff	:	
	:	
vs.	:	
	:	
R.J. CORMAN RAILROAD COMPANY/	:	
PENNSYLVANIA LINES, INC.,	:	
	:	
and	:	
	:	
POHL CORPORATION,	:	
Defendants	:	

**NOTICE TO PLEAD**

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.



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Kim C. Kesner, Esquire  
Attorney for Pohl Corporation

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

E.M. BROWN, INC., : No. 2004-606-CD  
Plaintiff :  
vs. :  
R.J. CORMAN RAILROAD COMPANY/ :  
PENNSYLVANIA LINES, INC., :  
and :  
POHL CORPORATION, :  
Defendants :  
:

**ANSWER AND NEW MATTER**  
**OF POHL CORPORATION**

AND NOW comes, Pohl Corporation (Pohl) by its attorney Kim C. Kesner, Esquire and files the following Answer to Plaintiff's Complaint:

1. It is admitted that E.M. Brown, Inc. is the Plaintiff. With respect to the remainder of the averments contained in Paragraph 1, after reasonable investigation, Defendant Pohl is without information or knowledge sufficient to form a belief as to the truth of the averments of Paragraph 1 and strict proof thereof, if relevant, is demanded at time of trial.

2. It is admitted that the first defendant is R.J. Corman Railroad Company/Pennsylvania Lines, Inc. ("RJCP"). With respect to the remainder of the averments contained in Paragraph 2, after reasonable investigation, Pohl is without information or knowledge sufficient to form a belief as to the truth of the averments of Paragraph 2, and strict proof thereof, if relevant, is demanded at time of trial.

3. Admitted.

4. Denied. After reasonable investigation, Pohl is without information or knowledge sufficient to form a belief as to the truth of the averments of Paragraph 4 and strict proof thereof, if relevant, is demanded at trial.

5. Denied. After reasonable investigation, Pohl is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 5 of Plaintiff's Complaint and strict proof thereof, if relevant, is demanded at trial.

6. Denied. The averments contained in Paragraph 6 of Plaintiff's Complaint constitute conclusions of law and construction of a document to which no response is required. To the extent that a response is required and is relevant, it is specifically denied that Plaintiff's installation of any railroad siding is confirmed or "was memorialized" in the document annexed to Plaintiff's Complaint as Exhibit 1. By way of further answer Pohl is without sufficient knowledge or information to form a belief as to the authenticity, materiality or relevancy to Plaintiff's claims of the photocopy of the document annexed to Plaintiff's Complaint as Exhibit 1.

7. Denied. Pohl objects to Plaintiff's attachment to its Complaint of purported documentary evidence which is in violation of the Rules of Civil Procedure. By way of further answer, Pohl is without sufficient knowledge or information to form a belief as to the authenticity, materiality and relevance to Plaintiff's claims of the photocopy annexed to Plaintiff's Complaint as Exhibit 2.

8. Admitted in part and denied in part. It is admitted that on or about September 9, 2002 Pohl entered into a Railroad Track Removal Agreement with R.J. Corman Railroad Company/Pennsylvania Lines, Inc. (RJCP) for removal of 2.1 miles of RJCP's track on RJCP's Winburne Branch and that thereafter Pohl fully performed the Agreement. Pohl is without sufficient knowledge or information to form a belief as to Plaintiff's claim that it owned the rail

removed under the aforesaid agreement. However, under the Railroad Track Removal Agreement, RJCP warranted to Pohl its title to the rail and agreed to defend Pohl for its removal. A copy of RJCP's Railroad Track Removal Agreement with Pohl is annexed hereto as Exhibit "A".

9. Denied. After reasonable investigation, Pohl is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 9 of Plaintiff's Complaint and strict proof thereof, if relevant, is demanded at trial.

10. Admitted in part and denied in part. It is admitted that on or about September 9, 2002 Pohl entered into a Railroad Track Removal Agreement with RJCP for removal of 2.1 miles of RJCP's track on RJCP's Winburne Branch and that thereafter Pohl fully performed the Agreement. Pohl is without sufficient knowledge or information to form a belief as to Plaintiff's claim that it owned the rail removed under the aforesaid agreement. However, under the Railroad Track Removal Agreement, RJCP warranted to Pohl its title to the rail and agreed to defend Pohl for its removal.

11. Admitted in part and denied in part. It is admitted that written demand has been made upon Defendant Pohl. With regard to the balance of the averments contained in Paragraph 11 of Plaintiff's Complaint, after reasonable investigation, Pohl is without sufficient knowledge or information to form a belief as to their truth. By way of further answer, RJCP in its Railroad Track Removal Agreement with Pohl warranted title to the rail removed by Pohl.

12. Denied. The averments contained in Paragraph 12 of Plaintiff's Complaint constitute conclusions of law to which no response is required. To the extent that a response is required and is relevant, Pohl specifically denies that it committed a conversion and/or trespass as it acted under the Railroad Track Removal Agreement with RJCP in reliance upon RJCP's warranty of title. If any liability exists for Pohl's removal of rail under its railroad track removal

agreement with RJCP, liability is solely and exclusively that of RJCP which has a contractual obligation under the Railroad Track Removal Agreement to defend and indemnify Pohl.

13. Denied. After reasonable investigation, Pohl is without sufficient knowledge or information to form a belief as to the fair market value of the rail removed subject to Plaintiff's Complaint and strict proof thereof, if relevant, is demanded at trial.

WHEREFORE, Defendant Pohl Corporation respectfully requests this Honorable Court to enter Judgment in its favor dismissing Plaintiff's Complaint as against it with its costs of suit in defense of this action.

**New Matter**

14. Plaintiff's claims are barred and/or limited because Plaintiff has failed to mitigate its damages, if any.

15. Plaintiff's claims are barred and/or limited by the applicable statute of limitations.

16. Plaintiff's claims are barred by the doctrine of laches.

17. Plaintiff's claims are barred by the doctrine of equitable estoppel.

18. Plaintiff's claims are barred because Defendant Pohl is a bona fide purchaser for value.

WHEREFORE, Defendant Pohl Corporation respectfully requests this Honorable Court to enter judgment in its favor dismissing Plaintiff's Complaint as against it with its costs of suit in defense of this action.

Date: 6/21/04

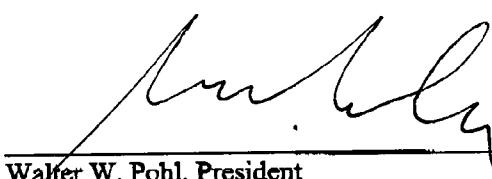


Kim C. Kesner, Esquire  
Supreme Court I.D. #28307  
23 North Second Street  
Clearfield, PA 16830  
(814) 765-1706

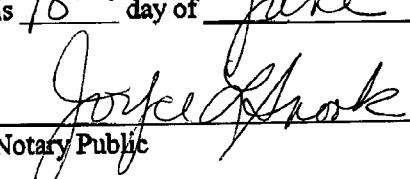
6/16/04

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF *Bucks* : S. S.

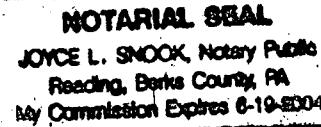
Before me the undersigned authority personally appeared, Walter W. Pohl, who being duly sworn according to law deposes and says that he is the President of Pohl Corporation and that as such officer, he is authorized and empowered to execute this affidavit and that the facts and averments set forth in the foregoing Answer, are true and correct to the best of his knowledge, information, and belief.

  
\_\_\_\_\_  
Walter W. Pohl, President  
Pohl Corporation

Sworn to and subscribed before me this 18<sup>th</sup> day of June, 2004.

  
\_\_\_\_\_  
Joyce L. Snock  
Notary Public

My Commission Expires:



**RAILROAD TRACK REMOVAL**  
**RJCP 2002-400**

This agreement is by and between **R.J. CORMAN RAILROAD COMPANY**  
**/PENNSYLVANIA LINES (RJCP) and POHL CORPORATION (CONTRACTOR)**

WHEREAS, CONTRACTOR has agreed to retire and remove certain track facilities of RJCP as outlined in Bid Package #1, attached and made part of this agreement as Exhibit "A";

and

WHEREAS, CONTRACTOR and RJCP have agreed to a Lump Sum Credit to RJCP of \$47,335.00;

NOW THEREFORE, in consideration of the mutual covenants set forth below, the parties agree to the following:

**1. EFFECTIVE DATE**

This Agreement shall become effective upon RJCP's receipt and verification of funds in an amount equal to \$47,335.00.

**2. TERM**

This agreement shall terminate either; within **150 Days from Effective Date** or the date in which CONTRACTOR has completed its work, whichever occurs first.

**3. SUB-CONTRACTORS**

CONTRACTOR shall submit to RJCP for written approval a list of sub-contractors showing the work proposed to be assigned to each, and no sub-contract for any part of the work shall be awarded to any party without approval of RJCP. Such approval shall not release or relieve CONTRACTOR from any of its obligations and liabilities under this Agreement. The provisions of this Agreement shall be incorporated, by reference, in all subcontracts and if so required by RJCP, CONTRACTOR shall furnish to RJCP a written statement, properly endorsed by Sub-contract in question, that this has been done, before any Sub-contractor shall begin work.

**4. USE OF PROPERTY**

Upon verification of funds, RJCP shall grant CONTRACTOR and its Sub-contractors the right to enter the property of RJCP's to perform the work as outlined in Exhibit "A".

**5. WARRANTIES**

RJCP, by entering into this agreement, hereby warrants that RJCP has the right to sell to CONTRACTOR the materials outlined in Exhibit "A" and that all materials are free and clear of any liens and/or encumbrances and RJCP shall warrant and defend the title the sale to CONTRACTOR.

## 6. RISK OF LOSS

The work and each part therefore shall be at the risk of CONTRACTOR in every respect, and CONTRACTOR shall be responsible for the WORK until it is completed and accepted by RJCP. CONTRACTOR will be responsible for and assumes all risk of loss in connection with the work.

## 7. STORAGE OF MATERIALS

CONTRACTOR shall be responsible for the safe and suitable storage of all materials at the work site. Storage locations and method of storage shall in no way interfere with RJCP's railroad operations. RJCP may require CONTRACTOR to move materials from storage locations, at CONTRACTOR's expense, unless the storage location was designated by RJCP.

## 8. PROTECTION OF PROPERTY

CONTRACTOR shall use special care and vigilance to avoid damage to trains, tracks or other facilities of RJCP and shall conduct its work so as not to interfere with the movement of trains or other operations of RJCP. CONTRACTOR shall not proceed with any work which might endanger or interfere with the movement of train or operations or other facilities until protection satisfactory to RJCP has been provided. If, in the opinion of RJCP, trains, tracks or other facilities are or may become endangered by the operations of CONTRACTOR, CONTRACTOR shall immediately do such work as may be ordered by RJCP to restore safety and upon failure of CONTRACTOR to carry out such orders immediately, RJCP may take whatever steps are necessary to restore safe conditions. The cost and expense to RJCP of restoring safe conditions or of any damages to trains, tracks or other facilities caused by CONTRACTOR's operations shall be charged against CONTRACTOR and paid by it.

## 9. SAFETY

CONTRACTOR shall furnish and maintain, at its own cost and expense and to the satisfaction of RJCP, all requisite materials and facilities for the protection of the work and the safety of the general public and of employees of RJCP and CONTRACTOR. CONTRACTOR shall exercise precaution at all times for protection of persons and property. Safety provisions of applicable law and building and construction codes shall be observed. All employees, both of CONTRACTOR and its Sub-Contractors, performing the work contemplated by this agreement, must be trained in ON-TRACK TRAINING FOR YEAR 2002, as required by the Federal Railroad Administration.

## 10. CLEANING UP

All work done by the CONTRACTOR shall be cleaned up and the premises occupied by the work left in a neat and orderly condition satisfactory to RJCP. Unwanted ties may be left on the right of way but are to be neatly stacked in piles of 10 or more.

## 11. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless RJCP and its affiliates with respect to any and all attorney's fees, liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, and settlements of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death of any person(s) (including but not limited to the employees of RJCP, its affiliates or CONTRACTOR), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of RJCP, its affiliates or CONTRACTOR, and environmental damages and any related remediation brought or recovered against RJCP and its affiliates), arising directly or indirectly from the presence of CONTRACTOR, its agents, employees, invitees, of sub-contractors, or its subcontractors' agents, employees or invitees, on or about RJCP property or the performance of the Agreement or activities incidental thereto, whether or not attributable in whole or part to the negligence of RJCP or its affiliates.

## 12. INSURANCE

CONTRACTOR shall procure and maintain, at its expense, statutory Worker's Compensation Insurance. Such insurance must contain a waiver of subrogation against RJCP and its affiliated companies. CONTRACTOR shall procure and maintain, at its expense, Commercial General Liability coverage with available limits of not less than \$2,000,000.00 in combined single limits for bodily injury and property damage. A certificate of insurance naming RJCP as an additional named insured and specifying such coverage shall be furnished to RJCP, and the required coverage shall be kept in force until all of CONTRACTOR's obligations under this Agreement have been fully discharged and fulfilled, or until Contractor shall have been specifically released therefrom in writing by RJCP. The insurance policy shall provide that the insurance carrier must give RJCP notice at least 30-days in advance of cancellation of coverage, or of cancellation of the policy. Notwithstanding any provision of this article, the liability assumed by CONTRACTOR shall not be limited to the required insurance coverage. CONTRACTOR shall also provide evidence of business Automobile Liability Insurance of at least \$500,000.00 combined single limit for bodily injury and/or property damage per occurrence.

## 13. CORRESPONDENCE

Any correspondence with respect to this agreement shall be mailed, VIA certified mail, return receipt requested, to the following:

If to RJCP:

RJ Corman Railroad Company/Pennsylvania Lines  
Contract Administrator  
One Jay Station  
Nicholasville, Kentucky 40356

and if mailed to CONTRACTOR, shall be addressed to:

POHL CORPORATION

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14. SEVERABILITY

If any provision or any part of a provision of the Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable law, ordinance, rule or regulation, such determination shall not impair or otherwise affect the validity, legality, or enforcement of the remaining provisions or parts of the provision of the Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

All parties hereto agree to abide by the terms and conditions of this agreement and show their concurrence by having a duly authorized representative sign and date as indicated below.

Pohl Corporation.

Witness(es)

BY:

TITLE: Asst. V.P. OPERATIONS

DATE: 9/5/02

Performance Guarantee:

By: \_\_\_\_\_

Principal

R.J. Corman Railroad Company  
Pennsylvania Lines

Witness(es)

BY:

TITLE: RIES

DATE 9/5/02

Melissa Estes

EXHIBIT 'A'

# Memo

**Date:** July 17, 2002

**To:** Joseph Sweeney  
Pohl Corporation

**Re:** Contract Award – Track Abandonment/Removal Project  
Revised Bid Package - No. 1 – Dated June 27, 2002  
Clearfield, PA

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

In regards to Revised Bid Package No. 1, R. J. Corman Railroad Company accepts your bid proposal for the purchase of Track Abandonment Project (s) as listed below, under terms and conditions indicated in the bid package.

## BID PACKAGE NO. 1 [To be complete within 150 days from sale date]

### Project No. 1 – Snow Shoe Branch

Milepost 19.9 to 21.8 – 105# Dudley 1.9 Miles – Remove only that material in track!  
Milepost 21.7 to 22.5 – 105# Dudley 3.3 Miles - Remove only that material in track!

### Windburn Branch @ MP 22

1.8 Miles – Main Line / .3 Mile Siding - Total of 2.1 Miles

Rail 1 mile 100 PS

.6 mile 80 lb

.1 105 # Dudley

.4 NYC 127#

Remove only that material in track!

R J Corman will remove ALL loose Rails and Ties

### Project No. 2 – Wallacetton

Woodlawn –	Milepost 6.9 to 7.3	105# Dudley	0.4 tenths mile
End of Track	Milepost 24.1 to 24.5	100#PS	0.4 tenths mile

### Project No. 3

Walker -	Milepost 10	131# Dudley	0.4 Tenths mile – 131 CWR
Main Line Switch stays in track!			

### Project No. 4

Phillipsburg	Milepost 17.5	9/10 rails long
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EXHIBIT 'A'

Grand Total Credit to R. J. Corman Railroad Company/Pennsylvania Lines \$47,335.00.  
[To be complete within 150 days from sale date]

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

We must receive all funds for Bid Package no later than Friday, July 26, 2002. Funds must be received before you will have access to the property. Funds are payable by either electronic wire transfer to Central Bank and Trust Company, Lexington, KY, acct number 10301763, routing number 042100146 or by certified check. Check must be made to R. J. Corman Railroad Company/Pennsylvania Lines and mailed to my attention at P.O. Box 788, Nicholasville, KY 40340. Once funds are received and verified you will be notified with the name of a contact person at the location to arrange a time for work to begin.

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

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

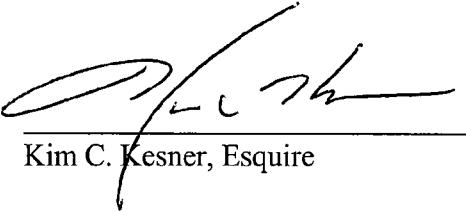
Thank you,  
Melissa Estes

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on the 21<sup>st</sup> day of June, 2004, I caused to be served a certified copy of the Answer of Pohl Corporation on the following by United States First Class Mail, Postage Prepaid:

Peter F. Smith, Esquire  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830

Date: June 21, 2004

  
\_\_\_\_\_  
Kim C. Kesner, Esquire

FILED  
cc  
JUN 21 2004  
Amy Kneser

William A. Shaw  
Prothonotary/Clerk of Courts

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

E. M. BROWN, INC. :  
Plaintiff : No. 2004-606-CD  
vs. :  
R.J. CORMAN RAILROAD COMPANY/ :  
PENNSYLVANIA LINES, INC., :  
and :  
POHL CORPORATION, :  
Defendants :

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I sent a true and correct copy of **PLAINTIFF'S ANSWER TO DEFENDANT POHL CORPORATION'S NEW MATTER** by U.S. First Class Mail to the attorney for the Defendants R. J. Corman Railroad Company/Pennsylvania Lines, Inc and Pohl Corporation at the following address:

Kim C. Kesner, Esquire  
23 North Second Street  
Clearfield, PA 16830

Date: July 2, 2004



Peter F. Smith, Attorney for Plaintiff

FILED <sup>NO  
cc</sup>  
07/11/04  
JUL 02 2004  
*Red* William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**JUL 02 2004**

William A. Shaw

Prothonotary/Clerk of Courts

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

E. M. BROWN, INC., : No. 2004-606-CD  
Plaintiff : Type of Case:  
vs. : **CIVIL**  
R.J. CORMAN RAILROAD COMPANY/ : Type of Pleading:  
PENNSYLVANIA LINES, INC., : **PLAINTIFF'S ANSWER TO**  
and : **DEFENDANT POHL CORPORATION'S**  
POHL CORPORATION, : **NEW MATTER**  
Defendants : Filed on Behalf of:  
: **PLAINTIFF**  
: Attorney for this Plaintiff:  
: **Peter F. Smith, Esquire**  
: Supreme Court No. 34291  
: 30 South Second Street  
: P.O. Box 130  
: Clearfield, PA 16830  
: (814) 765-5595  
: Attorney for Defendants:  
: **Kim C. Kesner, Esquire**  
: Supreme Court No. 28307  
: 23 North Second Street  
: Clearfield, PA 16830  
: (814) 765-1706

FILED *cc*  
*11:04 AM* *AH*  
*JUL 02 2004*  
*WAS*  
William A. Shaw  
Prothonotary/Clerk of Courts

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

E. M. BROWN, INC. :  
Plaintiff : No. 2004-606-CD  
vs. :  
R.J. CORMAN RAILROAD COMPANY/ :  
PENNSYLVANIA LINES, INC., :  
and :  
POHL CORPORATION, :  
Defendants :  
:

**PLAINTIFF'S ANSWER TO DEFENDANT POHL CORPORATION'S**  
**NEW MATTER**

COMES NOW, E.M. BROWN, INC., by its attorney, Peter F. Smith,  
who answers the New Matter as follows:

1-13. Paragraphs 1 - 13 of the complaint are referred to  
and incorporated herein by reference as though set forth in full.

14. Denied. E. M. Brown had no opportunity to mitigate its  
damages.

15. Denied as a conclusion of law and further denied  
because the applicable statute of limitations for actions in  
conversion is two years. 42 Pa.C.S.A. § 5524(3). Paragraph 10 of  
Defendant Pohl's answer admits that some time on or after  
September 9, 2002, it removed the track in question. The docket  
in this matter reflects that the complaint was filed on April 30,  
2004.

16. Denied as a conclusion of law. Laches is applicable  
only to equitable actions. This case presents a civil action.

17. Denied as a conclusion of law and further denied because the allegation is so general as to prevent Plaintiff from making a more specific denial on the facts. However, as a general matter, Plaintiff is not aware of any facts upon which the Defendants could conceivably base a defense of equitable estoppel.

18. Denied as a conclusion of law, and further denied because Defendant Corman had no title to pass to Defendant Pohl. Therefore, Defendant Pohl cannot be a bona fide purchaser under Pennsylvania law.

WHEREFORE, Plaintiff prays that the new matter be dismissed and that judgment be entered in its favor and against the Defendants, jointly and severally, in an amount in excess of \$25,000.00 together with costs and interest at the statutory rate.

Respectfully submitted,

Dated: 7/2/04



---

Peter F. Smith  
Attorney for Plaintiff

**VERIFICATION**

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

Dated: 6/30/04

Robert E. Brown

Robert E. Brown, President  
E. M. Brown, Inc.

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

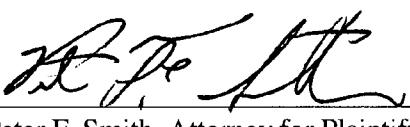
E. M. BROWN, INC., :  
Plaintiff : No. 2004-606-CD  
:  
vs. :  
:  
R.J. CORMAN RAILROAD COMPANY/ :  
PENNSYLVANIA LINES, INC., :  
:  
and :  
:  
POHL CORPORATION, :  
Defendants :  
:

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I sent  
**INTERROGATORIES** and **REQUEST FOR PRODUCTION OF DOCUMENTS** directed to  
Defendants R. J. Corman Railroad Company/Pennsylvania Lines, Inc. and Pohl Corporation by U.S.  
First Class Mail to the attorney for the Defendants at the following address:

Kim C. Kesner, Esquire  
23 North Second Street  
Clearfield, PA 16830

Date: August 4, 2004

  
Peter F. Smith, Attorney for Plaintiff

FILED *NO CC*  
01/10/2004  
AUG 05 2004  
WAS  
William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**AUG 05 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

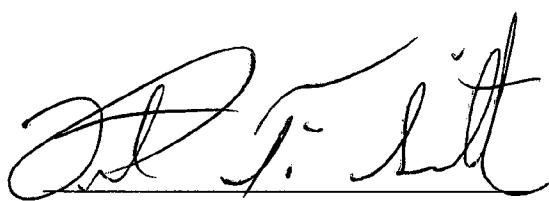
E. M. BROWN, INC.,	:	
Plaintiff	:	No. 2004-606-CD
	:	
vs.	:	
	:	
R.J. CORMAN RAILROAD COMPANY/	:	
PENNSYLVANIA LINES, INC.,	:	
	:	
and	:	
	:	
POHL CORPORATION,	:	
Defendants	:	

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I sent Plaintiff's **SECOND SET OF INTERROGATORIES** and **SECOND REQUEST FOR PRODUCTION OF DOCUMENTS** directed to Defendant Pohl Corporation by U.S. First Class Mail to the attorney for the Defendant at the following address:

Kim C. Kesner, Esquire  
23 North Second Street  
Clearfield, PA 16830

Date: October 27, 2004



Peter F. Smith, Esquire  
Attorney for Plaintiff

FILED  
OCT 28 2004  
cc

William A. Shaw  
Prothonotary, Clerk of Courts

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

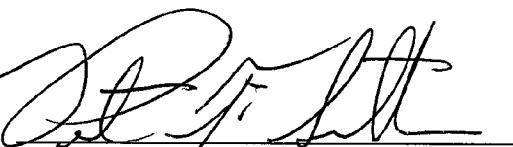
E. M. BROWN, INC., :  
Plaintiff : No. 2004-606-CD  
:  
vs. :  
:  
R.J. CORMAN RAILROAD COMPANY/ :  
PENNSYLVANIA LINES, INC., :  
:  
and :  
:  
POHL CORPORATION, :  
Defendants :  
:

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I sent **PLAINTIFF'S PRODUCTION OF DOCUMENTS** by U.S. First Class Mail to the attorney for the Defendant at the following address:

Kim C. Kesner, Esquire  
23 North Second Street  
Clearfield, PA 16830

Date: 4/7/05

  
Peter F. Smith, Esquire  
Attorney for Plaintiff

FILED NO  
04/10/15 AM  
APR 08 2005 (6K)

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**APR 08 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

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

E.M. BROWN, INC.,

Plaintiff

vs.

R.J. CORMAN RAILROAD COMPANY/  
PENNSYLVANIA LINES, INC.,

and

POHL CORPORATION,

Defendants

: No. 2004-606-CD

: Type of Case: Civil

: Type of Pleading: Praeclipe

: Attorney for Defendant R.J. Corman:

: Kim C. Kesner, Esquire  
Supreme Ct. I.D. No. 28307

: 23 North Second Street  
Clearfield, PA 16830  
814-765-1706

: Attorney for Plaintiff:

: Peter F. Smith, Esquire  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830  
814-765-5595

FILED  
OCT 14 2006  
DEC 20 2006  
William A. Shaw  
Prothonotary/Clerk of Courts  
Copy to CJA  
GK

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

E. M. BROWN, INC. :

Plaintiff : No. 2004-606-CD

vs. :

R.J. CORMAN RAILROAD COMPANY/  
PENNSYLVANIA LINES, INC. :

and :

POHL CORPORATION,  
Defendants :

**PRAECIPE**

To: William A. Shaw, Prothonotary of Clearfield County

Dear Sir :

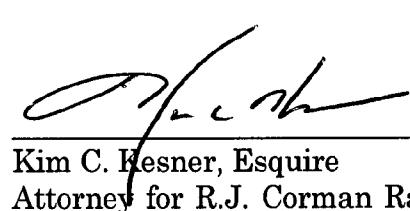
We, the undersigned attorneys are counsel for Plaintiff and Defendants in this litigation. Being authorized by our clients to do so, we request that this case be discontinued with prejudice.

Respectfully submitted



Peter F. Smith, Esquire  
Attorney for E. M. Brown, Inc.

Date: 12 - 6 - 06



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Kim C. Kesner, Esquire  
Attorney for R.J. Corman Railroad Co.  
and Pohl Corporation

Date: 12 - 8 - 06

**FILED**

**DEC 20 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

**RECEIVED**  
DEC 08 2006

BY: \_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

cc:

**E.M. Brown, Inc.**

vs.

**No. 2004-00606-CD**

**R. J. Corman Railroad Company  
Pennsylvania Lines, Inc.  
POHL Corporation**

**CERTIFICATE OF DISCONTINUATION**

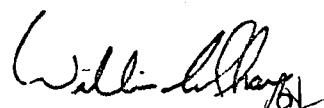
Commonwealth of PA  
County of Clearfield

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 December 20, 2006, marked:

Discontinued with Prejudice

Record costs in the sum of \$85.00 have been paid in full by E.M. Brown, Inc.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 20th day of December A.D. 2006.



\_\_\_\_\_  
William A. Shaw, Prothonotary