

04-1712-CD
RICHARD L. WITHEY, Etal. vs. ALL HAMILTON CONTRACTING COMPAN
Etal.

Equity

Date		Judge
10/29/2004	X Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Withey, Richard) Receipt number: 1889369 Dated: 10/29/2004 Amount: \$85.00 (Check) 7 CC to Atty.	No Judge
	X Rule AND NOW, this 29th day of October, 2004, based upon Plaintiffs; request for injunctive relief in the above captioned matter, Def. are hereby Ordered to file written response by Nov. 30, 2004 showing cause as to why said relief should be denied. Hearing on Pliffs request for injunctive relief sha be on the 14th day of December, 2004 at 9:00AM S/FJA 5 CC to Atty.	Fredric Joseph Ammerman
11/18/2004	X Preliminary Objections, filed on behalf of Defendants by s/William C. Kriner, Esq. No CC	Fredric Joseph Ammerman
11/30/2004	X Answer and New Matter filed on behalf of Defendants, filed by s/ William C. Kriner, Esquire. No CC	Fredric Joseph Ammerman
12/15/2004	X Order, NOW, this 14th day of December, 2004, it is the ORDER of the Cour that, until such time as the Court shall order otherwise, the Defendant Al Hamilton Contracting Company, Inc., shall continue to pay all real estate taxes when the same become due, and continue to maintain fire and hazarc insurance on the property. Proof of payment shall be provided to counsel for the Plaintiffs upon request. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 3 CC Atty Noble	Fredric Joseph Ammerman
	X Sheriff Returns: Now Nov. 1, 2004 served the Rule Returnable & Complaint Equity on the Estate of Anne Walker Macko. Nov. 1, 2004 served Rule Returnable & Complaint in Equity on Susan Kriner Nov. 16, 2004 served the Rule Returnable & Complaint in Equity on C. Alan Walker. Nov. 16, 2004 served the Rule Returnable & Complaint in Equity on Shanno Land and Mining Co. Nov. 16, 2004 served the Rule Returnable & Complaint in Equity on Al Hamilton Contracting Company, Inc. So Answers, Chester A. Hawkins, Sheriff, by s/ Marilyn Hamm	Fredric Joseph Ammerman
12/27/2004	X Order, AND NOW, this 27th day of Dec., 2004, it is the Order of the Court that argument on Defendants' Preliminary Objections filed in the above-captioned matter has been scheduled for the 7th day of Feb. 2005, a 9:00 a.m. in Courtroom No. 1, Clfd. Co. Courthouse. BY THE COURT:/s/ Fredric J. Ammerman, President Judge. 2CC & Memo Re: Service to Atty. Kriner.	Fredric Joseph Ammerman
2/8/2005	X Order, NOW, this 7th day of Feb., 2005, following argument on Defendants' Preliminary Objections, it is the ORDER of this Court that counsel for the parties have no more than 20 days form date hereof to submit a letter brief t the Court. BY THE COURT: Fredric J. Ammerman, President Judge. 2CC to Noble, 1Cert. to Kriner	Fredric Joseph Ammerman
3/22/2005	X Order, NOW, this 22nd day of March, 2005, in consideration of the Preliminary Objections filed on behalf of the Defendants it is the ORDER of this Court as follows: (see original). BY THE COURT: /s/ Fredric J. Ammerman, Judge. 1CC Attys: Noble, Kriner.	Fredric Joseph Ammerman
5/3/2005	X Answer, New Matter and Counterclaim, filed by s/ William C. Kriner, Esquire No CC	Fredric Joseph Ammerman
5/19/2005	X Plaintiff's Reply to New Matter, Answer to Counter-Claim and Additional Nev Matter, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
6/7/2005	X Reply to Additional New Matter of Plaintiffs filed by s/ Theron G. Noble Esquie. No CC.	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

User: L MILLER

Civil Disposition Report
 CT COMMON PLEAS

From 8/11/2008 to 8/15/2008

All Case Types

All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Date
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2008-01088-CD	Cole, Fred	08/13/2008	Court Ordered	Quiet Title	8/13/2008
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Defendant
 Cole, Virginia
 In favor of: Plaintiff
 Judgment amount or comment:

Defendant
 First Commonwealth Bank-T

Defendant
 Gilbert, Danny N. Sr.

Plaintiff

Gilbert, Missy L.

Plaintiff

Heller, Cletas M. Estate Of

Defendant

2008-01182-CD	Commonwealth of Pennsylv	08/11/2008	Commonwealth Lien	Satisfied	8/11/2008
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Plaintiff

In favor of: Plaintiff
 Judgment amount or comment:

D D J Manufacturing

Defendant

2008-01466-CD	Clearfield Bank & Trust Com	08/11/2008	DJ Transcript Judgme	Open	8/11/2008
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In favor of: Plaintiff
 Judgment amount or comment:

Coleman, Diana

Defendant

\$1,886.95

Coleman, Ernest Jr.

Defendant

2008-01467-CD	Cartwright, Timothy G.	08/11/2008	DJ Transcript Judgme	Open	8/11/2008
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In favor of: Plaintiff
 Judgment amount or comment:

Clearfield Bank & Trust Com

Defendant

\$4,689.34

2008-01468-CD	Clearfield Bank & Trust Com	08/11/2008	DJ Transcript Judgme	Open	8/11/2008
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In favor of: Plaintiff
 Judgment amount or comment:

Plaintiff

2008-01469-CD	Clearfield Bank & Trust Com	08/11/2008	DJ Transcript Judgme	Open	8/11/2008
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In favor of: Plaintiff
 Judgment amount or comment:

Kruise, Tristan L.

Defendant

\$2,051.26

2008-01470-CD	Bertes, Joseph G.	08/11/2008	DJ Transcript Judgme	Open	8/11/2008
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In favor of: Plaintiff
 Judgment amount or comment:

Owens, Debra J.

Defendant

\$2,861.90

2008-01471-CD	Clearfield Bank & Trust Com	08/11/2008	DJ Transcript Judgme	Open	8/11/2008
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In favor of: Plaintiff
 Judgment amount or comment:

Plaintiff

2008-01471-CD	Clearfield Bank & Trust Com	08/11/2008	DJ Transcript Judgme	Open	8/11/2008
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In favor of: Plaintiff
 Judgment amount or comment:

Klinger, Adam L.

Defendant

\$6,155.15

2008-01471-CD	Clearfield Bank & Trust Com	08/11/2008	DJ Transcript Judgme	Open	8/11/2008
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Equity

Date		Judge
6/22/2005	X Motion for Leave of Court to Amend Civil Complaint, filed by s/Theron G. Noble, Esq. No CC	Fredric Joseph Ammerman
6/24/2005	X Rule Returnable, Now, this 24th day of June, 2005, upon consideration of th Plaintiff's Motion For Leave of Court to Amend Civil Complaint, Rule Returnable for filing written response is set for the 15th day of July, 2005 an argument on the Motion set for the 22nd day of July, 2005 at 9:00 a.m. in Courtroom No. 1. By The Court: /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Noble	Fredric Joseph Ammerman
6/30/2005	X Certificate of Service of Rule Returnable issued upon Plaintiff's Motion for Leave of Court to Amend Complaint upon counsel of record William C Krine Esq. on June 28, 2005 filed by s/ Theron G Noble Esq. No CC.	Fredric Joseph Ammerman
7/5/2005	X Motion For Continuance, filed by s/William C. Kriner, Esquire. 1CC Atty Kriner	Fredric Joseph Ammerman
7/7/2005	X Order, this 6th day of July, 2005, upon consideration of the foregoing Motior for Continuance, Ordered that argument shall be held on the Motion for Lea to Amend Civil Complaint on the 19th day of August, 2005, at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Kriner	Fredric Joseph Ammerman
7/18/2005	X Certificate of Service of the Order dated July 6, 2005, scheduling argument on Motion for Leave to Amend Civil Complaint was served on July 7, 2005 o Theron G. Noble Esq., filed by s/ William C. Kriner Esquire. No CC.	Fredric Joseph Ammerman
7/18/2005	X Def.'s Answer and Legal Memorandum in Opposition to Plaintiffs' Motion for Leave of Court to Amend Civil Complaint, filed by s/William C. Kriner, Esquire. No CC	Fredric Joseph Ammerman
8/22/2005	X Order, NOW, this 19th day of August, 2005, Plaintiffs' Motion to Amend Civi Complaint is denied. By The Court, /s/ Fredric J. Ammerman, President Judge. 2CC Attys: Noble, Kriner	Fredric Joseph Ammerman
9/1/2005	X Order, NOW, this 30th day of August, 2005, it is the Order of this Court that the Plaintiffs' request that the Court certify the issues contained within the Plaintiffs' amended complaint for appeal pursuant to Rule 1312 of Appellate Procedure be and is hereby denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Noble, Kriner	Fredric Joseph Ammerman
9/30/2005	X Notice of Service, filed. I did mail a true and correct copy of Plaintiffs' FIRS SET OF DISCOVERY MATERIAL, to Willilam C. Kriner Esq on September 29, 2005, filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
3/22/2006	X Certificate of Service, filed. I did propound on all defendants Plaintiff's THIRI SET OF DISCOVERY MATERIAL, on the the 20th day of March 2005 to William C. Kriner Esq., filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
5/2/2006	X Motion To Compel, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
5/5/2006	X Rule To Show Cause, NOW, this 3rd day of May, 2006, upon consideration of the Defendant's Motion to Compel, a Rule is issued upon the Plaintiff. Rule Returnable for filing written response is set for the 26th day of May, 2006 and argument on the Motion set for the 6th day of June, 2006 at 11:00 a.m. in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Noble	Fredric Joseph Ammerman
5/8/2006	X Certificate of Service, filed. Served a certified copy of the Rule to Show Cause issued upon Plaintiffs' Motion to Compel, to William C. Kriner Esq. or this 6th day of May 2006 filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

User: LMILLER

Civil Disposition Report
 CT COMMON PLEAS

All Case Types

From 8/11/2008 to 8/15/2008

All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Date
2008-00413-CD	Discover Bank Plaintiff Finley, Amadeus M. Defendant	08/14/2008	In favor of: Plaintiff Default Judgment \$15,661.37 Judgment amount or comment:	Open	8/14/2008
2008-00569-CD	FIA Card Services, N.A. Plaintiff MBNA America Bank N.A. Plaintiff Shick, Kathleen M. Defendant	08/14/2008	In favor of: Plaintiff Default Judgment \$21,604.31 Judgment amount or comment:	Open	8/14/2008
2008-00667-CD	Dick, Erik R. Defendant Pennsylvania State Employe Plaintiff	08/14/2008	In favor of: Plaintiff Default Judgment \$9,565.29 Judgment amount or comment:	Open	8/14/2008
2008-00685-CD	BB&T Credit Services, Inc. Plaintiff Thomas, Robert A. Defendant	08/11/2008	In favor of: Plaintiff Default Judgment Writ of Possessi 8/11/2008	Writ of Possessi	8/11/2008
2008-00799-CD	Commonwealth of Pennsylv Plaintiff County National Bank Subject Reliable Construction, Inc. Defendant	08/13/2008	In favor of: Plaintiff Commonwealth Lien Writ of Execution 8/13/2008	Writ of Execution	8/13/2008
2008-00835-CD	CNB Bank Subject Commonwealth Financial Sy Plaintiff	08/11/2008	In favor of: Plaintiff DJ Transcript Judgme Attachment Diss 8/11/2008	Attachment Diss	8/11/2008
2008-01063-CD	Hamilton, Terry Defendant Johnson, Karl O. Defendant Johnson, Rachelle Defendant Mikar, Roy Plaintiff	08/13/2008	In favor of: Plaintiff Court Ordered Quiet Title 8/13/2008	Quiet Title	8/13/2008

Equity

Date		Judge
5/24/2006	X Defendant's Answer to Motion to Compel, filed by s/ William C. Kriner Esq. No CC.	Fredric Joseph Ammerman
10/12/2006	X Joint Motion For Partial Settlement And Order, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
10/16/2006	X Order, NOW, this 13th day of Oct., 2006, upon consideration of the Joint Motion for Partial Settlement, it is Ordered as follows: (see original). By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Noble, Kriner	Fredric Joseph Ammerman
11/7/2006	X Amended Civil Complaint, filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
11/21/2006	X Preliminary Objections to Plaintiffs' Amended Complaint, filed by s/ William C. Kriner, Esquire. No CC	Fredric Joseph Ammerman
11/27/2006	X Verification to Amended Civil Complaint, filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
12/4/2006	X Reply To PO's And in Alternative For Leave of Court to Amend, Nunc Pro Tunc, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
12/13/2006	X Order, filed 1 Cert. to Atty. Kriner AND NOW, this 12th day of December, 2006, Argument shall be heard on the P/O on Jan. 11, 2007.	Fredric Joseph Ammerman
1/10/2007	X Certificate of Service, filed. That the Order dated December 12, 2006, scheduling argument on Preliminary Objections was served on Theron G. Noble Esq., on December 12, 2006, filed by s/ William C. Kriner Esq. NO CC.	Fredric Joseph Ammerman
1/12/2007	X Order, NOW, this 11th day of Jan., 2007, following argument on the Preliminary Objections filed to the Plaintiffs' Amended Complaint, it is the Order of this Court as follows: 1. The Motion to strike paragraph 69 of the Amended Complaint is granted, without prejudice to the Plaintiffs to file an appropriate Petition for Leave of Court to Amend. The request for Leave to Amend as set forth in the Plaintiffs' Reply to Preliminary Objections is dismissed as being procedurally incorrect. 2. The preliminary objection relative insufficient pleading under Rule 1019(f) is granted. Plaintiffs shall file a further Amended Complaint and shall plead the matters with specificity. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Kriner	Fredric Joseph Ammerman
2/1/2007	X Motion For leave of Court to Amend Amended Civil Complaint, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
2/6/2007	X Rule, NOW, this 5th day of Feb., 2007, upon consideration of the Motion For Leave of Court to Amend Amended Civil Complaint, a Rule is issued upon the Defendants. Rule Returnable for filing written response is set for the 20th day of Feb., 2007, and hearing will be held on the 20th day of Feb., 2007, commencing at 10:00 a.m. Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Noble	Fredric Joseph Ammerman
2/8/2007	X Notice of Service, filed. Served a true and correct copy of the Rule Returnable issued upon Plaintiff's Motion to Amend Amended Civil Complaint on this 7th day of February 2007 to William C. Kriner Esq., filed by s/ Theron G. Noble Esq. No cc.	Fredric Joseph Ammerman

Civil Disposition Report
CT COMMON PLEAS

All Case Types

From 8/11/2008 to 8/15/2008

All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Date
2007-01848-CD	Deboer, Thomas A. Defendant Deutsche Bank National Tru: Plaintiff	08/13/2008	Default Judgment In favor of: Plaintiff	Vacated	8/13/2008
2007-01879-CD	Cochran, Lona M. Defendant HSBC Plaintiff	08/14/2008	DJ Transcript Judgme In favor of: Plaintiff	Satisfied	8/14/2008
2008-00020-CD	Arden Resources, Inc. Plaintiff Palisades Collection, L.L.C. Plaintiff	08/15/2008	Default Judgment In favor of: Plaintiff	Open	8/15/2008
2008-00294-CD	Read, Daniel K. Defendant Read, Laura D. Defendant S & T Bank Plaintiff	08/12/2008	Default Judgment In favor of: Plaintiff	Writ of Execution	8/12/2008
2008-00294-CD	Read, Daniel K. Defendant Read, Laura D. Defendant S & T Bank Plaintiff	08/12/2008	Default Judgment In favor of: Plaintiff	Open	8/12/2008
2008-00381-CD	Brcen, Jason T. Defendant Commonwealth of Pennsylv: Plaintiff	08/11/2008	Default Judgment In favor of: Plaintiff	Open	8/11/2008
2008-00382-CD	Dept of Conservation & Natu Plaintiff Commonwealth of Pennsylv: Plaintiff	08/11/2008	Default Judgment In favor of: Plaintiff	Open	8/11/2008
2008-00383-CD	Federal Home Loan Mortgag Plaintiff Gage, Karen A. Defendant Occupants, Defendant	08/11/2008	Judgment/Ejectment In favor of: Plaintiff	Satisfied	8/11/2008

Equity

Date		Judge
2/21/2007	X Order, NOW, this 20th day of Feb., Motion to Amend Amended Civil Complaint is Granted. Plaintiff shall file its again Amended Complaint within 20 days, and the Defendants shall file their responsive pleading within 20 days of Plaintiffs filing the again Amended Complaint. By the Court, /s/ Fredric J. Ammerman, pres. Judge. 1CC Attys: Noble, Kriner	Fredric Joseph Ammerman
2/26/2007	X Second Amended Civil Complaint, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
3/13/2007	X Answer, New Matter and Counterclaim to Second Amended Civil Complaint filed by s/ William C. Kriner, Esquire. No CC	Fredric Joseph Ammerman
4/9/2007	X Reply to New Matter, Answer to Counter-Claim and Additional New matter a to Second Amended Civil Complaint, filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
4/24/2007	X Defendants' Reply to Plaintiffs' Additional New Matter, filed by s/ William C. Kriner, Esquire. No CC	Fredric Joseph Ammerman
6/7/2007	X Notice of Deposition of Plaintiff Zoe Withey and Certificate of Service, filed b s/ William C. Kriner, Esquire. No CC	Fredric Joseph Ammerman
6/11/2007	X Notice of Service, copy of Plaintiff's Notice of Deposition (directed to Defendant C. Alan Walker), served upon William C. Kriner, Esquire, on the 8th day of June, 2007, via first class Mail. Filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
8/28/2007	X Certificate of Service, filed. Served a true and correct service of the Plaintiffs Notice of Deposition, to William C. Kriner Esq. on this 27th day of August 2007, filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
10/24/2007	X Defendants' Motion for Summary Judgment, filed by s/ William C. Kriner Esq. No CC.	Fredric Joseph Ammerman
10/26/2007	X Order, this 25th day of Oct., 2007, upon consideration of the Defendants' Motion for Summary Judgment, it is Ordered that argument on said Motion shall be had on Nov. 27, 2007, in Courtroom 1 @ 9:30 a.m. Notice of the entry of this order shall be provided to all parties by the moving party. By The court, /s/ Fredric J. Ammerman, pres. Judge. 2CC Atty. Kriner	Fredric Joseph Ammerman
11/1/2007	X Certificate of Service, filed. That the Order dated October 25, 2007, scheduling argument on Motion for Summary Judgment was served on Theron G. Noble Esq. by first class mail on October 29, 2007 to William C. Kriner Esq. No CC.	Fredric Joseph Ammerman
11/28/2007	X Order, this 27th day of Nov., 2007, it is Ordered that counsel for the Plaintiff file an appropriate Answer to the Motion for Summary Judgment within no more than 20 days from this date. Within no more than forty days from this date, counsel for Defendants shall submit appropriate letter brief to the Court. Within no more than 60 days from this date, counsel for Plaintiff shall submit appropriate letter brief to the Court. By The Court, /s/ Fredric J. Ammerman Pres. Judge. 2Cc Attys: Noble, Kriner	Fredric Joseph Ammerman
12/19/2007	X Reply to Motion For Summary Judgment, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
1/28/2008	Transcript of Proceedings, filed by Atty. Noble. Deposition of C. Alan Walker on July 9, 2007 by Sargent's Court Reporting Service, Inc.	Fredric Joseph Ammerman
	Transcript of Proceedings, filed by Atty. Noble. Deposition of Dave Nelson on September 13, 2007 by Sargent's Court Reporting Service, Inc.	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

Civil Disposition Report

CT COMMON PLEAS,

All Case Types

From 8/11/2008 to 8/15/2008

All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Date
2001-01466-CD	Roy, Larry Defendant Sandy Township Plaintiff	08/14/2008	Municipal Lien In favor of: Plaintiff Judgment amount or comment:	Satisfied	8/14/2008
2003-00356-CD	Discover Bank/Edward Stock Plaintiff Hockenberry, Clifford Merrill Defendant	08/13/2008	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment:	Writ of Revival	8/13/2008
2006-02099-CD	National Fuel Gas Distributio Plaintiff Smith, Annette Defendant	08/13/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment:	Satisfied	8/13/2008
2007-00093-CD	Calvary SPV I, LLC Plaintiff Cavalry Portfolio Services, LI Plaintiff First Commonwealth Bank Subject McLeod, David L. Defendant Providian Plaintiff	08/15/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment:	Writ of Execution	8/15/2008
2007-00176-CD	E. M. Fenush Jr. Trucking Plaintiff Fenush, Eugene M. Jr. Defendant J. J. Powell, Inc. Plaintiff	08/15/2008	Court Ordered In favor of: Plaintiff Judgment amount or comment:	Open	8/15/2008
2007-00677-CD	Chase Bank USA, N.A. Plaintiff Commonwealth Financial Sy Plaintiff Polonki, Michael S. Defendant Unifund CCR Partners Plaintiff	08/15/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment:	Writ of Execution	8/15/2008
2007-00790-CD	Citibank (South Dakota) NA Plaintiff Meinert, Rebecca A. Plaintiff Defendant	08/14/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment:	Writ of Execution	8/14/2008

Equity

Date		Judge
5/8/2008	X Stipulation and Order: NOW, this 8th day of May, 2008, Defendant's Motion for Summary Judgment is Denied as to Counts I, II, III, and VI and Granted as to Count V. The Court finds that with regard to Counts I, II, III, and VI, viewed in a light most favorable to the nonmoving party, the facts alleged do raise issues of material fact that are sufficient to withstand the Motion for Summary Judgment. Count V is hereby Dismissed With Prejudice. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Noble, Kriner	Fredric Joseph Ammerman
5/13/2008	← Certificate of Readiness for Jury Trial, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
6/11/2008	X Order, this 10th day of June, 2008, it is Ordered that pre-trial conference is scheduled for July 9, 2008 at 10:30 a.m. in Judges Chambers. Jury Selection will be held on July 24, 2008 at 9:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Kriner, Noble	Fredric Joseph Ammerman
7/11/2008	X Order, filed cert. to Atty's Kriner & Noble X NOW, this 9th day of July, 2008, Jury Selection to be held July 24th, 2008 and trial is scheduled for Aug. 13, 14 & 15, 2008	Fredric Joseph Ammerman
7/24/2008	X Motion for Dismissal or Continuance, filed by s/ William C. Kriner Esq. No CC.	Fredric Joseph Ammerman
7/25/2008	X Order, this 24th day of July, 2008, this being the date set for jury selection, it is Ordered that Jury Selection is continued until Jan. 6, 2009, at 9:00 a.m., Courtroom 1. Plaintiffs shall have no more than 20 days from this date to file a motion with the Court to frame the Plaintiffs' position that Plaintiffs can proceed with jury trial against the remaining Defendants in order that the Court may make further determination of the issue. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Kriner	Fredric Joseph Ammerman
8/8/2008	X Motion to List for Trial as to All Defendants Except AI Hamilton, filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
8/13/2008	X Rule to Show Cause, this 13th day of August, 2008, upon consideration of Motion to List For Trial as to All Defendants Except AI Hamilton Contracting Co., Inc., a Rule is issued upon all Defendants to show cause why the Motion should not be granted. Rule Returnable for filing written response, is set for the 12th day of Sept., 2008, and hearing will be held on the 6th day of Oct., 2008, at 10:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Noble	Fredric Joseph Ammerman
8/19/2008	X Notice of Service, I, Theron G. Noble, Esquire, certifies that I served a copy of the rule to Show Cause issued upon Plaintiff's Motion to List For Trial as to all Defendants Excluding AI Hamilton Contracting Company, Inc., upon William C. Kriner, Esquire, on the 18th day of August, 2008, via first class mail. filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
9/11/2008	X Defendants' Answer to Plaintiffs' Motion to List for Trial as to all Defendants except AI Hamilton Contracting Company, filed by s/ William C. Kriner, Esquire. No CC	Fredric Joseph Ammerman

•Comments:

Urgent For Review Please Comment Please Reply Please Recycle

Re:

CC:

Phone:

Pages:

Fax:

Date:

To:

Sharon

From:

William A. Shaw

August 15, 2008 &

Fax

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County
Counthouse**

Equity

Date	Selected Items	Judge
10/8/2008	X Order, AND NOW, this 6th day of October 2008, following argument on the Plaintiff's Motion to List for Trial as to All Defendant Excluding Al Hamilton Contracting Company Inc., it is the ORDER of this Court that counsel for the parties supply the Court with appropriate letter brief within no more than fifteen (15) days from this date. Within no more than twenty-five (25) days from this date, either party may supply the Court with an additinal brief in reply to that of the other party. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Kriner.	Fredric Joseph Ammerman
10/17/2008	X Motion to Compel, filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
10/21/2008	X Rule, this 21st day of Oct., 2008, upon consideration of the Motion to Compel, a Rule is issued upon the Defedants. Rule Returnable for filing written response, is set for the 10th day of Nov., 2008, and hearing will be held on the 19th day of Nov., 2008, at 3:00 p.m. Courtroom 1. by The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty.	Fredric Joseph Ammerman
10/27/2008	X Notice of Service, filed. Served a true and correct copy of the Rule Returnable issued upon their Motion to Compel this 24th day of October 2008, via first class mail to William C. Kriner Esq., filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
11/10/2008	X Defendants' Answer, filed by s/ William C. Kriner, Esquire. No CC	Fredric Joseph Ammerman
11/25/2008	X Opinion and Order, this 24th day of Nov., 2008, Plaintiffs' Motion to List for Trial as to All Defendants Except Hamilton is GRANTED. This case is listec for Jury Selection on Jan. 6, 2009 at 9:00 a.m. Courtroom 1. Further ordere that Plaintiffs' Motion to Compel is GRANTED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Noble, Kriner; 1CC Law Library, D. Mikesell (without memo)	Fredric Joseph Ammerman

12-4-08 Notice of Service

12-16-08 Order, dated 12-15-08

CA

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adlt individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

CIVIL COMPLAINT

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

012-34 700 to city.

OCT 29 2004

William A. Shaw
Prothonotary

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

RICHARD L. WITHEY, and)
ZOE E. WITHEY,)

PLAINTIFFS,)

v.)

AL HAMILTON CONTRACTING COMPANY, INC.;)
a Pennsylvania corporation; SHANNON LAND AND)
MINING COMPANY; a Pennsylvania partnership;)
C. ALAN WALKER, an adult individual; SUSAN)
W. KRINER; a adult individual; and THE ESTATE)
OF ANNE WALKER MACKO,)

DEFENDANTS.)

No. 04-_____ -CD

IN EQUITY AND AT LAW

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM 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 CLAIM IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF(S). YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

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

David Meholick, Court Administrator
c/o Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830
(814)-765-2641

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adult individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

No. 04- _____ -CD

IN EQUITY AND AT LAW

CIVIL COMPLAINT

NOW COMES, the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their CIVIL COMPLAINT:

The Parties

1. First plaintiff is Richard L. Withey, who does, and at all material times, did reside at 4 McKee Road, Olanta, Clearfield County Pennsylvania, 16863.
2. Second plaintiff is Zoe E. Withey, who does, and at all material times, did reside at 4 McKee Road, Olanta, Clearfield County Pennsylvania, 16863.
3. That at all relevant and material times, Plaintiffs were husband and wife living together at the aforementioned physical address, albeit with a different mailing address given the changes with the 911 system, and jointly referred sometimes hereinafter as "Withey".

4. First defendant is Al Hamilton Contracting Company, Inc., upon information and belief, a duly formed and existing Pennsylvania Corporation, with principal place of business located at 1988 Dale Road, Woodland, Clearfield County, Pennsylvania 16825, hereinafter referred to as "Hamilton".

5. Second defendant is Shannon Land and Mining Company, upon information and belief, a duly formed and existing Pennsylvania partnership, with partners being the hereinafter named third, fourth and fifth defendants, with principal place of business also located 1988 Dale Road, Woodland, Clearfield County, Pennsylvania 16825, hereinafter referred to as "Shannon".

6. That third defendant is C. Alan Walker, upon information and belief, an adult individual, who does and at all material times did reside at 1018 Country Club Road, Clearfield, Clearfield County, Pennsylvania 16830, hereinafter referred to as "Walker".

7. That fourth defendant is Susan Kriner, upon information and belief, an adult individual, who does and at all material times did reside at 2512 Meadow Road, Clearfield, Clearfield County, Pennsylvania 16830, hereinafter referred to as "Kriner".

8. That fifth defendant is the Estate of Anne Walker Macko, a duly formed and probated estate, with fiduciaries being William Kriner, 2512 Meadow Road, Clearfield County, Pennsylvania 16830, and Derick Walker, 179 Walker Road, Bigler, Clearfield County, Pennsylvania, hereinafter referred to as "Macko".

Background

9. That upon information and belief, at all relevant and material times, Walker, Kriner and Macko were and are officers, directors and shareholders of Hamilton.

10. That upon information and belief, at all relevant and material times, Walker, Kriner and Macko owned a controlling interest of the issued and outstanding shares of Hamilton.

11. That Hamilton and Shannon, beside being similarly owned and controlled, upon information and belief, often times engage in business activities which are mutually beneficial, specifically that Shannon owns or otherwise controls the land upon which Hamilton conducts mining operations.

12. That upon information and belief, at least some of the employees of Hamilton and Shannon also perform tasks for the other company of which they are not employed.

13. Alternatively, upon information and belief, there are employees of Hamilton and Shannon which are simultaneously employed by both entities.

14. That Hamilton and Shannon are allied companies, with the individual defendants herein named being the principals of each company.

15. That upon information and belief, at all relevant and material times, being November 27, 1991 to the present, Walker, Kriner and Macko were partners, and the only partners, in Shannon.

16. That Hamilton's business focus is coal mining operations.

17. That the Witheys are owners of record of a certain tract of land, containing approximately 1.14 acres, located in Pike Township, Clearfield County, Pennsylvania, hereinafter referred to as "the Pike Township tract".

18. That in the early 1990s, the defendants desired to mine coal in close proximity to the Pike Township tract.

19. That for reasons of convenience or need, defendants desired the Witheys to authorize such coal mining operation and permit use of the Pike Township tract, which at that time was serving as the Witheys homestead, for defendants' business purposes.

20. That in connection with defendants' above stated desires, plaintiffs and defendants entered into a certain agreement, on November 27, 1991, hereinafter "the 1991 agreement", a true and correct copy of which is attached hereto as Exhibit "A", the terms of which are hereby incorporated as if fully set forth at length, which in essence transferred equitable title of the Pike Township tract from the Witheys to the defendants, in exchange for which the defendants were to convey approximately 66 acres, hereinafter identified as "the Fred Long farm", also located in Pike Township, Clearfield County, Pennsylvania, to the Witheys.

21. That Shannon was aware of the commitment made by Hamilton that the Fred Long farm would be conveyed to the Witheys, prior to and at the time the 1991 agreement was entered into by Hamilton and the Witheys. Attached hereto as Exhibit "B" is a letter from Shannon stating its intent to deliver the Fred Long farm to the Witheys.

22. That Shannon did not object and implicitly agreed to the commitment that its property would be transferred to the Witheys at the completion of the terms contained in the 1991 agreement and would be the entity, upon information and belief, that Hamilton would direct the Witheys to convey the Pike Township tract.

23. That Hamilton and others associated with Shannon acted as Shannon's agent, disclosed or undisclosed, binding Shannon to the 1991 agreement, making Shannon a party eo nomine to the 1991 agreement.

24. That although Shannon was at all relevant and material times the record owner of Fred Long farm, for the home built for the Witheys on the Fred Long farm property, the real estate taxes were issued to Hamilton at the direction of Hamilton and/or Shannon.

25. This cause of action concerns the defendants failures to complete said transfers as well as to breach other terms and conditions of the 1991 agreement.

Count I: Request for Injunctive Relief
(In Equity)
Irreparable Harm

26. That the averments of paragraphs 1 - 25, inclusive, are hereby incorporated as if again fully set forth at length.

27. That per the 1991 agreement, defendants constructed a home upon the Fred Long farm in which the Witheys have been living since its completion and using the same as their homestead.

28. That per the 1991 agreement, defendants amongst other tasks were to pay the real estate taxes, including the taxes on the Witheys' home on the Fred Long farm property, (see paragraph 4) and maintain liability and hazard insurance (see paragraph 8).

29. That defendants have failed to pay the real estate taxes since 2001 on the Witheys' home on the Fred Long farm, identified as Map# H11-000-00021-DW-01 and control # 126093318. Attached hereto as Exhibit "C" are various documents from the Tax Claim Office showing such default.

30. That despite the Witheys requests to be provided with assurances that defendants have maintained such hazard and liability insurance on the Fred Long farm premises, defendants have failed to produce such assurance. Attached hereto as Exhibit "D" is a letter from the Witheys requesting assurances as to the real estate taxes and insurance issues.

31. That upon information and belief, defendants have failed to maintain adequate hazard and liability insurance, and do not presently maintain such insurance, on the Fred Long farm. Furthermore, in that the Witheys are not the record owners, they do not have an insurable interest in the Fred Long farm and are prevented from obtaining insurance themselves.

32. That Hamilton is financially unstable, upon information and belief, having filed for and received bankruptcy protection.

33. That in the event defendant refuses to pay for taxes on the Witheys' home on the Fred Long farm, the property would be sold at tax sale and defendants would lose their home, through no fault of their own, and would suffer irreparable harm and would have no opportunity for recovery against Hamilton due to its financial circumstances.

34. That in the event defendants have failed to maintain insurance protection on the Fred Long property, the Witheys would suffer irreparable harm, again given Hamilton's financial circumstances, in the event the Fred Long farm would suffer catastrophic loss.

35. That the Witheys have a clear and unambiguous right, per the 1991 agreement, to have the real taxes paid on the Fred Long farm and have the same insured.

36. That the Witheys have demanded that defendants abide by their agreement and upon information and belief, have failed to do so.

WHEREFORE, Plaintiffs request that this Court grant their request for an injunction and ORDER as follows:

- 1. That Defendants shall within ten (10) days hereof pay all outstanding real estate taxes on the Fred Long property;**
- 2. Within three days hereof, deliver to the Witheys proof that the Fred Long farm is reasonably insured for fire and hazard;**
- 3. Pay to the Witheys, per paragraph 8 of the 1991 agreement, their reasonable attorney's fees in conjunction with the litigation of this matter;**
- 4. Any other relief this Court determines to be just and proper under the circumstances.**

Count II: Request for Specific Performance
(In Equity)
Completion of the 1991 Agreement

37. That the averments of paragraphs 1 - 36, inclusive, are hereby incorporated as if again fully set forth at length.

38. That per paragraph 5 of the 1991 agreement, Hamilton was to convey the Fred Long farm property to the Witheys and the Witheys were to convey the Pike Township tract, upon completion of Hamilton's mining operations and release of Stage III bonds concerning said

operations. See paragraph 5 of Exhibit "A".

39. That upon information and belief, Hamilton has completed all mining operations on and near the Pike Township tract and the Stage III bonds have been released.

40. That upon information and belief, all conditions precedent required by the 1991 for defendants to convey the Fred Long farm to the Witheys have been performed.

41. That defendants have refused to deliver sufficient title to the Fred Long farm to the Witheys despite their demand.

42. That the Witheys stand willing, ready and able to convey the Pike Township tract to the Defendants as part of the agreement.

43. That this Honorable Court might need to make determinations as to what is to be included in the conveyance of the Fred Long farm to the Witheys especially relative to mineral rights as defendants have proposed to except and reserve mineral rights to which the 1991 agreement is silent.

44. That although Shannon is the owner of record of the Fred Long property, and has been at all relevant and material times, given the allied company relationship between Hamilton and Shannon, as well as the principal relationship between the individual defendants and each defendant business, Shannon agreed through its agents to convey the Fred Long farm to the Witheys despite the fact that it is not a signatory to the 1991 agreement.

45. That the Fred Long farm is unique and the Witheys have no other reasonable remedy at law.

46. That the equities of the circumstances require defendants to convey the Fred Long farm to the Witheys.

47. That defendants should be ordered to convey the Fred Long property to the Witheys, without any exceptions or reservations, solely excepting any such reservations which appeared in the chain of title as of the time the 1991 agreement was entered.

WHEREFORE, Plaintiffs demand that this Honorable Court grant their request for SPECIFIC PERFORMANCE and ORDER as follows:

1. Defendants convey all of their interest in the Fred Long farm, per the 1991 agreement, to the Witheys without exceptions and reservations appearing in the chain of title prior to the 1991 Agreement;

2. Defendants be ordered to pay Plaintiff's reasonable attorney fees pursuant to the 1991 agreement;

3. That this Honorable Court make a determination as to how the transfer taxes be allocated with the conveyance(s) in that the 1991 agreement is silent as to the same;

4. That the defendants be ordered to satisfy any and all liens on the Pike Township tract, which have resulted since the time of the 1991 agreement; and

5. Any other order which is just and proper under the circumstances.

Count III: Breach of Contract

(at Law)

Conveyances post 1991 Agreement

48. That the averments of paragraphs 1 - 47, inclusive, are hereby incorporated as if again fully set forth at length.

49. That upon information and belief, defendants entered into other contracts and conveyances concerning the Fred Long property, after the 1991 agreement.

50. That the result of the contracts and conveyances by the defendants, concerning the Fred Long farm, after the 1991 agreement, deny the Witheys the full benefit of their bargain under the 1991 agreement and for which the Witheys should be compensated in an amount to be determined at time of trial.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against Defendants, jointly and severally, in an amount to be determined, believed to be in excess of \$20,000, together with costs, interest and attorneys fees.

Count IV: Breach of Contract

(At Law)

Real Estate Taxes

51. That the averments of paragraphs 1 - 50, inclusive, are hereby incorporated as if again fully set forth at length.

52. That pursuant to paragraph 4 of the 1991 agreement, the Witheys were entitled to live in the home constructed on the Fred Long farm, "tax-free".

53. That the defendants were responsible to pay the real estate taxes on the Fred Long farm per the 1991 agreement.

54. That defendants have not paid the real estate taxes since 2001 on the Witheys' home located on Fred Long farm property. A true and correct copy of the letter and notice concerning the delinquent taxes are attached hereto as Exhibit "C".

55. To protect their interest, the Witheys were forced to pay the 2002 real estate taxes, with penalty, in the amount of \$1,311.85, to prevent the Fred Long farm property from going to tax sale. A true and correct copy of the check issued by the Witheys is attached hereto as Exhibit "E".

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against the defendants, jointly and severally, in the amount of \$1,311.85, together with costs, interest and reasonable attorneys fees.

Count V: Request for an Accounting
(In Equity)
Insurance Proceeds

56. That the averments of paragraphs 1 - 55, inclusive, are hereby incorporated as if again fully set forth at length.

57. That per the 1991 agreement, at paragraph 8, defendants agreed to maintain fire and liability insurance on the Fred Long farm as well as the Pike Township tract.

58. That per the 1991 agreement, at paragraph 5, at the end of the transaction, the Witheys were to receive the "dwelling buildings thereon" (emphasis added).

59. Although the 1991 agreement is silent to the same, Pennsylvania law would require that the buildings be delivered upon the premises in reasonable condition, normal wear and tear excepted.

60. That one of the structures, best described as a barn, has suffered severe damage caused by the weather.

61. That such damage should have been covered by insurance if the defendants had maintained

such insurance.

62. If the defendants did maintain such insurance and received such payment, said money rightfully belongs to the Witheys as part of their bargained for consideration and they should receive an accounting for such payment.

WHEREFORE, Plaintiff requests that in the event defendants received insurance proceeds for damage to the barn on the Fred Long farm, they be ordered as follows:

- 1. Make an accounting to the Witheys for any insurance proceeds received by the defendants for such damage;**
- 2. Pay to the Witheys any such sums received as a result of such damage to the barn;**
- 3. Pay the Witheys reasonable attorney's fees incurred in this matter; and**
- 4. Any other relief this Court determines as fair and just under the circumstances.**

Count VI: Breach of Contract
(At law)
Barn Damage in the Alternative

63. That the averments of paragraphs 1 - 58, inclusive, are hereby incorporated as if again fully set forth at length.

64. In the alternative to Count IV, in the event the defendants either failed to maintain such insurance, or if they did maintain such insurance but failed to make a claim, per the 1991 agreement, defendants breached the 1991 agreement and the Witheys should be compensated for the necessary repairs to the barn in an amount to be determined.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an amount in excess of \$20,000, together with costs and reasonable attorneys fees.

Count VII: Request for Accounting
(In Equity)
Mineral Rights

65. That the averments of paragraphs 1 - 64, inclusive, are hereby incorporated as if again fully

set forth at length.

66. That pursuant to paragraph 5 of the 1991 Agreement, the conveyances from the Witheys to the defendants, and from the defendants to the Witheys, were to be free and clear of all encumbrances.

67. That the Witheys are entitled to the mineral rights as to the Fred Long farm.

68. That since 1991, the defendants have entered into lease agreements, true and correct copies of which are attached hereto as Exhibit "F", for the minerals located on the Fred Long farm property.

69. That the defendants should account to the Witheys for all mineral royalties received by any of them from said leases, commencing at the time it is determined that defendants should have conveyed the Fred Long farm property to the Witheys, being the time the Stage III bonds were, or reasonably should have been released.

WHEREFORE, Plaintiffs request defendants' they be ordered as follows:

- 1. Make an accounting to the Witheys for any and all royalties received pursuant to the attached leases from the time period the Stage III bond were, or should have been released;**
- 2. Pay the Witheys reasonable attorney's fees incurred in this matter; and**
- 3. Any other relief this Court determines as fair and just under the circumstances.**

Count VIII: Breach of Contract

(At Law)

Fair Market Value of Fred Long Property

70. That the averments of paragraphs 1 - 69, inclusive, are hereby incorporated as if again fully set forth at length.

71. That in the event this honorable Court would determine that for any reason Plaintiffs are not entitled to the specific performance earlier requested, than in such event defendants should pay to the Witheys the fair market value of the Fred Long farm, together with improvement thereupon in the condition they should have been in, in an amount to be determined at time of trial.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an amount in excess of \$20,000, together with costs and reasonable attorneys fees.

Count IX: Breach of Contract
(At Law)
Reasonable Attorney's Fees

72. That the averments of paragraphs 1 - 71, inclusive, are hereby incorporated as if again fully set forth at length.

73. That per the 1991 agreement, specifically at paragraph 9, in the event one party breaches the agreement and the other party sues to enforce their rights, the non-breaching party has the right to recover reasonable attorneys fees against the breaching party.

74. That for the reasons set forth herein, defendants have breached the 1991 agreement.

75. That defendant should pay to the Witheys their reasonable attorneys fees incurred in connection with this litigation, in an amount to be determined.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an amount in excess of \$20,000, together with costs and reasonable attorneys fees.

Miscellaneous Averments

76. That jurisdiction is proper.

77. That venue is proper.

78. That defendants are jointly and severally liable to the Witheys.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against defendants, jointly and severally, in an amount in excess of \$20,000, together with interest, where applicable, costs of suit, and attorney's fees as well as Plaintiffs be granted specific performance, injunctive relief, accountings, and any other relief deemed just and appropriate under the circumstances.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. G. Noble', written over a horizontal line.

Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

VOL 1547 PAGE 522

AGREEMENT

THIS AGREEMENT, made and entered into this 27th day of November, 1991, by and between RICHARD L. WITHEY and ZOE E. WITHEY, husband and wife, of Pike Township, Clearfield County, Pennsylvania, parties of the first part, hereinafter referred to as "WITHEY",

AND

AL HAMILTON CONTRACTING COMPANY, a Pennsylvania business corporation, having its principal place of business at R. D. 1, Box 87, Woodland, Clearfield County, Pennsylvania, party of the second part, hereinafter referred to as "HAMILTON".

W I T N E S S E T H :

WHEREAS, HAMILTON is conducting surface mining operations in close proximity to the home of WITHEY; and

WHEREAS, HAMILTON wishes to obtain various authorizations to mine within three hundred (300) feet of the WITHEY home; and

WHEREAS, HAMILTON has agreed to provide alternate housing for WITHEYS during mining operations under authorizations signed by WITHEY.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. That this Agreement shall represent authorization by WITHEY for HAMILTON to conduct surface mining activities on

the 1.14 acres of real property owned by WITHEY in Pike Township, Clearfield County, Pennsylvania.

2. That contemporaneous with the execution of this Agreement WITHEYS will sign any and all necessary authorizations for HAMILTON to conduct surface mining activities within three hundred (300) feet of the present WITHEY home in Pike Township, Clearfield County, Pennsylvania, which will include execution of a Supplemental "C" and a building variance authorization. WITHEYS also agree to sign any and all other documents required to conduct mining within three hundred (300) feet of their home.

3. That HAMILTON agrees to construct for WITHEYS alternative housing on property formerly of Fred Long located in Pike Township, Clearfield County, Pennsylvania. HAMILTON agrees to execute a construction agreement with Neff Construction Company, of Curwensville, Pennsylvania, to construct said home when this Agreement is executed. Said home will be constructed in a manner agreed to by the parties and at a location on the former Fred Long property mutually acceptable to WITHEYS and HAMILTON. HAMILTON further agrees to be solely responsible and liable for payment in full of any and all obligations incurred for the construction of said home by Neff Construction. HAMILTON further agrees to indemnify and save the WITHEYS harmless from any and all debts, liabilities, or obligations (including attorneys' fees and legal costs of WITHEY) incurred with respect to the construction of said home by Neff Construction.

4. That upon completion of the construction project by Neff Construction Company, WITHEYS will be permitted to immediately occupy the new dwelling. WITHEYS shall live in said dwelling rent-free and tax-free, but will be required to pay any and all utilities used at said dwelling.

5. Upon completion of all mining activities on the Blomington Job of HAMILTON and the release of Stage III bonds from Permot No. 17803166, HAMILTON will arrange for the conveyance of surface of the former Fred Long Farm of approximately 66 acres, together with the dwelling buildings thereon, to WITHEYS and WITHEYS shall convey the present house and 1.14 acres of surface in Pike Township from WITHEY to HAMILTON, SHANNON LAND AND MINING COMPANY, or a nominee. The conveyances shall be made free and clear of all liens and encumbrances and pass marketable title. A description of each property is attached hereto.

6. That the WITHEYS covenant and agree that the providing of alternative new housing during mining within three hundred (300) feet of the WITHEY home and the conveyance to WITHEYS of surface to sixty-six (66) acres, formerly identified as the Fred Long Property, together with the dwelling buildings thereon, with marketable title free and clear of all liens and encumbrances, will represent consideration for said mining, and no royalty or payment of any nature or kind will be owed by HAMILTON to WITHEY for the mining of coal or the conducting of mining activities on the 1.14 acres of WITHEYS.

7. That conveyance of the 66 acres and new dwelling house may occur sooner than the time period identified in

Paragraph 4 above upon written agreement by both parties.

8. That HAMILTON covenants and agrees to maintain liability and fire insurance on both the home being constructed by Neff Construction and the present WITHEY home and 1.14 acres in Pike Township, Clearfield County, Pennsylvania. Said duty and obligation to carry insurance shall cease and terminate upon the delivery of the Deed to the 66 acres of the formerly Fred Long Farm to the WITHEYS.

9. That in the event that either party breaches this Agreement, and as a result of said breach either party has the right to elect to sue for damages or seek any other remedies or relief as may be available to them, and if the party choosing such remedy is successful in enforcing their rights, then the responsible party shall be liable for legal fees and any and all other costs of litigation incurred in enforcing their rights under this Agreement.

10. That this Agreement may not be assigned or transferred by either party without first obtaining the written consent of the other to so transfer.

11. That this agreement constitutes the entire understanding of the parties hereto and any amendment of this agreement shall be in writing executed by both parties.

12. That this agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns as if they were named in each and every provision herein.

13. That the parties agree to execute a Memorandum of Agreement outlining those matters which are required by law for recordability, which Memorandum shall memorialize and represent this Agreement, and which may be recorded by the WITHEYS if they so desire.

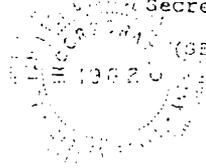
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed the day and year first above written.

Richard L. Withey (SEAL)
Richard L. Withey

Zoe E. Withey (SEAL)
Zoe E. Withey

AL HAMILTON CONTRACTING COMPANY
By
C. Alan Walker, C.E.O.
C. Alan Walker
C.E.O.

ATTEST:
[Signature]
Secretary (SEAL)



CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 8:31 AM 8-3-93
BY [Signature]
FEES [Signature]
Karen L. Starck, Recorder

I hereby CERTIFY that this document is recorded in the Recorder's Office of Clearfield County, Pennsylvania.



[Signature]
Karen L. Starck
Recorder of Deeds

SHANNON LAND AND MINING COMPANY

P. O. Box 368
Bigler, PA 16825

PHONE: (814) 857-7681

FAX; (814) 857-5003

September 13, 2000

Mr. & Mrs. Richard L. Withey
R. R. #1, Box 488
Olanta, PA 16863

Exhibit "B"

RE: Agreement dated 11/27/91

Dear Dick and Zoe:

I had our attorney, Mr. William C. Kriner, review the agreement dated November 27, 1991 between you and Al Hamilton Contracting Company regarding the former Fred Long Farm in Pike Township.

The Fred Long Farm is owned by Shannon Land and Mining Company. Shannon Land and Mining Company is not a party in the agreement dated 11/27/91 and is not bound by the terms thereof. Paragraph 5, on Page 3 states that: "Hamilton will arrange for the conveyance of surface of the former Fred Long Farm of approximately 66 acres, together with the dwelling buildings thereon, to Withey's."

In the meantime, Shannon Land and Mining Company may do whatever they desire to the Fred Long property; i.e., cut trees, build roads, put in water lines, power lines, etc. We feel it would not be proper to sell a tract of land to Bill Elensky and then deny him water and electric service or a good road to his property.

We fully intend to transfer the Fred Long Farm to you in the future. Until the property is titled to you, it remains the property of Shannon Land and Mining Company.

Sincerely,



E. David Nelson, Manager
Properties & Reserves
SHANNON LAND AND MINING COMPANY

EDN/smr
cc: C. A. Walker
wd/sep00/withey

Clearfield County Tax Claim Bureau



230 EAST MARKET STREET
SUITE 121
Clearfield, Pennsylvania 16830

TELEPHONE (814) 765-2641
FAX (814) 765-2640

MAY 20, 2004

Exhibit "C" *4 pages*

Map # 126-H11-000-00021-DW-01
Municipality: PIKE TOWNSHIP
Control: # 126.0-93318
Description: H
Owner: AL HAMILTON CONTRACTING CO.

To Whom It May Concern:

This letter is to verify that there are delinquent taxes, on the above referenced assessment. Taxes due are for 2002- 2003. A statement is enclosed.

Sincerely,

Jeffrey C. Graham
Jeffrey C. Graham

Asst. Director

05/20/2004

Searched Jeb

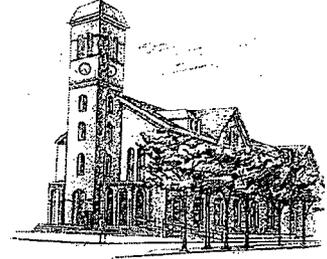
STATEMENT VALID AS TO CURRENT ACCOUNTS.
SUBJECT TO CORRECTIONS AND CHANGES.

Clearfield County Tax Claim Bureau

230 East Market Street - Suite 121

Clearfield, Pennsylvania 16830

Phone: (814) 765-2641 Ext. 5998



-Customer Copy-

Receipt # 175191

Tuesday, May 25, 2004

Received Of:

AL HAMILTON CONTRACTING CO.

Control # 126093318

Claim # 2002-007714

Map # H11-000-00021-DW-01

In The Amount Of:

\$1,311.85

Property Desc H

	County	District	School
TAX	0.00	0.00	1156.72
INTEREST	0.00	0.00	130.13
COST / PENALTY	25.00		
CURRENT YEAR	0.00	0.00	0.00
OVBID	0.00		
TOTAL	<u>\$1,311.85</u>		

MaryAnne Waddock

Director of Tax Claim Bureau

RECEIPT VALID ONLY UPON PAYMENT OF LEGAL TENDER

ANY CHECK RETURN UNPAID BY YOUR BANK WILL BE SUBJECT TO A TWENTY DOLLAR (\$20.00) RETURNED CHECK FEE

Total Received On All Claims For 12609331 On 5/25/04 \$1,311.85

12/20/2001 11:00:00-0000000001

Address: M. HAMILTON CONTRACTING CO.
 1988 PAINE ROAD,
 WOODLAND, WA
 WASHINGTON, WA

Phone: (509) 225-1166

M. HAMILTON CONTRACTING CO.
 1988 PAINE ROAD,
 WOODLAND, WA

Phone: (509) 225-1166

M. HAMILTON CONTRACTING CO.
 1988 PAINE ROAD,
 WOODLAND, WA

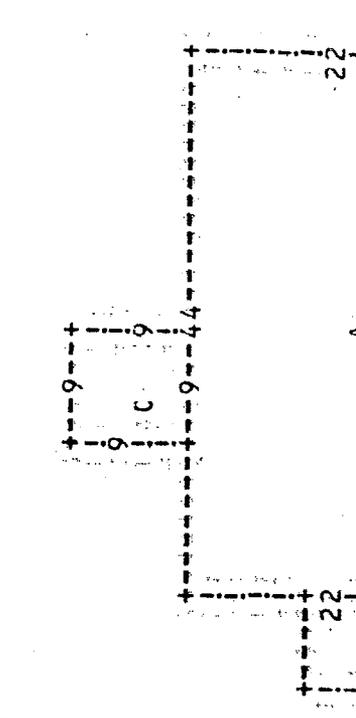
Phone: (509) 225-1166

Account	Balance	Debit	Credit	Balance	Account	Balance	Debit	Credit	Balance
200200077148	0.00	0.00	0.00	0.00	115672	0.00	0.00	0.00	0.00
2003007680	0.00	0.00	0.00	0.00	115672	0.00	0.00	0.00	0.00
					28100	0.00	0.00	0.00	0.00
					28100	0.00	0.00	0.00	0.00
					28103	0.00	0.00	0.00	0.00
					120775	0.00	0.00	0.00	0.00
					120775	0.00	0.00	0.00	0.00

View Detailed Statement

Amounts Good till 5/20/04

PROPERTY ADDRESS: 117037
 LOCATION: NEIGH/SPOT CONDO LEVEL
 FRONTING: RESID CONDO TYPE
 PARCEL: PIE BACK
 LAND DISC FRAME NO:



NUMBER	BUILDING PERMIT RECORD	DATE	AMOUNT
1	WIFE WOULDN'T LET IN HOUSE FOR APPROPRIEMENT		

ID	LL	1	2	3	AREA	PTS	
B	OFF				96	12	
C	EFP				81	16	
						TOTAL	28

VALUES	OLD	APPRAISAL	CURRENT ASST	VALUE
LAND	10200	40800	10200	40800
BLDG	6875	27500	6875	27500
TOTAL	17075	68300	17075	68300

CONTROL NUMBER	LEGAL DESCRIPTION	FRONTAGE RATE	INFLUENCE FACTOR	LOT VALUE
1258	H, B, 2 BLDGS. & 66 A SURF.	0349	EM	4800
				17500
				12500
				6000

LAND DATA & COMPUTATIONS	EFFECTIVE DEPTH	UNIT PRICE	FRONTAGE RATE	INFLUENCE FACTOR	LOT VALUE
THOMASITE	1.000	6000			4800
TILLABLE	25.000	700			17500
PASTURE	25.000	500			12500
WOODLAND	15.000	400			6000
TOTAL ACRES	66.000				
ROSS LAND					40800

DWELLING DATA & COMPUTATIONS		TOTAL DWELLING VALUE
STORY HEIGHT/ATTIC	1.0 UNFIN	43600
GROUND FLOOR AREA	968 SF	35500
EXTERIOR WALLS	FRAME	40100
ADJUSTED BASE		24100
BASEMENT	FULL BSMT	
HEAT & A/C	BASIC	
PLUMBING	5 FIXTURES	
REC ROOM		
FIN. BSMT LIVING AREA		
WBEP		
BASEMENT GARAGE		
UNFIN. AREA		
HEATING AREA (+)		
SUBTOTAL	C = .92	43600
GRADE		35500
C & D FACTOR		40100
RCN	60	24100
PERCENT GOOD		
TOTAL DWELLING VALUE		

OTHER BUILDINGS & YARD		TOTAL OBY
SN	TYPE QTY YR SIZE	
B1	BANKBARN 100 52X054	28920 05
P1	4SCLMTPU 171 28X030	4790 25
S1	FRUTSHD 171 16X018	1770 25
TOTAL OBY		300
TOTAL OTHER IMPROVEMENT		3580

May 25, 2004

C. Alan Walker, CEO
Al Hamilton Contracting Co.
1988 Dale Road
Woodland, PA 16881

Exhibit "D"

RE: 1993 Agreement

Dear Mr. Walker:

As you know, we have been attempting to get you and your company to comply with the terms of our 1993 Agreement. According to Paragraph 4 of said Agreement we are not to have any tax liability on the premises. However, you have refused to pay the 2002 and 2003 taxes, resulting in a Tax Sale being scheduled. Based upon advice of counsel we have proceeded to pay the 2002 taxes to prevent further escalation of our damages. We hereby demand that you reimburse us the amount paid for the 2002 taxes within 30 days hereof. Furthermore, we further demand that you pay the 2003 taxes within 30 days, otherwise we shall pursue appropriate legal action. You should note that under Paragraph 9 of said Agreement we will hold you and your company responsible for our reasonable attorney's fees incurred therein.

Lastly, and of utmost concern is the homeowner's insurance which you are also required to maintain pursuant to Paragraph 8 of said Agreement. Under these circumstances we sincerely question whether you have protected our interest as required. Therefore, we demand that you produce a certificate of insurance within 5 days hereof. In the event you do not do so we will have no choice other than to obtain insurance, again holding you responsible and pursuing appropriate legal action.

With regards,

Sincerely,

Richard and Zoe Withey

Richard L. Withey
Zoe Withey

Exhibit "E"

RICHARD L. WITHEY 05-81
ZOE E. WITHEY
R.R. 1, BOX 488 PH. 814-236-2532
OLANTA, PA 16863

60-629/313
12212245

2430

DATE *May 25, 04*

PAY TO THE
ORDER OF

Tax Claims Bureau

\$ *1311.85*

One Thousand Three Hundred Eleven and 85/100

DOLLARS

Chairman's Club



Curwensville Office
407 Walnut Street
Curwensville, PA 16833

MEMO

Richard L. Withey

⑆031306294⑆ 1 2 21224 5⑈ 2430 ⑈0000131185⑈

Ck# 2430

Date 05/27/04

Amt \$1,311.85

30791

OIL AND GAS AGREEMENT

Date: 6/1/99 SHANNON LAND & MINING CO
Landowners (and address): P.O. Box 368 BIGLER, PA 16825

Phone No.: 814-857-7681

Gas Co.: Kriebel Resources, P.O. Box 785, Clarion, Pennsylvania 16214

1. Leasing Clause: Landowners in consideration of One (\$1.00) Dollar in hand paid by the Gas Co., receipt of which is hereby acknowledged, grant and convey unto the Gas Co., its heirs, executors, administrators, successors, and assigns, and warrant generally title to, all the oil, gas, surface and Drilling Rights in, on and under all that certain piece, parcel, or tract of land situate in PIKE Township, CLEARFIELD County, Pennsylvania, bounded and described as follows:

On the North by lands of N/E SR 17037 SMALL TRACTS
On the East by lands of N/E CLEARFIELD M.C.I. Co.
On the South by lands of N/E SHANNON LAND AND MINING
On the West by lands of N/E MCGARRY SHANNON LAND & MINING
Containing 66 Acres, more or less, also referred to by Tax Map No. 126-H11-21 and herein collectively referred to as 'Property'.

2. Drilling Rights: In addition, 'Property' shall include all oil, gas and surface rights owned or claimed by landowners in and under lands which are adjacent, contiguous to or form a part of the lands above described Gas Co. is hereby granted the exclusive right of drilling and operating the Property alone or jointly with neighboring lands for producing oil and gas by any means, and all rights necessary, convenient and incident thereto, including but not limited to, the right to conduct geological and geophysical surveys and explorations on the Property; to drill new wells, recondition producing wells and redrill and use abandoned wells pipe and equipment on the property; to construct and maintain buildings, plants, drips, tanks, generators, compressor stations, gates, meters, regulators, tools, appliances, materials and other equipment used in exploring for and producing oil and gas, and pipelines, telephone lines, electric power lines, leading from adjoining lands on and across the Property and other lands which rights shall continue at Gas Co.'s option after the termination of this Agreement, which option shall be exercised through continued use of the then existing pipelines, telephone lines and electric power lines which may be repaired or replaced, or by Gas Co. giving written notice of exercise and similar rights for roadways which rights shall continue there after so long as Gas Co., its heirs and assigns desire to maintain the same; the right to use water, oil and gas and other materials from the Property for operating purposes, and Gas Co. is released of all damages, including but not limited to land, surface improvements and waters and has the right of removing either during or at any time after the term hereof, all casing, tubing, machinery, buildings, structures and property of the Gas Co. and its assigns and employees. In the event that Gas Co. constructs a meter site, pipeline or road on Landowners Property for the benefit of an adjacent property, and prior to the drilling of a well on the said Property, Gas Co. shall pay Landowners for the said improvements at the rate of Two Hundred Dollars per meter site and Five Dollars per rod for roads and pipelines. All of the above described rights shall be herein referred to as 'Drilling Rights'. Landowners release any right of indemnification that they may have against Gas Co.

3. Existing Wells: It is understood and agreed that this Agreement does not convey any right, title or interest to Gas Co. in any existing well on the Property.

4. Term: Gas Co. has the right to enter upon the Property to drill for oil and gas at any time within 36 months from 6/1/99 hereof and as long thereafter as (1) oil or gas or either of them is produced from the Property or any lands pooled or unitized therewith, (2) operations continue for the production of oil or gas, (3) Gas Co. shall continue to pay Landowners \$5.00 FIVE dollars per acre per year as delayed rentals, (4) an application for a drilling permit is pending with the appropriate authorities, and Lessee, after grant of such permit, commences drilling operations within a reasonable time thereafter and continues same with due diligence, provided said permit application was filed prior to the expiration of the primary term, (5) a completed oil or gas well would be capable of producing oil or gas from any portion of the premises or any lands pooled or unitized therewith, but for acts of God, unavailability or interruption of markets or pipelines, or any other causes, which have caused Lessee not to commence production from such well or to suspend production from such well, (6) or until all oil and gas has been removed from the Property, whichever shall last occur.

5. Unitization: Gas Co. is hereby granted the right to pool and unitize all or any part of the Property with any other lease or leases, land or lands, mineral estates, or any of them whether owned by Gas Co. or others, so as to create one or more drilling or production units. The commencement of drilling, completion of or production from a well on any portion of the unit created under the terms of this paragraph shall (except for the reserve gas clause described below) have the same effect upon the terms of this Agreement as if a well were commenced, drilled, completed, or producing on the Property. As to each drilling or production unit designated by Gas Co., Landowners agree to accept and shall receive out of the production or the proceeds from the production from such units, such portion of the royalties specified herein, as the number of acres of the Property which may be included from time to time in any such unit bears to the total number of acres included in such unit. Gas Co. may at any time increase or decrease that portion of the acreage covered by this Agreement which is included in any drilling or production unit, or exclude it altogether.

6. Royalty: Gas Co. agrees to pay landowners a royalty equal to one-eighth part of the oil and gas produced, saved and marketed from a well on the Property, with said one-eighth part to be valued at the price received by Gas Co. at the wellhead at the time of production, for said oil and gas in its natural state after deducting from such proceeds, severance, ad valorem and other applicable taxes, together with the reasonable costs incurred by the Gas Co. in preparing such oil and gas for market including, but not limited to, the cost of any necessary treatment or compression and the cost of transporting such oil and gas to the point of sale. In no event shall royalty be required to be paid to Landowners based upon a price higher than the Gas Co. is permitted by law to receive. Settlement therefore shall be made quarterly for production during the preceding calendar quarter. Unless Landowners deliver written notice to Gas Co. of a dispute with respect to royalty payments or of an alleged breach of any of the terms of this Agreement within sixty (60) days from the date the same is paid or the alleged breach occurs, then said payment shall be binding upon Landowners and the alleged breach shall be deemed to be waived.

7. Payment of Royalties: All payments may be made by check mailed to Landowners at the above address or deposited to their credit, or the credit of their heirs and assigns in any state or national bank, or by check mailed to them at the above address or in such manner as Landowners and Gas Co. shall otherwise agree. Provided, however, that Gas Co. can apply any money it may owe or which may become due to Landowners to satisfy liens or clear encumbrances against the Property, and set off any money it may owe Landowners in the event that Landowners owe Gas Co. money because of an overpayment of royalty or otherwise.

8. Force Majeure: Gas Co. shall be excused from performance, and this agreement shall not be in breach, and the term thereof shall be extended, if it shall be prevented from operating on the Property by law, by operation of force majeure (including, without limitation, lightning, earthquake, fire, storm, flood, washout) or by any cause beyond Gas Co.'s control. Gas Co. shall thereafter exercise reasonable diligence to resume operations. In no event the title to the Property is for any reason clouded by or action is filed in any court of law or equity, involving the title to said Property or any part thereof, the time of such delay or the continuance of said cloud or court action shall not be counted in computing the term of this agreement or the obligations thereunder, and Gas Co. shall not be obligated to perform any of its covenants and conditions. Landowners shall provide Gas Co. with a copy of the certificate and abstract of title for the Property that Landowners or Landowner's attorney may have, if requested by Gas Co.

9. Surrender: It is agreed that upon the payment of One (\$1.00) Dollar, Gas Co., its successors and assigns, may terminate this agreement and thereby be released of all covenants and obligations herein set forth even if unfulfilled by (1) determining that the oil and gas has been exhausted from the Property; or (2) reconveying the oil and gas and remaining privileges given to Landowners.

10. Drilling Permits: Landowners, for themselves, their heirs, executors, administrators, successors and assigns, agree to execute any and all documents that may from time to time be helpful or necessary in order for Gas Co. to obtain the governmental approvals to carry on operations.

11. Entire Contract: No presumption shall be deemed to exist in favor of or against either party hereto as a result of the preparation and/or negotiation of this agreement. No inference or covenant shall be implied as to either party hereto since the full contractual obligations and covenants of each party is herein fully and expressly set forth.

12. Conveyance of Property: No change in ownership of the Property or royalties shall be binding on Gas Co. until a person acquiring any interest has furnished Gas Co. with proof satisfactory to Gas Co. of such change in ownership. Landowners agree not to enter into any oil and gas agreement with any other party with regard to the Property until this agreement is terminated. If Landowners do not have title to all of the Property and rights described above, payments hereunder may be made to Landowners in proportion to the interest held by Landowners.

13. Adverse Claims: If the Property is subject to an instrument granting rights to a party other than Gas Co. or in the event of dispute or litigation as to title or as to royalties or other sums payable hereunder or any part thereof, royalties and other payments may be held in escrow by Gas Co. until such instrument has been released or canceled as to the Property and until such dispute or litigation is terminated. The sum so paid in escrow by Gas Co. shall be deemed payment of royalties and other sums due hereunder.

14. Counterparts: In the event there is more than one Landowner, then this agreement may be executed by Landowners in one or more counterparts each of which shall constitute an original, but all of which when taken together shall constitute one agreement.

15. Additional Provisions: It is further understood and agreed that SEE Addendum

16. Option to Lease: If Landowners receive an offer to lease the oil and gas concerning any portion of the Property described herein at any time while this agreement remains in full force and effect, or within six (6) months thereafter, Landowners hereby agree to notify Gas Co. in writing immediately of offeror's name and the terms offered. Gas Co. shall have fifteen (15) days to accept or reject the said offer to lease the oil and gas covered by the offer at the price, terms, and conditions specified in the offer. Failure of Landowners to provide such notice to Gas Co. shall terminate any lease entered into between Landowners and such offeror.

17. No Third Party Payments: Landowners hereby warrant that (i) the Property is not encumbered by any enforceable oil or gas lease of record or otherwise and that (ii) they are not currently receiving any bonus, rental, production royalty or shut-in royalty as the result of any prior oil or gas lease covering any or all of the subject Property, and that there have been no wells drilled upon the subject Property or upon any lands with which the Property has been combined in a drilling or production unit.

18. Heirs and Assigns: All provisions of this agreement shall extend to and be binding upon the heirs, executors, administrators, successors, sublessees and assigns of the parties hereto, provided, however, that an assignment or sublease of this agreement in whole or in part shall release and discharge Gas Co. from any and all obligations or liabilities hereunder.

Witness the proper execution of this agreement on the date above written with intent to be legally bound.

WITNESS

E. David Nelson, Agent (SEAL)
LANDOWNER
25-1200339

WITNESS

LANDOWNER
SS #

WITNESS

LANDOWNER
SS #

WITNESS

LANDOWNER
SS #

WITNESS

By: Gregory B. [Signature] (SEAL)
GAS CO.

Exhibit "F" 4 pages

STATE OF PA
COUNTY OF CLEARFIELD

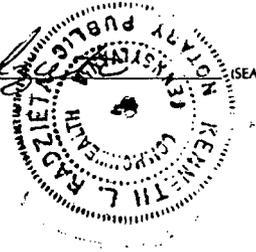
On this 15th day of JUNE, 19 99, before me, Kenneth L Radzieta
the undersigned officer, personally appeared E DAVID NELSON

_____ , satisfactorily proven to me to be the person _____ whose name _____
subscribed to the within instrument, and acknowledged that DIS
executed the same for the purposes therein contained.

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

Notarial Seal
Kenneth L. Radzieta, Notary Public
Clarion Boro, Clarion County
My Commission Expires Dec. 18, 2000
Member Pennsylvania Association of Notaries

Kenneth L Radzieta
Notary Public



COMMONWEALTH OF PENNSYLVANIA
COUNTY OF _____

BE IT REMEMBERED, that on the _____ day of _____, 19 _____, before me, the subscriber, a Notary Public,
personally appeared _____, the subscribing witness to the execution of the above indenture, who
being duly sworn upon his oath according to law, doth depose and say that he did see _____
the Landowner(s) above named, sign and seal, and as _____ act and deed deliver the above indenture for the uses and purposes
therein mentioned, and that the name of this deponent thereunto set and subscribed as a witness is of this deponents own proper handwriting and that the foregoing Agreement
to be their act and deed for the purpose therein mentioned and desire that the same might be recorded as such.

WITNESS, my hand, and official seal the date first above written.

NOTARY PUBLIC _____ (SEAL)

RECORDED
REGISTER AND RECORDER
CLEARFIELD COUNTY, PA
Pennsylvania
INSTRUMENT NUMBER
199910680
RECORDED ON
Jun 28, 1999
11:55:08 AM
RECORDING FEES - \$12.00
RECORDER
COUNTY IMPROVEMENT \$1.00
FUND
RECORDER
IMPROVEMENT FUND \$1.00
STATE WRIT TAX \$0.50
TOTAL \$16.50

SUBSCRIBING WITNESSES
David Nelson

Oil and Gas Agreement

From _____
To _____
Date, _____ 19 _____
Term _____
No. Acres _____
Location, _____
On Waters of _____
District or Township _____
County _____
State _____
Received for Record _____
Recorded, _____
In Book _____ page _____
Clearfield

COMPANY ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clarion

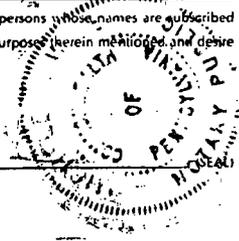
SS:

On this 16 day of June, 19 99, before me: _____
the undersigned officer, personally appeared _____

_____ to me known to be the same persons whose names are subscribed
to the foregoing instrument and in due form of law acknowledged the execution of the foregoing Agreement to be their act and deed for the purpose herein mentioned, and desire
that the same might be recorded as such.

WITNESS, my hand, and official seal the date first above written.
Michèle A. Wice, Notary Public
Clarion Boro, Clarion County
My Commission Expires June 18, 2000
Member Pennsylvania Association of Notaries

Michele A Wice
NOTARY PUBLIC



AFFIDAVIT No. 35362 OIL AND GAS AGREEMENT

Date: 4-5-02

Landowners (and address): SHANNON LAND & MINING CO 814-857-7681
PO BOX 368
RIGLER, Pa 16825

Gas Co.: Kriebel Resources, P.O. Box 765, Clarion, Pennsylvania 16214

1. **Leasing Clause.** Landowners in consideration of One (\$1.00) Dollar in hand paid by the Gas Co., receipt of which is hereby acknowledged, grant and convey unto the Gas Co., its heirs, executors, administrators, successors, and assigns and warrant generally title to, all the oil, gas, surface and Drilling Rights in, on and under all that certain piece, parcel, or tract of land situate in

PIKE Township, CLEARFIELD County, Pennsylvania, bounded and described as follows:

On the North by lands of n/l SR 17037 SMALL TRACTS

On the East by lands of n/l CLEARTRU M.C.T. CO

On the South by lands of n/l SHANNON LAND & MINING CO

On the West by lands of n/l MCGARRY Shannon Land & Mining Co

Containing 66 Acres, more or less, also referred to by Tax Map No. 126-411-21 and herein collectively referred to as "Property".

2. **Drilling Rights.** In addition, "Property" shall include all oil, gas and surface rights owned or claimed by landowners in and under lands which are adjacent, contiguous to or form a part of the lands above described. Gas Co. is hereby granted the exclusive right of drilling and operating the Property alone or conjointly with neighboring lands for producing oil and gas by any means, and all rights necessary, convenient and incident thereto, including but not limited to, the right to conduct geological and geophysical surveys and explorations on the Property; to drill new wells, recondition producing wells and redrill and use abandoned wells pipe and equipment on the property; to construct and maintain buildings, plants, dries, tanks, generators, compressor stations, gates, meters, regulators, tools, appliances, materials and other equipment used in exploring for and producing oil and gas, and pipelines, telephone lines, electric power lines, leading from adjoining lands on and across the Property and other lands which rights shall continue at Gas Co.'s option after the termination of this Agreement, which option shall be exercised through continued use of the then existing pipelines, telephone lines and electric power lines which may be repaired or replaced, or by Gas Co. giving written notice of exercise and similar rights for roadways which rights shall continue there after so long as Gas Co., its heirs and assigns desire to maintain the same; the right to use water, oil and gas and other materials from the Property for operating purposes, and Gas Co. is released of all damages, including but not limited to land, surface improvements and waters and has the right of removing either during or at any time after the term hereof, all casing, tubing, machinery, buildings, structures and property of the Gas Co. and its assigns and employees. In the event that Gas Co. constructs a meter site, pipeline or road on Landowners Property for the benefit of an adjacent property, and prior to the drilling of a well on the said Property, Gas Co. shall pay Landowners for the said improvements at the rate of Two Hundred Dollars per meter site and Five Dollars per rod for roads and pipelines. All of the above described rights shall be herein referred to as "Drilling Rights". Landowners release any right of indemnification that they may have against Gas Co.

3. **Existing Wells.** It is understood and agreed that this Agreement does not convey any right, title or interest to Gas Co. in any existing well on the Property.

4. **Term.** Gas Co. has the right to enter upon the Property to drill for oil and gas at any time within 36 months from 6-1-02 hereof and as long thereafter as (1) oil or gas or either of them is produced from the Property or any lands pooled or unitized therewith, (2) operations continue for the production of oil or gas, (3) Gas Co. shall continue to pay Landowners rent (\$ 800) dollars per acre per year as delayed rentals, (4) an application for a drilling permit is pending with the appropriate authorities, and Lessee, after grant of such permit, commences drilling operations within a reasonable time thereafter and continues same with due diligence, provided said permit application was filed prior to the expiration of the primary term, (5) a completed oil or gas well would be capable of producing oil or gas from any portion of the premises or any lands pooled or unitized therewith, but for acts of God, unavailability or interruption of markets or pipelines, or any other causes, which have caused Lessee not to commence production from such well or to suspend production from such well, (6) or until all oil and gas has been removed from the Property, whichever shall last occur.

5. **Unitization.** Gas Co. is hereby granted the right to pool and unitize all or any part of the Property with any other lease or leases, land or lands, mineral estates, or any of them whether owned by Gas Co. or others, so as to create one or more drilling or production units. The commencement of drilling, completion of or production from a well on any portion of the unit created under the terms of this paragraph shall have the same effect upon the terms of this Agreement as if a well were commenced, drilled, completed, or producing on the Property. As to each drilling or production unit designated by Gas Co., Landowners agree to accept and shall receive out of the production or the proceeds from the production from such units, such portion of the royalties specified herein, as the number of acres of the Property which may be included from time to time in any such unit bears to the total number of acres included in such unit. Gas Co. may at any time increase or decrease that portion of the acreage covered by this Agreement which is included in any drilling or production unit, or exclude it altogether.

6. **Royalty.** Gas Co. agrees to pay Landowners a royalty equal to one-eighth part of the oil and gas produced, saved and marketed from a well on the Property, with said one-eighth part to be valued at the price received by Gas Co. at the wellhead at the time of production, for said oil and gas in its natural state after deducting from such proceeds, severance, ad valorem and other applicable taxes, together with the reasonable costs incurred by the Gas Co. in preparing such oil and gas for market including, but not limited to, the cost of any necessary treatment or compression and the cost of transporting such oil and gas to the point of sale. In no event shall royalty be required to be paid to Landowners based upon a price higher than the Gas Co. is permitted by law to receive. Settlement therefore shall be made quarterly for production during the preceding calendar quarter. Unless Landowners deliver written notice to Gas Co. of a dispute with respect to royalty payments or of an alleged breach of any of the terms of this Agreement within sixty (60) days from the date the same is paid or the alleged breach occurs, then said payment shall be binding upon Landowners and the alleged breach shall be deemed to be waived.

7. **Payment of Royalties.** All payments may be made by check mailed to Landowners at the above address or deposited to their credit, or the credit of their heirs and assigns in any state or national bank, or by check mailed to them at the above address or in such manner as Landowners and Gas Co. shall otherwise agree. Provided, however, that Gas Co. can apply any money it may owe or which may become due to Landowners to satisfy liens or clear encumbrances against the Property, and set off any money it may owe Landowners in the event that Landowners owe Gas Co. money because of an overpayment of royalty or otherwise.

8. **Force Majeure.** Gas Co. shall be excused from performance, and this agreement shall not be in breach, and the term thereof shall be extended, if it shall be prevented from operating on the Property by law, by operation of force majeure (including, without limitation, lightning, earthquake, fire, storm, flood, washout) or by any cause beyond Gas Co.'s control. Gas Co. shall thereafter exercise reasonable diligence to resume operations. In the event the title to the Property is for any reason clouded by or action is filed in any court of law or equity, involving the title to said Property or any part thereof, the time of such delay or the continuance of said cloud or court action shall not be counted in computing the term of this agreement or the obligations thereunder, and Gas Co. shall not be obligated to perform any of its covenants and conditions. Landowners shall provide Gas Co. with a copy of the certificate and abstract of title for the Property that Landowners or Landowner's attorney may have, if requested by Gas Co.

9. **Survivorship.** It is agreed that upon the payment of One (\$1.00) Dollar, Gas Co., its successors and assigns, may terminate this agreement and thereby be released of all covenants and obligations herein set forth even if unfulfilled by (1) determining that the oil and gas has been exhausted from the Property; or (2) recovering the oil and gas and remaining privileges given to Landowners.

10. **Drilling Permits.** Landowners, for themselves, their heirs, executors, administrators, successors and assigns, agree to execute any and all documents that may from time to time be helpful or necessary in order for Gas Co. to obtain the governmental approvals to carry on operations.

11. **Entire Contract.** No presumption shall be deemed to exist in favor of or against either party hereto as a result of the preparation and/or negotiation of this agreement. No inference or covenant shall be implied as to either party hereto since the full contractual obligations and covenants of each party is herein fully and expressly set forth.

12. **Commencement of Property.** No change in ownership of the Property or royalties shall be binding on Gas Co. until a person acquiring any interest has furnished Gas Co. with proof satisfactory to Gas Co. of such change in ownership. Landowners agree not to enter into any oil and gas agreement with any other party with regard to the Property until this agreement is terminated. If Landowners do not have title to all of the Property and rights described above, payments hereunder may be made to Landowners in proportion to the interest held by Landowners.

13. **Adverse Claims.** If the Property is subject to an instrument granting rights to a party other than Gas Co. or in the event of dispute or litigation as to title or as to royalties or other sums payable hereunder or any part thereof, royalties and other payments may be held in escrow by Gas Co. until such instrument has been released or cancelled as to the Property and until such dispute or litigation is terminated. The sum so paid in escrow by Gas Co. shall be deemed payment of royalties and other sums due hereunder.

14. **Counterparts.** In the event there is more than one Landowner, then this agreement may be executed by Landowners in one or more counterparts each of which shall constitute an original, but all of which when taken together shall constitute one agreement.

15. **Affidavit of Non-Production.** Landowners hereby warrant that (i) the Property is not encumbered by any enforceable oil or gas lease of record or otherwise and that (ii) they are not currently receiving any bonus, rental, production royalty, or shut-in royalty as the result of any prior oil and gas lease covering any or all of the subject property, and that there have been no wells drilled upon the subject Property or upon lands with which the Property has been combined in a drilling or production unit.

16. **Additional Provisions.** It is further understood and agreed that SEE Addendum to be part of the OIL & GAS AGREEMENT, but NOT to be recorded

17. **Option to Lease.** If Landowners receive an offer to lease the oil and gas concerning any portion of the Property described herein at any time while this agreement remains in full force and effect, or within six (6) months thereafter, Landowners hereby agree to notify Gas Co. in writing immediately of offeror's name and the terms offered. Gas Co. shall have fifteen (15) days to accept or reject the said offer to lease the oil and gas covered by the offer at the price, terms, and conditions specified in the offer. Failure of Landowners to provide such notice to Gas Co. shall terminate any lease entered into between Landowners and such offeror.

18. **Heirs and Assigns.** All provisions of this agreement shall extend to and be binding upon the heirs, executors, administrators, successors, sublessees and assigns of the parties hereto, provided, however, that an assignment or sublease of this agreement in whole or in part shall release and discharge Gas Co. from any and all obligations or liabilities hereunder.

Witness the proper execution of this agreement on the date above written with intent to be legally bound.

WITNESS _____ E. David Nelson, Agent (SEAL)

LANDOWNER _____
SS # 25-1200339

WITNESS _____ LANDOWNER _____
SS # _____ (SEAL)

WITNESS _____ By Gregory B. Kriebel (SEAL)

WITNESS _____ GAS CO.

STATE OF PA

COUNTY OF CLEARFIELD

On this 5th day of April, 2002, before me, a Notary Public, the undersigned officer, personally appeared E. DAVID NELSON

satisfactorily proven to me to be the person whose name subscribed to the within instrument, and acknowledged that HIS executed the same for the purposes therein contained.

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

Notarial Seal Kenneth L. Radzieta, Notary Public Clarion Boro, Clarion County My Commission Expires Feb. 7, 2005 Member, Pennsylvania Association of Notaries

Kenneth J Radzieta (SEAL) Notary Public

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF

BE IT REMEMBERED, that on the day of 20 before me, the subscriber, a Notary Public, personally appeared the subscribing witness to the execution of the above Indenture, who being duly sworn upon his oath according to law, doth depose and say that he did see the Landowner(s) above named, sign and seal, and as act and deed deliver the above indenture for the uses and purposes therein mentioned, and that the name of this deponent thereunto set and subscribed as a witness is of this deponents own proper handwriting and that the foregoing Agreement to be their act and deed for the purpose therein mentioned and desire that the same might be recorded as such.

KAREN L. STARK REGISTER AND RECORDER CLEARFIELD COUNTY Pennsylvania

INSTRUMENT NUMBER 200207803 RECORDED ON May 15, 2002 12:06:44 PM Total Pages: 2 RECORDING FEES - \$13.00 RECORDER COUNTY IMPROVEMENT FUND \$1.00 RECORDER IMPROVEMENT FUND \$1.00 STATE MORT TAX \$0.50 TOTAL \$15.50 CUSTOMER GREGO & LANDER

SUBSCRIBING WITNESS WITNESS, my hand, and official seal the date first above written. NOTARY PUBLIC (SEAL)

Oil and Gas Agreement

From To Date, Term No. Acres Location, On Waters of District or Township County State Received for Record Recorded, In Book page

GLEN RICHEY

COMPANY ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Clarion

SS:

On this 26 day of April, 2002, before me, a Notary Public the undersigned officer, personally appeared Gregory R. Kriebel to me known to be the same persons whose names are subscribed to the foregoing Instrument and in due form of law acknowledged the execution of the foregoing Agreement to be their act and deed for the purposes therein mentioned and desire that the same might be recorded as such.

Notarial Seal Michele A. Wrice, Notary Public Clarion County My Commission Expires June 19, 2004 Member, Pennsylvania Association of Notaries

WITNESS, my hand, and official seal the date first above written.

Michele A. Wrice (SEAL) NOTARY PUBLIC

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adlt individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

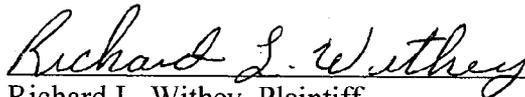
No. 04-_____-CD

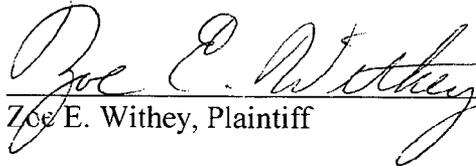
IN EQUITY AND AT LAW

VERIFICATION

We, Richard L. Withey and Zoe E. Withey, Plaintiffs, do hereby swear and affirm that we have read the foregoing and attached CIVIL COMPLAINT in the above captioned matter, and that to the best of our information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that we make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

So made this 18 day of October, 2004.


Richard L. Withey, Plaintiff


Zoe E. Withey, Plaintiff

CA

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

RICHARD L. WITHEY, and)
ZOE E. WITHEY,)
)
PLAINTIFFS,)

v.)

AL HAMILTON CONTRACTING COMPANY, INC.;)
a Pennsylvania corporation; SHANNON LAND AND)
MINING COMPANY; a Pennsylvania partnership;)
C. ALAN WALKER, an adult individual; SUSAN)
W. KRINER; a adult individual; and THE ESTATE)
OF ANNE WALKER MACKO,)
)
DEFENDANTS.)

No. 04- 1712 -CD

IN EQUITY AND AT LAW

FILED
OCT 29 2004
12:34 PM sec to the

RULE RETURNABLE

William A. Shaw
Prothonotary

AND NOW, this 29th day of October, 2004, based upon

Plaintiffs' request for injunctive relief in the above captioned matter, Defendants are hereby ORDERED to file written response by the 30th day of November, 2004, showing cause as to why said relief should be denied. Hearing on Plaintiffs' request for injunctive relief shall be on the 14th day of December, 2004, commencing at 9:00, A.M., at Courtroom No.1, Clearfield County Courthouse, Clearfield, Pennsylvania. For purposes of this ORDER, averments 1 - 36 of Plaintiffs' CIVIL COMPLAINT shall require written response on the day above set forth.

By the Court,


Fredric J. Ammerman, PJ

CA

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual; and THE ESTATE OF
ANNE WALKER MACKO

Defendants

No. 04-1712-CD

PRELIMINARY OBJECTIONS

Filed on behalf of:
Defendants

Counsel of record for this
party:

William C. Kriner, Esquire
219 East Market Street
P. O. Box 1425
Clearfield, PA 16830
(814) 768-7893
PA I.D. # 15559

Counsel of record for
Plaintiffs:

Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830
(814) 375-2221
PA I.D. # 55942

FILED No
0/3/39/01 cc
NOV 18 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual; and THE ESTATE OF
ANNE WALKER MACKO

Defendants

PRELIMINARY OBJECTIONS

NOW COME, the Defendants in the above captioned matter, by and
through legal counsel, to file Preliminary Objections to the Plaintiffs' Complaint
as follows:

EXISTENCE OF A LEGAL REMEDY

1. The Complaint is filed in equity and law.
2. The case is based on a written agreement, as asserted by the Plaintiffs in
paragraph 20 of the Complaint.
3. That there exists full, complete and adequate common law remedies for the
complaints of the Plaintiffs set forth in the complaint.
4. That there is no actual or threatened irreparable injury threatened to allow for
injunctive relief under Count I of the complaint.
5. That the Plaintiffs have failed to establish a clear legal right or interest to a
claim for injunctive relief under Count I of the complaint.

6. That the Plaintiffs have failed to establish a clear legal right to specific performance under Count II of the complaint.
7. That the Plaintiffs have failed to establish a clear legal right to an accounting under Count V of the complaint.

WHEREFORE, the Defendants respectfully request the Court to dismiss the equitable portions of the Plaintiffs' Complaint.

LACK OF CAPACITY TO SUE I.

8. That the action of the Plaintiffs is founded on a written document attached to the Complaint as Exhibit "A".
9. That the parties to the written document are the Plaintiffs and Defendant Al Hamilton Contracting Company.
10. That the complaint nowhere alleges that Defendants C. Alan Walker, Susan W. Kriner or the late Anne Walker Macko, individually, or trading as Shannon Land and Mining Company, were responsible for performance of the written agreement between the Plaintiffs and Defendant Al Hamilton Contracting Company.
11. That Defendants C. Alan Walker, Susan W. Kriner, the Estate of Anne Walker Macko, deceased, or Shannon Land and Mining Company have no duty or obligation to the Plaintiffs under the agreement attached as Exhibit "A" to the Plaintiffs' Complaint.

WHEREFORE, Defendants C. Alan Walker, Susan W. Kriner, Estate of Anne Walker Macko, deceased, and Shannon Land and Mining Company,

respectfully request the Honorable Court to dismiss the Plaintiff's Complaint as to them.

LACK OF CAPACITY TO SUE II.

12. That Shannon Land and Mining Company is a partnership under the Uniform Partnership Act (UPA).

13. That under the UPA upon the death of a partner, that partner's right in specific partnership property vests in the surviving partners (15 PA C.S.A.8353).

14. That Anne Walker Macko died on February 27, 2004, as reflected in her Estate filed in Centre County, Pennsylvania, as Estate No. 14-04-0114.

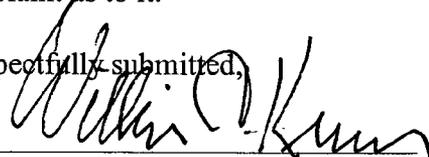
15. That under the UPA the deceased partner is entitled to the value of their interest at death and shall be entitled as an ordinary creditor an amount equal to their interest plus interest. (15 PA C.S.A. 8364).

16. That the Estate of Anne Walker Macko, deceased, is named as a Defendant by virtue of being a partner in Shannon Land and Mining Company.

17. That as a matter of law, the Estate of Anne Walker Macko, deceased, is not a partner in Shannon Land and Mining Company and, therefore, cannot be a Defendant in this matter.

WHEREFORE, Defendant Estate of Anne Walker Macko, deceased, requests the Court to dismiss the Plaintiffs' Complaint as to it.

Respectfully submitted,



William C. Kriner
Attorney for the Defendants
PO Box 1425
Clearfield, PA 16830
814-768-7893
PA # 15559

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

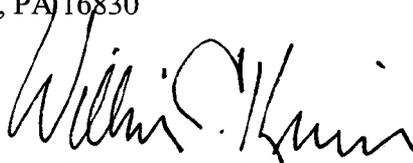
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual; and THE ESTATE OF
ANNE WALKER MACKO

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Preliminary Objections was served on the following by regular First Class United States mail on the 18th day of November, 2004:

Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual; and THE ESTATE OF
ANNE WALKER MACKO

Defendants

No. 04-1712-CD

Answer and New Matter

Filed on behalf of:
Defendants

Counsel of record for this
party:

William C. Kriner, Esquire
219 East Market Street
P. O. Box 1425
Clearfield, PA 16830
(814) 768-7893
PA I.D. # 15559

Counsel of record for
Plaintiffs:

Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830
(814) 375-2221
PA I.D. # 55942

^{EGK}
FILED

0 7:21 04 No. CC

NOV 30 2004

William A. Shaw
Prothonotary

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual; and THE ESTATE OF
ANNE WALKER MACKO

Defendants

ANSWER AND NEW MATTER TO PARAGRAPHS ONE THROUGH THIRTY-SIX
OF PLAINTIFFS' COMPLAINT AS PER RULE DATED OCTOBER 29, 2004

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted in part; denied in part. Shannon is a partnership under the Uniform Partnership Act of the Commonwealth. The partnership is a partnership with C. Alan Walker and Susan W. Kriner as partners. Anne Walker Macko died on February 27, 2004, thereby ceasing to be a partner. Under the Uniform Partnership Act the partnership assets and liabilities become the property of the surviving partners. The Estate of Anne Walker Macko, deceased, has no ownership rights in Shannon and is a creditor having a claim against the partnership of the capital and income accounts she possessed at her death.

6. Admitted.

7. Admitted.

8. Admitted.

9. Denied. On the contrary, it is alleged that only C. Alan Walker was an officer, director and shareholder of Hamilton

10. Denied. On the contrary, it is alleged that only C. Alan Walker owned any shares of common stock in Hamilton.

11. Denied. On the contrary, Hamilton and Shannon are not similarly owned and controlled entities. In addition, Shannon, as a land and mineral owning entity, has competitors of Hamilton mine and remove coal from its owned interests, to wit, Sky Haven, Inc., King Coal, Inc., Am-Fire Inc., Hepburnia Coal Company, and Waroquier Coal Company. Furthermore, Hamilton has mined on properties of its own and many other owners besides Shannon.

12. Denied. On the contrary, Shannon has only one employee, E. David Nelson, and he performs tasks as the land representative of Shannon which may relate to many other companies with which Shannon does business.

13. Denied. On the contrary, there are no employees of Shannon or Hamilton who are simultaneously employed by both entities.

14. Denied. While "allied" companies is not defined, Shannon and Hamilton are independent entities with different ownerships, different control, different decision making and different activities.

15. Admitted in part; denied in part. While it is admitted that since 1991, C. Alan Walker, Susan W. Kriner and Anne Walker Macko were the partners of Shannon, it is denied that Anne Walker Macko or her estate is a partner now for the reasons set forth in the answer to paragraph 5 above which is incorporated herein by reference.

16. Admitted in part; denied in part. While Hamilton has historically been a surface mine coal operator it has also been engaged in other asset managing activities.

18. Admitted.

19. Denied. Because of the Department of Environmental Resources [now Department of Environmental Resources (DEP)] regulations requiring a three hundred foot barrier and one thousand foot blasting barrier from the Withey property, in order to mine the Fred Long property, it was necessary for the Witheys to authorize coal mining.

20. Denied. On the contrary, the November 27, 1991, agreement was entered into by Defendant Hamilton and the Plaintiffs. Neither C. Alan Walker, Susan Walker Kriner, the Estate of Anne Walker Macko, deceased, nor Shannon Land and Mining Company was a party to said agreement. Furthermore, no title, equitable or legal to the Withey property passed hands at the time of the agreement. The parties to the agreement agreed

that conveyances would be made according to the agreement upon the fulfilling of conditions precedent concerning the mining operations of Defendant Hamilton.

21. Admitted in part; denied in part. It is admitted that Shannon, the partnership, was aware of the arrangements Hamilton made with Witheys. Hamilton conducted the surface mining on the Fred Long farm that was owned by Shannon. Shannon had always owned the coal and right to support beneath the Long farm. It was Plaintiff, Zoe Withey, daughter of Fred Long, who came to Shannon and requested they buy the surface because of the domestic dispute between Fred and Mary Long. Shannon made an offer to buy the Long surface in September 1987, through the Master in Divorce for the Longs, Peter Smith, Esq., as evidenced by the letter attached hereto as Exhibit "D-1". Shannon was only interested in having developed for mining purposes and was not concerned with post-mining arrangements Hamilton had with Witheys. Exhibit "B" attached to the Plaintiffs' Complaint confirms the proposition that conveyance of properties under the 1991 agreement would occur when pre-conditions were met.

22. Admitted.

23. Denied. On the contrary, no one on behalf of Hamilton acted in any way to bind or make Shannon a party to the agreement. Allegations of agency are legal conclusions to which no response is required. However, if a response is required, said allegation is denied.

24. Denied. While the real estate known as the Fred Long farm was owned, possessed and controlled by Shannon, the house built on the Fred Long property was built by Hamilton and owned by Hamilton, therefore, the taxes on the house are issued to Hamilton.

25. This allegation states a legal conclusion to which no response is required.

26. The answers to paragraphs 1-25 are incorporated herein by reference as if fully set forth herein.

27. Admitted.

28. Admitted.

29. Denied. On the contrary, all the taxes due and owing on the Hamilton home built for Withey have been paid in full.

30. Denied. On the contrary, Hamilton has in fact presented coverage for fire and hazard on the Hamilton house built for Withey to Withey through their insurance agent, Terry Briskar.

31. Admitted in part; denied in part. While it is admitted that the house is owned by Hamilton and Withey has no insurable interest, it is denied that there is no coverage. On the contrary, there has been and currently is hazard and fire insurance coverage on the house.

32. Denied. On the contrary, Hamilton is not financially unstable and is not operating under the protection of the federal Bankruptcy Court.

33. Denied. There is no outstanding tax bill for township, county or school real estate taxes against the Hamilton house on the Fred Long farm.

34. Denied. On the contrary, Hamilton has and does maintain hazard and fire insurance coverage on the Hamilton house where Withey resides.

35. Admitted.

36. Denied. On the contrary, Hamilton had abided by the agreement and has attempted to bring this matter to a conclusion since the year 2001 through having the agreement of November 27, 1991, amended and accelerating the conveyances contemplated by the agreement.

NEW MATTER

36A. That there are still Stage III bonds outstanding on the mining permit that covers the Fred Long Farm.

36B. That all real estate taxes and liability insurance has been paid by Hamilton as per the agreement between the parties.

36C. That as long as bonds remain outstanding, the conditions precedent to the conveyance of real estate under the agreement are not fulfilled.

36D. That Hamilton has attempted to accelerate the conveyance of the properties under the agreement beginning in 2001 with a letter, amendment to agreement and deeds to exchange sent to then counsel for Withey, David Mason Esquire. Said mailings are attached hereto and incorporated herein by reference as Exhibits D-2, D-3, D-4, and D-5 respectively.

36E. That again in July of 2004 Hamilton attempted to accelerate the conveyances under the 1991 agreement with the Plaintiff's present legal counsel.

37F. That since 2001 the Plaintiffs have continued to refuse to execute documents to amend the 1991 agreement thus permitting the conveyances contemplated in the agreement.

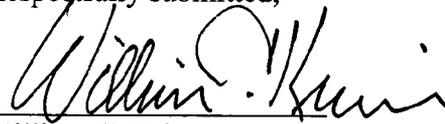
36G. That under the circumstances of this case, only an amendment to the agreement will permit deeds and an agreement of sale to the house to be delivered.

36H. That where the outstanding requirements of the 1991 agreement have not yet been met, there is no basis for equitable relief to be granted in the form of an injunction.

36I. That the parties to the agreement have sufficient legal remedies and contractual responsibilities to be discharged without the necessity of injunctive relief from the Court.

WHEREFORE, Defendants request the Court to dismiss the Plaintiffs' Complaint for Preliminary Injunction.

Respectfully submitted,



William C. Kriner
Attorney for Defendants
PO Box 1425
Clearfield, PA 16830
814-768-7893
ID # 15559

KRINER, KOERBER AND KIRK
ATTORNEYS-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-9611

FILE COPY

WILLIAM C. KRINER
DWIGHT L. KOERBER, JR.
ALAN F. KIRK

September 18, 1987

COUNSEL TO THE FIRM
WILLIAM T. DAVIS

Peter Smith, Esquire
30 South Second Street
Clearfield, PA 16830

Re: Long Divorce

Dear Peter:

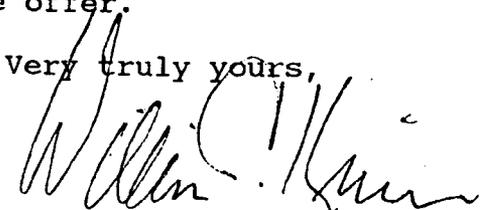
As you are aware, we represent Shannon Land and Mining Company of Bigler, Pennsylvania. I have been authorized to make an offer to purchase the farm property of Mr. and Mrs. Long, who are currently in a divorce proceeding in which you are sitting as Master.

Shannon Land and Mining Company hereby offers to buy all right, title and interest owned, possessed and controlled by Fred and Mary Long in and to sixty-six (66) acres located in Pike Township, Clearfield County, Pennsylvania, for the sum of One Hundred Forty-Five Thousand and no/100 (\$145,000.00) Dollars. The only condition to the offer is that if accepted, Mr. and Mrs. Long would pay Deed preparation costs and one-half the Pennsylvania Realty Transfer Tax due on the transaction upon closing.

This offer shall remain open until the close of business on December 31, 1987. If the offer is not accepted by that time, it will expire automatically without further action of any nature or kind thereby revoking any power of acceptance.

A copy of this letter is being sent to Andrew Gates and John Sobel, respective counsel for Mr. and Mrs. Long, so that they are fully apprised of the offer.

Very truly yours,


William C. Kriner

WCK:jj

cc: Mr. C. Alan Walker
Andrew Gates, Esq.
John Sobel, Esq.
Mr. David Nelson

Exhibit D-1

William C. Kriner

Law Office

E-Mail: sgm@penn.com

31 North Third Street

P. O. Box 1425

Clearfield, PA 16830

FILE COPY

Telephone 814-768-7893

Fax 814-768-7895

September 20, 2001

David C. Mason, Esq.
409 North Front Street
P. O. Box 28
Philipsburg, PA 16866

Re: Al Hamilton Contracting Company/Richard L. & Zoe E. Withey

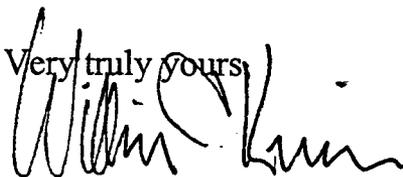
Dear Dave:

In response to your letter of August 22, 2001, yes, I am well aware of all of the matters you pointed out. However, I am trying to expedite matters within the confines of the prior Agreement. Therefore, enclosed please find an Amendment to the original Agreement and two Deeds.

If this is not an acceptable way for accelerating the obligations in the 1991 Agreement, it will be necessary to wait until the Stage 3 bonds are released before any further activity in this matter is undertaken. That, of course, is dependent on the economic and environmental climate over which none of us has control.

If I do not hear from you by September 30th concerning execution of these documents, I will assume you have rejected our proposition for moving forward at this time.

Very truly yours,



William C. Kriner

WCK:jh

Enclosures

cc: Mr. C. Alan Walker
(w/enclosures)

Exhibit D-2

AMENDMENT AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2001, by and between **RICHARD L. WITHEY** and **ZOE E. WITHEY**, husband and wife, of Pike Township, Clearfield County, Pennsylvania, parties of the first part, hereinafter referred to as "WITHEY",

AND

AL HAMILTON CONTRACTING COMPANY, of R. D. Woodland, Clearfield County, Pennsylvania, party of the second part, hereinafter referred to as "HAMILTON".

WITNESSETH:

WHEREAS, the parties hereto executed an Agreement dated 27 November 1991; and

WHEREAS, said Agreement contained an obligation to convey real property between the parties; and

WHEREAS, the parties wish to amend the Agreement to expedite the conveyances required in said Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and with the intention of being mutually bound, the parties hereto amend an agreement between themselves dated 27 November 1991, as follows:

1. That in consideration of WITHEY agreeing not to object to any bond release requests of HAMILTON on Permit No. 17803166, Paragraph 5 of the Agreement dated 27 November 1991, is hereby amended and modified to state as follows:

"5. That contemporaneous with the execution of this amendment, Shannon Land and Mining Company shall convey to the Witheys 66 acres of surface rights, together with the dwelling buildings thereon, known as the former Fred Long Farm, and the Witheys shall convey their house and 1.14 acres of surface rights to Al Hamilton Contracting Company, Shannon Land and Mining Company, or their nominee. Both properties are located in Pike Township, Clearfield County, Pennsylvania. Both conveyances shall be made free and clear of all liens and encumbrances and pass good and marketable title."

2. That in the event WITHEY objects to any bond release request of HAMILTON on permit No. 17803166, WITHEY shall be liable to HAMILTON for the amount of bond not released by DEP on account of any and all bond release objections.

3. That in all other particulars, the Agreement dated 27 November 1991, shall remain in full force and effect as unamended and unmodified.

4. That the parties hereto ratify and confirm each and every provision, term, and condition of the Agreement dated 27 November 1991, except for the modifications and amendments herein.

IN WITNESS WHEREOF, the parties have caused this instrument to be properly executed the day and year first above written.

_____(SEAL)
Richard L. Withey

_____(SEAL)
Zoe E. Withey

AL HAMILTON CONTRACTING COMPANY

C. Alan Walker, President

ATTEST:

(SEAL)

FILE COPY

THIS DEED,

MADE the ____ day of _____, in the year two thousand one (2001), between **C. ALAN WALKER**, of Lawrence Township, Clearfield County, Pennsylvania, **SUSAN W. KRINER**, of Lawrence Township, Clearfield County, Pennsylvania, and **C. ALAN WALKER**, as **Attorney-in-Fact for ANNE WALKER MACKO**, (under Power of Attorney dated May 12, 1997 and recorded on January 15, 1998, in Clearfield County Deeds and Records Book 1901, Page 62), of State College, Pennsylvania, trading and doing business as **SHANNON LAND AND MINING COMPANY**, of Bigler, Pennsylvania, parties of the first part, hereinafter called the "GRANTORS",

AND

RICHARD L. WITHEY and ZOE E. WITHEY, husband and wife, of R. R. # 1, Box 488, Olanta, PA 16863, as tenants by the entireties, parties of the second part, hereinafter called the "GRANTEES".

WITNESSETH:

That for and in consideration of the sum of One and no/100 (\$1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey to the said Grantees, their heirs and assigns,

ALL that certain tract or parcel of land situate in the Township of Pike, County of Clearfield and State of Pennsylvania, bounded and described as follows:

BEGINNING at hazel in line of land now or formerly of William Price; thence South along land now or formerly of Thomas Long eighty- three and one-third (83 1/3) degrees East one hundred twenty-two and eight-tenths (122.8) perches to post corner of land now or formerly of Alfred Long; thence along said land now or formerly of Long South eighty-eight (88) degrees East sixty-eight (68) perches to post in public road; thence along said public road and land now or formerly of John Owens North one and one-half (1-1/2) degrees West sixty-nine and five-tenths (69.5) perches to post; thence along land now or formerly of Michael Wise Estate North six and one-half (6-1/2) degrees West forty-nine and nine-tenths (49.9) perches to a white pine stump; thence along land now or formerly of Michael Wise Estate North sixty (60) degrees West fifty-four and eight-tenths (54.8) perches to a post corner of land now or formerly of said Wise Estate; thence South along lands now or formerly of W. J. Owens and Adam Smith and William Price sixty-four and one-tenth (64.1) degrees West one hundred eighty-five and three-tenths (185.3) perches to hazel and place of beginning. Containing one hundred three (103) acres and sixty-two (62) perches but after

Exhibit D-4

deductions for the reservations hereinafter recited containing, according to the Mapping Office of Clearfield County, sixty-six (66) acres.

The said premises being further identified by Clearfield County Assessment Map Number 126-H11-21.

RESERVING and EXCEPTING, therefrom, however, all the coal, in, under and upon said premises, the same having been sold to S. R. Peale, by deed dated June 4, 1883; and also reserving and excepting, therefrom, however, all that certain piece or parcel of land bounded and described as follows, to wit: BEGINNING at a post; thence South forty-six and one-fourth ($46\frac{1}{4}$) degrees West sixty-five and five-tenths (65.5) perches to a witch hazel; thence South eighty-three and one-half ($83\frac{1}{2}$) degrees East forty-seven (47) perches to post; thence North one (1) degree East fifty and four-tenths (50.4) perches to post and beginning. Containing seven (7) acres and fifty-four (54) perches, neat.

ALSO RESERVING and EXCEPTING, therefrom however, all that certain piece of land bounded and described as follows, to wit: BEGINNING at a red oak in line of Bowman and D. D. Long; thence along said line North eighty-seven (87) degrees eighteen (18) minutes West eight hundred ninety-four (894) feet to post in center of public road leading from New Millport to Curwensville, Pa.; thence by said road North three (3) degrees forty-five (45) minutes East two hundred seventy-one (271) feet to post in center of road; thence North five (5) degrees thirty (30) minutes East three hundred forty-five (345) feet to post in center of road and point in line between Brolin and Bowman properties; thence by said line North forty-two (42) degrees forty-five (45) minutes East eight hundred eighty-five (885) feet to post; thence along other land of Bowman ten (10) degrees, thirty (30) minutes East nineteen hundred fourteen (1914) feet to red oak and the place of beginning. Being the same premises conveyed by Anthony Hile by his deed dated the 27th day of August A.D. 1914 and recorded in the office for recording of deeds in Deed Book No. 238, Page 298, to Alfred Brolin.

ALSO RESERVING and EXCEPTING, therefrom, however, all that certain piece of land which Maude E. Bowman conveyed to Frank Bloom, bounded and described as follows: BEGINNING at a post on public road; thence North two hundred two and six-tenths (202.6) feet to post; thence North five (5) degrees forty (40) minutes West eight hundred thirty-four (834) feet to post; thence North forty-two (42) degrees forty-five (45) minutes West three hundred forty (340) feet to post at public road; thence South five (5) degrees thirty (30) minutes West three hundred seventy-nine and three-tenths (379.3) feet to post; thence South fourteen (14) degrees East four hundred forty-eight and six-tenths (448.6) feet to post; thence South three (3) degrees forty-five (45) minutes West two hundred seventy-one and five-tenths (271.5) feet to post and place of beginning. Containing three and fifty-one one-hundredths (3.51) acres.

ALSO EXCEPTING and RESERVING, therefrom, the school lot, as well as one and six one-hundredths (1.06) acres, used as a cemetery and church.

ALSO EXCEPTING AND RESERVING oil and gas lying in, under and upon the subject premises together with all rights necessary to remove said oil and gas.

ALSO EXCEPTING and RESERVING any other exceptions and/or reservations which appear in the chain of title.

BEING the same premises conveyed from Fred Long and Mary Jane Long, his wife, to C. Alan Walker, et al., as Shannon Land and Mining Company, by Deed dated July 1, 1988, and recorded in Clearfield County Deeds and Records Book 1258, at Page 349.

For the purpose of complying with the Act of July 17, 1957, P.L. 984; 52 P.S. Supp. 1551, as amended, of the General Assembly of Pennsylvania, and for no other purpose, there is incorporated herein the following:

THIS DOCUMENT DOES NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO COAL OR RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT IN THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

TOGETHER with all and singular the improvements, ways, streets, alleys, passages, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of the parties of the first part, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof.

TO HAVE AND TO HOLD the said lot or piece of ground above described with the messuage or tenement thereon erected unto the said parties of the second part, their successors and assigns forever.

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

COMMONWEALTH OF PENNSYLVANIA :
 :
COUNTY OF CLEARFIELD : ss
 :

On this, the day of , 2001, before me, the undersigned officer, personally appeared SUSAN W. KRINER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

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

Notary Public

CERTIFICATE OF RESIDENCE

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

Attorney for Grantees

FILE COPY

DEED

MADE the _____ day of _____, in the year two thousand one (2001), between **RICHARD L. WITHEY** and **ZOE E. WITHEY**, husband and wife, of R. R. # 1, Box 488, Olanta, PA 16863, parties of the first part, hereinafter called "GRANTORS",

AND

C. ALAN WALKER, of Lawrence Township, Clearfield County, Pennsylvania, **SUSAN W. KRINER**, of Lawrence Township, Clearfield County, Pennsylvania, and **ANNE WALKER MACKO**, of State College, Pennsylvania, trading and doing business as **SHANNON LAND AND MINING COMPANY**, of Bigler, PA 16825, parties of the second part, hereinafter called "GRANTEES".

WITNESSETH:

That for and in consideration of the sum of One and no/100 (\$1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey to the said Grantees, their heirs, successors and assigns,

ALL that certain piece, parcel or tract of real estate, situate in the Township of Pike, County of Clearfield and State of Pennsylvania, bounded and described as follows:

BEGINNING at a point on the centerline of Pa. Route 453 running between Olanta and Curwensville and being at the Northwest corner of the premises herein below described; thence along line of land of James N. Rummings South 84 degrees 46 minutes East 166.5 feet to an iron pin; thence along other land of the Grantor herein, South 6 degrees 12 minutes West 330 feet to an iron pin; thence North 84 degrees 46 minutes West 166.5 feet to the centerline of Pa. Route 453; thence along the centerline of said route, North 6 degrees 12 minutes East 330 feet to a point and place of beginning. Containing 1.14 acres.

RESERVING the coal and mining and removal rights conveyed by previous deeds, duly entered of record.

BEING the same premises conveyed to the Grantors herein by Deed of Jennie Long and Forest Orin McGarry and Fay G. McGarry, dated October 17, 1972, and recorded in Clearfield County Deed Book 610, at Page 105.

CERTIFICATE OF RESIDENCE

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

_____.

Attorney/Agent for Grantee

Verification

I verify that the foregoing Answer and New Matter to Paragraphs One through Thirty-six of Plaintiff's Complaint as per Rule dated October 29, 2004, are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 PA. C.S.A. Section 4904 relating to unsworn falsification to authorities and is given pursuant to the provisions for verification of pleadings as defined and provided for in Rule 1024 of the Pennsylvania Rules of Civil Procedure.

Al Hamilton Contracting Company
By

C. Alan Walker, President
C. Alan Walker, President

November 30, 2004

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

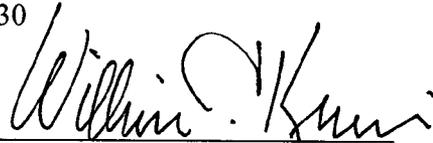
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual; and THE ESTATE OF
ANNE WALKER MACKO

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer and New Matter was served
on the following by regular First Class United States mail on November 30, 2004:

Theron G. Noble, Esq.
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

FILED

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DEC 15 2004

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CR

William A. Shaw
Prothonctary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

RICHARD L. WITHEY and
ZOE E. WITHEY

VS.

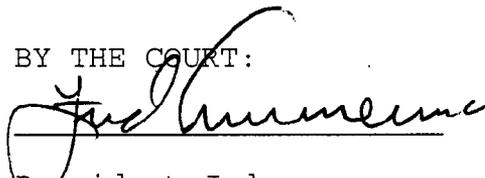
AL HAMILTON CONTRACTING
COMPANY, INC., et al

:
:
:
: NO. 04-1712-CD
:
:
:

O R D E R

NOW, this 14th day of December, 2004, being the date set for hearing on Count I of the Plaintiffs' Civil Complaint for Injunctive Relief; the Court noting that it has been certified that all outstanding real estate taxes on the property in question have been paid through and including the year 2004 and that fire and hazard insurance is currently maintained on the premises. Accordingly, it is the ORDER of this Court that, until such time as the Court shall order otherwise, the Defendant Al Hamilton Contracting Company, Inc., shall continue to pay all real estate taxes when the same become due, and continue to maintain fire and hazard insurance on the property. Proof of payment of taxes and of the continued maintenance of insurance on the property shall be provided to counsel for the Plaintiffs upon request.

BY THE COURT:



President Judge

In The Court of Common Pleas of Clearfield County, Pennsylvania

WITHEY, RICHARD L. & ZOE E.

VS.

AL HAMILTON CONTRACTING COMPANY, INC. al

COMPLAINT & RULE RETURNABLE

Sheriff Docket #

16551

04-1712-CD

FILED

DEC 15 2004

SHERIFF RETURNS

William A. Shaw
County/Clerk of Courts

NOW NOVEMBER 1, 2004 AT 2:19 PM SERVED THE WITHIN RULE RETURNABLE & COMPLAINT IN EQUITY ON THE ESTATE OF ANNE WALKER MACKO, DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO WILLIAM KRINER, ATTORNEY FOR THE ESTATE A TRUE AND ATTESTED COPY OF THE ORIGINAL RULE RETURNABLE & COMPLAINT IN EQUITY AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: HAWKINS

NOW NOVEMBER 1, 2004 AT 2:19 PM SERVED THE WITHIN RULE RETURNABLE & COMPLAINT IN EQUITY ON SUSAN KRINER, DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO WILLIAM KRINER, ATTORNEY FOR DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL RULE RETURNABLE & COMPLAINT IN EQUITY AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: HAWKINS

NOW NOVEMBER 16, 2004 AT 12:57 PM SERVED THE WITHIN RULE RETURNABLE & COMPLAINT IN EQUITY ON C. ALAN WALKER, DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO C. ALAN WALKER, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL RULE RETURNABLE & COMPLAINT IN EQUITY AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: DEHAVEN

NOW NOVEMBER 16, 2004 AT 12:57 PM SERVED THE WITHIN RULE RETURNABLE & COMPLAINT IN EQUITY ON SHANNON LAND AND MINING COMPANY, DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO C. ALAN WALKER, OWNER A TRUE AND ATTESTED COPY OF THE ORIGINAL RULE RETURNABLE & COMPLAINT IN EQUITY AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: DEHAVEN

NOW NOVEMBER 16, 2004 AT 12:57 PM SERVED THE WITHIN RULE RETURNABLE & COMPLAINT IN EQUITY ON AL HAMILTON CONTRACTING COMPANY INC., DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO C. ALAN WALKER, OWNER A TRUE AND ATTESTED COPY OF THE ORIGINAL RULE RETURNABLE & COMPLAINT IN EQUITY AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: DEHAVEN

In The Court of Common Pleas of Clearfield County, Pennsylvania

WITHEY, RICHARD L. & ZOE E.

vs.

AL HAMILTON CONTRACTING COMPANY, INC. a

COMPLAINT & RULE RETURNABLE

Sheriff Docket # 16551
04-1712-CD

SHERIFF RETURNS

Return Costs

Cost	Description
44.37	SHERIFF HAWKINS PAID BY: ATTY CK# 1627
50.00	SURCHARGE PAID BY: ATTY CK# 1628

Sworn to Before Me This

15 Day Of Dec. 2004



So Answers,




Chester A. Hawkins
Sheriff

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

RICHARD L. WITHEY and :
ZOE E. WITHEY :
 :
 :
 vs. : No. 04-1712-CD
 :
 AL HAMILTON CONTRACTING :
 COMPANY, INC., a Pennsylvania :
 corporation; SHANNON LAND AND :
 MINING COMPANY, a Pennsylvania :
 partnership; C. ALAN WALKER, an :
 adult individual; SUSAN W. KRINER, :
 an adult individual; and THE ESTATE :
 OF ANNE WALKER MACKO :

ORDER

AND NOW, this 27th day of December, 2004, it

is the Order of the Court that argument on Defendants' Preliminary Objections
filed in the above-captioned matter has been scheduled for the 7 day of
February, 2005, at 9:00 A.M, in Courtroom No. 1,
Clearfield County Courthouse, Clearfield, PA.

FILED

2cc & memo
re: service
to Amy Kriner

64
DEC 27 2004

William A. Shaw
Prothonotary, Clerk of Courts

BY THE COURT:

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

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

DAVID S. MEHOLICK
COURT ADMINISTRATOR

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

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

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

Please make note of the following:

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

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

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

CA

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

RICHARD L. WITHEY, et al :
VS. : NO. 04-1712-CD
AL HAMILTON CONTRACTING :
COMPANY, INC., et al :

O R D E R

NOW, this 7th day of February, 2005, following argument on Defendants' Preliminary Objections, it is the ORDER of this Court that counsel for the parties have no more than twenty (20) days from date hereof to submit a letter brief to the Court.

BY THE COURT:

President Judge

FILED

6th FEB 08 2005

William A. Shaw
Prothonotary/Clerk of Courts

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1 cent. to ~~John~~
Kramer

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of 4:00 PM
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cc
Atty's:
Noble
Krines

CA

William A. Shaw
Prothonotary/Clerk of Courts

CA

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

RICHARD L. WITHEY and
ZOE E. WITHEY,
Plaintiff

vs.

NO. 04-1712-CD

AL HAMILTON CONTRACTING
COMPANY, INC., et al,
Defendant

ORDER

NOW, this 22nd day of March, 2005, in consideration of the Preliminary
Objections filed on behalf of the Defendants it is the ORDER of this Court as follows:

1. Defendant's Preliminary Objection to Count II of the Plaintiff's Complaint requesting relief in specific performance is hereby DENIED;
2. Defendant's Preliminary Objection to Count V of the Plaintiff's Complaint wherein an accounting is requested is GRANTED and said Count DISMISSED. The allegations in Count V do not meet the criteria for an accounting as set forth in Williams v. Finlaw, 141 A. 47 (Pa. 1928). See also Donatelli v. Carino, 116 A.2d 95 (Pa. Super 1955). Plaintiff's cause of action lies in a request for damages (as set forth in Count VI) and the information being sought can be obtained through the discovery process.
3. Defendant's Preliminary Objection to Count VII of the Plaintiff's Complaint wherein the Plaintiffs are requesting an accounting as to oil and gas proceeds is hereby GRANTED. Plaintiff's request for an accounting is DISMISSED. This ruling is based upon the Court's review of the language in paragraph #5 of the agreement entered into between the parties (Exhibit "A" to Plaintiff's Complaint) wherein it states that the Defendant "Hamilton will arrange for the conveyance of surface of the former Fred Long farm. . ." (emphasis added)

to the Plaintiffs. Surface is a distinct interest in real estate under Pennsylvania law and by implication also includes the right of surface support. Smith v. Glen Alden Coal Co., 32 A.2d 227 (Pa. 1943). However, absent specific language to the contrary, the use of the word surface cannot be interpreted to require, as a matter of law, that Defendants convey the oil and gas rights to the Plaintiffs. As the Court has determined that the Plaintiffs have no right under the terms of the agreement to a conveyance of the oil and gas rights, their request for an accounting of any monies received under any oil and gas lease executed by any of the Defendants is moot.

4. Defendant's Preliminary Objection to Plaintiff's Complaint based on lack of capacity to sue Defendants Shannon Land and Mining Co., C. Alan Walker and Susan W. Kriner is hereby DENIED. Plaintiffs have set forth sufficient allegations in their complaint claiming a relationship between the said Defendants and Defendant Al Hamilton Contracting Co., Inc. See Heilwood Fuel Co. v. Manor Real Estate Co., 175 A.2d 880 (Pa. 1961).

5. Defendant's Preliminary Objection Lack of Capacity to Sue II is hereby GRANTED. The Estate of Anne Walker Macko is hereby removed as a Defendant in the case. Although the death of Anne Walker Macko may cause dissolution of the partnership of Shannon Land and Mining Co., 15 Pa. C.S.A. § 8353(4), the Partnership will continue by law until its affairs are completed. 15 Pa. C.S.A. §8352.

BY THE COURT,



FREDRIC J. AMMERMAN

President Judge

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.,
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

:
: No. 04-1712-CD
:
: **Answer, New Matter and Counterclaim**
:
: Filed on behalf of:
: Defendants
:
: Counsel of record for this
: party:
: William C. Kriner, Esquire
: 219 East Market Street
: P. O. Box 1425
: Clearfield, PA 16830
: (814) 768-7893
: PA I.D. # 15559
:
: Counsel of record for
: Plaintiffs:
:
: Theron G. Noble, Esq.
: 301 East Pine Street
: Clearfield, PA 16830
: (814) 375-2221
: PA I.D. # 55942

FILED ⁶² NO CC
04:01:01
MAY 03 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZCE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

No. 04-1712-CD

ANSWER AND NEW MATTER

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Denied. Shannon is a partnership under the Uniform Partnership Act with C. Alan Walker and Susan W. Kriner as partners.
6. Admitted.
7. Admitted.
8. Denied. The Estate of Anne Walker Macko has been dismissed as a party as per Order of Court dated 22 March 2005.
9. Denied. On the contrary, it is alleged that only C. Alan Walker was an officer, director and shareholder of Hamilton.

10. Denied. On the contrary, it is alleged that only C. Alan Walker owned any common stock of Hamilton.

11. Denied. On the contrary, it is alleged that Hamilton and Shannon are not similarly owned and controlled entities. In addition, Shannon, as a land and mineral owning entity, has competitors of Hamilton mine and remove coal from its owned interests, to wit, Sky Haven, Inc., King Coal, Inc., AmFire, Inc., Hepburnia Coal Company, and Waroquier Coal Company. Furthermore, Hamilton has mined on many of its own properties and the properties of others beside Shannon.

12. Denied. On the contrary, it is alleged that Shannon has only one employee, E. David Nelson, and he performs tasks as the land representative for Shannon and for other businesses as they relate to Shannon's interests.

13. Denied. On the contrary, there are no employees of Shannon or Hamilton who are simultaneously employed by both entities.

14. Denied. While "allied" companies is not defined, Shannon and Hamilton are independent entities with different ownerships, different control, different decision making, different goals and different activities.

15. Admitted in part; denied in part. While it is admitted that beginning in 1991, Walker, Kriner and Macko were partners in Shannon, by Order of Court dated 22 March 2005, the Estate of Anne Walker Macko is no longer a party to this action.

16. Admitted in part; denied in part. While it is admitted that Hamilton has historically been a surface coal mine operator, it has also been engaged in other asset managing activities.

17. Admitted.

18. Admitted.

19. Denied. On the contrary, it is alleged that the Department of Environmental Resources [now Department of Environmental Protection ("DEP")] regulations required a three hundred [300'] foot barrier and a one thousand [1000'] foot blasting barrier from the Withey property, in order to mine the Fred Long Farm. Consequently, for mining to occur, the Witheys had to authorize same for regulatory purposes.

20. Denied. On the contrary, the November 27, 1991, operations agreement was entered into by Defendant Hamilton and the Plaintiffs. Neither C. Alan Walker, Susan W. Kriner, or anyone acting on behalf of Shannon was a party to said agreement. Furthermore, no title, equitable or legal, passed from Withey under said agreement. The agreement was conditional and did not vest in either party a beneficial ownership in property. Conveyances were to be made under the agreement after the fulfilling of conditions precedent concerning the mining operations of Hamilton.

21. Admitted in part; denied in part. It is admitted that Shannon was aware of the operational arrangements Hamilton made with the Witheys in 1991. Hamilton conducted surface mining operations on the Fred Long Farm owned by Shannon. Shannon had always owned the coal rights and right to support beneath the Fred Long Farm. It was Plaintiff, Zoe Withey, daughter of Fred Long, who came to Shannon and requested that Shannon buy the surface of the Fred Long Farm because of a domestic dispute between Fred and Mary Long. Shannon made an offer to buy the Long surface in September 1987, through the Master in Divorce for the Long divorce, Peter Smith, Esq., as evidenced by the letter attached hereto and marked Exhibit "D-1". Shannon was only interested in having the farm developed for commercial purposes and was not concerned with post-

mining arrangements Hamilton had with Witheys. Exhibit "B" attached to the Plaintiffs' Complaint confirms the proposition that conveyance of properties under the 1991 agreement would only occur when post-mining conditions were met.

22. Admitted.

23. Denied. On the contrary, no one on behalf of Hamilton acted in any way to bind or make Shannon a party to the 1991 agreement. Allegations of agency are legal conclusions to which no response is required. However, if a response is required, said allegation is denied.

24. Denied. While the real estate known as the Fred Long Farm was owned, possessed and controlled by Shannon, the house built on the Fred Long Farm property was built by Hamilton and owned by Hamilton, therefore, the taxes on said house are issued to Hamilton as owner.

25. This allegation states a legal conclusion to which no response is required.

Count I

This matter was concluded with a hearing and a Court Order issued 14 December 2004.

Count II

37. That the answers to paragraphs 1 through 36 are incorporated herein by reference as if fully set forth herein.

38. Admitted.

39. Admitted in part; denied in part. It is admitted that mining is complete on the Fred Long Farm but it is denied that the Stage III Bonds have been released.

40. Denied. See answer to paragraph 39 which is incorporated herein by reference.

41. Denied. On the contrary, Defendant Hamilton has attempted since 2001 to accelerate the conveyance of the properties in question even without the conditions met. In September of 2001, Hamilton forwarded to David Mason, Esq, then counsel for Witheys, a letter with an amendment to the 1991 agreement permitting conveyance before meeting preconditions and deeds for the two properties to be exchanged. Said documents are attached hereto and incorporated herein by reference as Exhibits "D-2", "D-3", "D-4" and "D-5" respectively. Again, in July 2004, Hamilton tried to complete the conveyances with current counsel for Witheys. Neither time did Witheys agree to complete the transaction as proffered by Hamilton in accord with the 1991 agreement.

42. Denied. On the contrary, Witheys have refused for 3 ½ years to convey their parcel to Shannon or receive the Fred Long Farm as per the terms of the 1991 agreement, as amended.

43. Paragraph 43 is not a fact pleading. In any event it is denied since the agreement is clear about what is to be conveyed to Witheys as the Court has found in the Court Order of 22 March 2005.

44. Denied. Shannon has always been aware of the Hamilton/Withey Operations agreement of 1991 as was answered more fully in paragraph 21 above. Shannon is presently the owner of the Fred Long Farm and has agreed to convey the Fred Long Farm to Witheys and receive the Withey property since they have obligated themselves to Hamilton to do so. Said agreement with Hamilton had nothing to do with the allegations made in paragraph 44 by the Plaintiff but rather is an agreement between Hamilton and Shannon in conjunction with Hamilton mining the Fred Long Farm.

45. Denied. On the contrary, it is alleged that the Fred Long Farm is by no means unique as surface mined farm land in Clearfield County Pennsylvania. In any event, Hamilton has since 2001 been trying to convey the Fred Long Farm to Witheys. Yet, Witheys have continued to refuse to accept same.

46. Paragraph 46 contains a legal conclusion to which no answer is required. However, if an answer is required, Defendants allege that since 2001, they have been attempting to convey to Witheys the Fred Long Farm but the Witheys have refused to accept same.

47. Paragraph 47 is a conclusion of law to which no response is required. However, it is denied as an erroneous conclusion both on the factual terms of the 1991 agreement and legally by virtue of the Court Order dated 22 March 2005.

Count III

48. The answers to paragraphs 1 through 47 are incorporated herein by reference as if fully set forth herein.

49. Denied. On the contrary, it is alleged that no contracts and conveyances were entered into affecting the Fred Long Farm except the laying of a water line on a boundary of the Fred Long Farm.

50. Denied. On the contrary, it is alleged that the laying of the water line does not deny to Witheys their benefit of the bargain under the 1991 operations agreement. It is further alleged that the laying of the water line enhanced the value of the surface rights to be conveyed to Witheys upon the meeting of the conditions under the 1991 operations agreement.

Count IV

51. The answers to paragraphs 1 through 50 are incorporated herein by reference as if fully set forth herein.

52. Admitted.

53. Admitted.

54. Denied. On the contrary, all real estate taxes, county, state and school, have been paid on the Withey home as assessed to Hamilton.

55. Admitted in part; denied in part. It is admitted that the Witheys paid the 2002 taxes. However, it is denied that they were damaged in any way since they were repaid in full by Hamilton for all taxes they paid. It is also denied that the Fred Long Farm was in danger of tax sale since the Witheys' house and the Fred Long Farm are separately assessed.

Count V

This Count V was dismissed by the Court by granting Preliminary Objections in a Court Order dated 22 March 2005, consequently, no answer is required.

Count VI

63. The answers to paragraphs 1 through 55 are incorporated herein by reference as if fully set forth herein.

64. Denied. This allegation has to do with fire and casualty insurance and is tied to the dismissed Count V. On the contrary, it is alleged that under Paragraph 8 of the 1991 operations agreement, Defendant Hamilton was only required to carry fire and casualty insurance on the "old" Withey house on 1.14 acres and the "new" Withey house constructed by Hamilton on the Fred Long Farm. Furthermore, the dwellings on the

Fred Long Farm, including the barn, were leased to Fred Long by agreement (“Long Lease”) dated 1 August 1989. A copy of said agreement is attached hereto, marked Exhibit “D-6” and incorporated herein by reference as if fully set forth herein. Under the Long Lease, Fred Long was responsible for keeping the barn in “good order and repair as when originally leased, excepting wear and tear.” Therefore, the repair of the barn was a Fred Long responsibility and not that of Hamilton and damage claims concerning the barn are between Hamilton and Fred Long, without involvement of the Plaintiffs.

Count VII

This Count VII was dismissed by the Court by granting Preliminary Objections in a Court Order dated 22 March 2005, consequently, no answer is required.

Count VIII

70. The answers to paragraphs 1 through 55 and 63 and 64 are incorporated herein by reference as if fully set forth herein.

71. Paragraph 71 is a request for a finding of law and, therefore, no answer is required. However, it is denied. The Plaintiffs have no right to damages for non-conveyance of the Fred Long Farm. The conveyances to be exchanged by Hamilton and Witheys are conditional without any equitable title or rights being vested in either party to the other’s real property. The 1991 agreement was an operations agreement and the Witheys received the benefit of that bargain by having a new home built for them free of cost and have subsequently lived rent free from April, 1992, to date. Furthermore, as alleged herein, the Witheys have refused for 3 ½ years to take a conveyance of the Fred Long Farm under the terms of the 1991 agreement, as amended, therefore, they are not entitled to a remedy for value of the Fred Long Farm for non-conveyance of same.

Count IX

72. The answers to paragraphs 1 through 55 and 63, 64, 70 and 71 are incorporated herein by reference as if set forth fully herein.

73. Admitted.

74. Denied. On the contrary, it is alleged that any breach has been remedied and therefore there is no reason for the payment of reasonable attorneys' fees on behalf of the Plaintiffs.

75. Denied. On the contrary, it is alleged that the Witheys should pay reasonable legal fees to counsel for Hamilton who has had to defend Hamilton against allegations with no basis in fact or law and for successfully obtaining dismissal, to date, of three (3) counts of the Plaintiffs' Complaint.

76. The allegation in paragraph 76 is a conclusion of law for which no answer is required, however, if an answer is required, said allegation is denied.

77. The allegation in paragraph 77 is a conclusion of law for which no answer is required, however, if an answer is required, said allegation is denied.

78. The allegation in paragraph 78 is a conclusion of law for which no answer is required, however, if an answer is required, it is denied.

NEW MATTER

By way of further answer, the Defendants set forth the following New Matter:

79. That all real estate taxes due and owing under the 1991 agreement between Hamilton and Witheys have been paid in full by Hamilton.

80. That Stage III bonds have not been released from the mining operation that included the Fred Long Farm.

81. That until the Stage III bonds are released, the conditions precedent to the conveyance of real estate under the 1991 agreement have not been fulfilled.

82. That without the fulfilling of the conditions precedent, the agreement between Hamilton and the Witheys of 1991 will have to be amended to enable the real estate exchange to take place.

83. That since 2001, Hamilton had been attempting to amend the agreement of 1991 so that the real estate can be exchanged. In both 2001 and 2004, legal counsel for Hamilton delivered amendments and deeds so that the real estate exchange could occur without the meeting of the conditions in the agreement.

84. That since 2001, the Plaintiffs have refused to execute the documents required to amend the agreement of 1991 so that the conveyances can occur.

85. That the agreement dated 1991 does not vest in Hamilton or Withey any equitable rights in the properties to be exchanged.

86. That under the facts of this case, only an amendment of the agreement to avoid the performance of the conditions precedent will permit the exchange of properties to occur.

87. That the 1991 agreement between Withey and Hamilton was an operations agreement whereby Withey exchanged mining right prohibitions in and around their 1.14 acres in consideration for Hamilton erecting for them, without cost, a new dwelling in which they could live rent free.

88. That the consideration and bargain contemplated in the 1991 agreement has been performed as the Witheys have lived in their new home from April, 1992, to date, rent free.

89. That Witheys have no claim to the Fred Long Farm dwelling buildings under the 1991 agreement.

90. That on July 1, 1989, the house and barn on the Fred Long Farm was leased to Fred Long.

91. That Fred Long has continually leased the house and barn on the Fred Long property since 1989.

92. That Fred Long is still in possession of the house and barn on the Fred Long Farm.

93. That under the 1989 lease, Fred Long has the responsibility for the upkeep and maintenance of the barn.

94. That Hamilton owes to Withey no duty or responsibility under the 1991 agreement for the upkeep of the dwelling buildings on the Fred Long Farm.

AFFIRMATIVE DEFENSE OF ESTOPPEL

95. That the Plaintiffs were aware of the agreement of 1989 leasing the Fred Long house and barn to Fred Long.

96. That the Plaintiffs knew that under said 1989 lease, Fred Long was responsible for the upkeep and maintenance of the house and barn on the Fred Long Farm.

97. That the Plaintiffs are thereby estopped from making a claim against the Defendants for damage to the barn or house on the Fred Long Farm.

AFFIRMATIVE DEFENSE OF CONSENT

98. That the allegations in paragraphs 95 and 96 are incorporated herein by reference as if set forth fully herein.

99. That the lease of 1989 granted to Fred Long exclusive rights and responsibilities of possession and control in the house and barn on the Fred Long Farm.

100. That upon the execution of the 1991 agreement, Plaintiffs were aware of the rights of Fred Long in the Fred Long Farm, house and barn.

101. That the Plaintiffs consented to the rights and responsibilities of Fred Long in and to the dwelling house and barn on the Fred Long Farm as well as Fred Long's use and possession of the house and barn.

102. That as a result of the Plaintiffs consent to the 1989 agreement and Fred Long's rights and responsibilities in the house and barn on the Fred Long Farm, the Plaintiffs have no claims against the Defendants with respect to the dwelling buildings on the Fred Long Farm.

WHEREFORE, Defendants request the Court to enter judgment on their behalf and against the Plaintiffs and award to Defendants costs of litigation.

COUNTERCLAIM

103. That under Paragraph 9 of the agreement dated 27 November 1991, between Defendant Hamilton and Plaintiffs, a party successful in enforcing its right in litigation is entitled to reasonable legal fees and costs of litigation.

104. That as of 22 March 2005, Defendant Hamilton was successful in having three (3) counts of the Plaintiffs' Complaint dismissed.

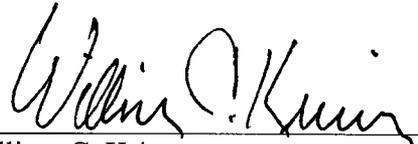
105. That the Plaintiffs have refused and continue to refuse to allow the 1991 agreement to be amended so that the real estate in said agreement can be conveyed.

106. That the actions of the Plaintiffs in failing to follow the procedures outlined in the agreement for amendment and pursuing litigation is a repudiation of the terms of the agreement.

107. That Defendant Hamilton is entitled to reasonable legal fees and costs of litigation incurred by it in defending itself against the actions of the Plaintiffs.

WHEREFORE, Defendant Hamilton requests judgment be entered in its favor and against the Plaintiffs in an amount in excess of Twenty Thousand (\$20,000) Dollars for legal fees and costs of litigation incurred by Defendant Hamilton, and in the event Plaintiffs obtain a monetary judgment against Defendant Hamilton, the Plaintiffs' judgment be set off to the extent the Plaintiffs' judgment exceeds Defendant Hamilton's judgment on this Counterclaim.

Respectfully submitted,



William C. Kriner
Attorney for Defendants
P.O. Box 1425
Clearfield, PA 16830
814-768-7893
I. D. # 15559

Verification

I verify that the foregoing Answer, New Matter and Counterclaim are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 PA. C.S.A. Section 4904 relating to unsworn falsification to authorities and is given pursuant to the provisions for verification of pleadings as defined and provided for in Rule 1024 of the Pennsylvania Rules of Civil Procedure.

Al Hamilton Contracting Company

By

C. Alan Walker, President
C. Alan Walker, President

May 2, 2005

KRINER, KOERBER AND KIRK
ATTORNEYS-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-9611

WILLIAM C. KRINER
DWIGHT L. KOERBER, JR.
ALAN F. KIRK

COUNSEL TO THE FIRM
WILLIAM T. DAVIS

September 18, 1987

Peter Smith, Esquire
30 South Second Street
Clearfield, PA 16830

Re: Long Divorce

Dear Peter:

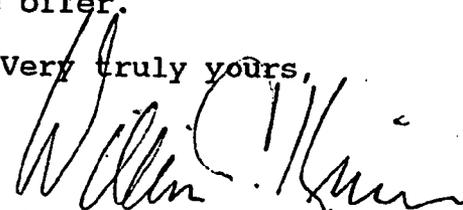
As you are aware, we represent Shannon Land and Mining Company of Bigler, Pennsylvania. I have been authorized to make an offer to purchase the farm property of Mr. and Mrs. Long, who are currently in a divorce proceeding in which you are sitting as Master.

Shannon Land and Mining Company hereby offers to buy all right, title and interest owned, possessed and controlled by Fred and Mary Long in and to sixty-six (66) acres located in Pike Township, Clearfield County, Pennsylvania, for the sum of One Hundred Forty-Five Thousand and no/100 (\$145,000.00) Dollars. The only condition to the offer is that if accepted, Mr. and Mrs. Long would pay Deed preparation costs and one-half the Pennsylvania Realty Transfer Tax due on the transaction upon closing.

This offer shall remain open until the close of business on December 31, 1987. If the offer is not accepted by that time, it will expire automatically without further action of any nature or kind thereby revoking any power of acceptance.

A copy of this letter is being sent to Andrew Gates and John Sobel, respective counsel for Mr. and Mrs. Long, so that they are fully apprised of the offer.

Very truly yours,


William C. Kriner

WCK:jj

cc: Mr. C. Alan Walker
Andrew Gates, Esq.
John Sobel, Esq.
Mr. David Nelson

EXHIBIT
D-1

William C. Kriner

Law Office

E-Mail: sgm@penn.com

31 North Third Street

P. O. Box 1425

Clearfield, PA 16830

Telephone 814-768-7893

Fax 814-768-7895

September 20, 2001

David C. Mason, Esq.
409 North Front Street
P. O. Box 28
Philipsburg, PA 16866

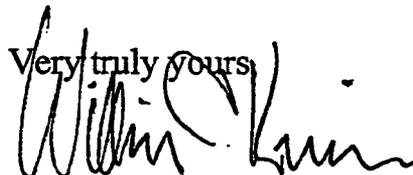
Re: Al Hamilton Contracting Company/Richard L. & Zoe E. Withey

Dear Dave:

In response to your letter of August 22, 2001, yes, I am well aware of all of the matters you pointed out. However, I am trying to expedite matters within the confines of the prior Agreement. Therefore, enclosed please find an Amendment to the original Agreement and two Deeds.

If this is not an acceptable way for accelerating the obligations in the 1991 Agreement, it will be necessary to wait until the Stage 3 bonds are released before any further activity in this matter is undertaken. That, of course, is dependent on the economic and environmental climate over which none of us has control.

If I do not hear from you by September 30th concerning execution of these documents, I will assume you have rejected our proposition for moving forward at this time.

Very truly yours,

William C. Kriner

WCK:jh

Enclosures

cc: Mr. C. Alan Walker
(w/enclosures)

AMENDMENT AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2001, by and between **RICHARD L. WITHEY and ZOE E. WITHEY**, husband and wife, of Pike Township, Clearfield County, Pennsylvania, parties of the first part, hereinafter referred to as "WITHEY",

AND

AL HAMILTON CONTRACTING COMPANY, of R. D. Woodland, Clearfield County, Pennsylvania, party of the second part, hereinafter referred to as "HAMILTON".

WITNESSETH:

WHEREAS, the parties hereto executed an Agreement dated 27 November 1991; and

WHEREAS, said Agreement contained an obligation to convey real property between the parties; and

WHEREAS, the parties wish to amend the Agreement to expedite the conveyances required in said Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and with the intention of being mutually bound, the parties hereto amend an agreement between themselves dated 27 November 1991, as follows:

1. That in consideration of WITHEY agreeing not to object to any bond release requests of HAMILTON on Permit No. 17803166, Paragraph 5 of the Agreement dated 27 November 1991, is hereby amended and modified to state as follows:

"5. That contemporaneous with the execution of this amendment, Shannon Land and Mining Company shall convey to the Witheys 66 acres of surface rights, together with the dwelling buildings thereon, known as the former Fred Long Farm, and the Witheys shall convey their house and 1.14 acres of surface rights to Al Hamilton Contracting Company, Shannon Land and Mining Company, or their nominee. Both properties are located in Pike Township, Clearfield County, Pennsylvania. Both conveyances shall be made free and clear of all liens and encumbrances and pass good and marketable title."

2. That in the event WITHEY objects to any bond release request of HAMILTON on permit No. 17803166, WITHEY shall be liable to HAMILTON for the amount of bond not released by DEP on account of any and all bond release objections.

3. That in all other particulars, the Agreement dated 27 November 1991, shall remain in full force and effect as unamended and unmodified.

4. That the parties hereto ratify and confirm each and every provision, term, and condition of the Agreement dated 27 November 1991, except for the modifications and amendments herein.

IN WITNESS WHEREOF, the parties have caused this instrument to be properly executed the day and year first above written.

_____(SEAL)
Richard L. Withey

_____(SEAL)
Zoe E. Withey

AL HAMILTON CONTRACTING COMPANY

C. Alan Walker, President

ATTEST:

(SEAL)

THIS DEED,

MADE the ____ day of _____, in the year two thousand one (2001), between **C. ALAN WALKER**, of Lawrence Township, Clearfield County, Pennsylvania, **SUSAN W. KRINER**, of Lawrence Township, Clearfield County, Pennsylvania, and **C. ALAN WALKER**, as Attorney-in-Fact for **ANNE WALKER MACKO**, (under Power of Attorney dated May 12, 1997 and recorded on January 15, 1998, in Clearfield County Deeds and Records Book 1901, Page 62), of State College, Pennsylvania, trading and doing business as **SHANNON LAND AND MINING COMPANY**, of Bigler, Pennsylvania, parties of the first part, hereinafter called the "GRANTORS",

AND

RICHARD L. WITHEY and **ZOE E. WITHEY**, husband and wife, of R. R. # 1, Box 488, Olanta, PA 16863, as tenants by the entireties, parties of the second part, hereinafter called the "GRANTEES".

WITNESSETH:

That for and in consideration of the sum of One and no/100 (\$1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey to the said Grantees, their heirs and assigns,

ALL that certain tract or parcel of land situate in the Township of Pike, County of Clearfield and State of Pennsylvania, bounded and described as follows:

BEGINNING at hazel in line of land now or formerly of William Price; thence South along land now or formerly of Thomas Long eighty- three and one-third (83 1/3) degrees East one hundred twenty-two and eight-tenths (122.8) perches to post corner of land now or formerly of Alfred Long; thence along said land now or formerly of Long South eighty-eight (88) degrees East sixty-eight (68) perches to post in public road; thence along said public road and land now or formerly of John Owens North one and one-half (1-1/2) degrees West sixty-nine and five-tenths (69.5) perches to post; thence along land now or formerly of Michael Wise Estate North six and one-half (6-1/2) degrees West forty-nine and nine-tenths (49.9) perches to a white pine stump; thence along land now or formerly of Michael Wise Estate North sixty (60) degrees West fifty-four and eight-tenths (54.8) perches to a post corner of land now or formerly of said Wise Estate; thence South along lands now or formerly of W. J. Owens and Adam Smith and William Price sixty-four and one-tenth (64.1) degrees West one hundred eighty-five and three-tenths (185.3) perches to hazel and place of beginning. Containing one hundred three (103) acres and sixty-two (62) perches but after

deductions for the reservations hereinafter recited containing, according to the Mapping Office of Clearfield County, sixty-six (66) acres.

The said premises being further identified by Clearfield County Assessment Map Number 126-H11-21.

RESERVING and EXCEPTING, therefrom, however, all the coal, in, under and upon said premises, the same having been sold to S. R. Peale, by deed dated June 4, 1883; and also reserving and excepting, therefrom, however, all that certain piece or parcel of land bounded and described as follows, to wit: BEGINNING at a post; thence South forty-six and one-fourth ($46\frac{1}{4}$) degrees West sixty-five and five-tenths (65.5) perches to a witch hazel; thence South eighty-three and one-half ($83\frac{1}{2}$) degrees East forty-seven (47) perches to post; thence North one (1) degree East fifty and four-tenths (50.4) perches to post and beginning. Containing seven (7) acres and fifty-four (54) perches, neat.

ALSO RESERVING and EXCEPTING, therefrom however, all that certain piece of land bounded and described as follows, to wit: BEGINNING at a red oak in line of Bowman and D. D. Long; thence along said line North eighty-seven (87) degrees eighteen (18) minutes West eight hundred ninety-four (894) feet to post in center of public road leading from New Millport to Curwensville, Pa.; thence by said road North three (3) degrees forty-five (45) minutes East two hundred seventy-one (271) feet to post in center of road; thence North five (5) degrees thirty (30) minutes East three hundred forty-five (345) feet to post in center of road and point in line between Brolin and Bowman properties; thence by said line North forty-two (42) degrees forty-five (45) minutes East eight hundred eighty-five (885) feet to post; thence along other land of Bowman ten (10) degrees, thirty (30) minutes East nineteen hundred fourteen (1914) feet to red oak and the place of beginning. Being the same premises conveyed by Anthony Hile by his deed dated the 27th day of August A.D. 1914 and recorded in the office for recording of deeds in Deed Book No. 238, Page 298, to Alfred Brolin.

ALSO RESERVING and EXCEPTING, therefrom, however, all that certain piece of land which Maude E. Bowman conveyed to Frank Bloom, bounded and described as follows: BEGINNING at a post on public road; thence North two hundred two and six-tenths (202.6) feet to post; thence North five (5) degrees forty (40) minutes West eight hundred thirty-four (834) feet to post; thence North forty-two (42) degrees forty-five (45) minutes West three hundred forty (340) feet to post at public road; thence South five (5) degrees thirty (30) minutes West three hundred seventy-nine and three-tenths (379.3) feet to post; thence South fourteen (14) degrees East four hundred forty-eight and six-tenths (448.6) feet to post; thence South three (3) degrees forty-five (45) minutes West two hundred seventy-one and five-tenths (271.5) feet to post and place of beginning. Containing three and fifty-one one-hundredths (3.51) acres.

ALSO EXCEPTING and RESERVING, therefrom, the school lot, as well as one and six one-hundredths (1.06) acres, used as a cemetery and church.

ALSO EXCEPTING AND RESERVING oil and gas lying in, under and upon the subject premises together with all rights necessary to remove said oil and gas.

ALSO EXCEPTING and RESERVING any other exceptions and/or reservations which appear in the chain of title.

BEING the same premises conveyed from Fred Long and Mary Jane Long, his wife, to C. Alan Walker, et al., as Shannon Land and Mining Company, by Deed dated July 1, 1988, and recorded in Clearfield County Deeds and Records Book 1258, at Page 349.

For the purpose of complying with the Act of July 17, 1957, P.L. 984; 52 P.S. Supp. 1551, as amended, of the General Assembly of Pennsylvania, and for no other purpose, there is incorporated herein the following:

THIS DOCUMENT DOES NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO COAL OR RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT IN THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

TOGETHER with all and singular the improvements, ways, streets, alleys, passages, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of the parties of the first part, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof.

TO HAVE AND TO HOLD the said lot or piece of ground above described with the messuage or tenement thereon erected unto the said parties of the second part, their successors and assigns forever.

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

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

On this, the day of , 2001, before me, the undersigned officer, personally appeared SUSAN W. KRINER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

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

Notary Public

CERTIFICATE OF RESIDENCE

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

Attorney for Grantees

DEED

MADE the _____ day of _____, in the year two thousand one (2001), between **RICHARD L. WITHEY and ZOE E. WITHEY**, husband and wife, of R. R. # 1, Box 488, Olanta, PA 16863, parties of the first part, hereinafter called "GRANTORS",

AND

C. ALAN WALKER, of Lawrence Township, Clearfield County, Pennsylvania, **SUSAN W. KRINER**, of Lawrence Township, Clearfield County, Pennsylvania, and **ANNE WALKER MACKO**, of State College, Pennsylvania, trading and doing business as **SHANNON LAND AND MINING COMPANY**, of Bigler, PA 16825, parties of the second part, hereinafter called "GRANTEES".

WITNESSETH:

That for and in consideration of the sum of One and no/100 (\$1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey to the said Grantees, their heirs, successors and assigns,

ALL that certain piece, parcel or tract of real estate, situate in the Township of Pike, County of Clearfield and State of Pennsylvania, bounded and described as follows:

BEGINNING at a point on the centerline of Pa. Route 453 running between Olanta and Curwensville and being at the Northwest corner of the premises herein below described; thence along line of land of James N. Rummings South 84 degrees 46 minutes East 166.5 feet to an iron pin; thence along other land of the Grantor herein, South 6 degrees 12 minutes West 330 feet to an iron pin; thence North 84 degrees 46 minutes West 166.5 feet to the centerline of Pa. Route 453; thence along the centerline of said route, North 6 degrees 12 minutes East 330 feet to a point and place of beginning. Containing 1.14 acres.

RESERVING the coal and mining and removal rights conveyed by previous deeds, duly entered of record.

BEING the same premises conveyed to the Grantors herein by Deed of Jennie Long and Forest Orin McGarry and Fay G. McGarry, dated October 17, 1972, and recorded in Clearfield County Deed Book 610, at Page 105.

For the purpose of complying with the Act of July 17, 1957, P.L. 984; 52 P.S. Supp. 1551, as amended, of the General Assembly of Pennsylvania, and for no other purpose, there is incorporated herein the following:

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO COAL OR RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT IN THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

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

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

Richard L. Withey (SEAL)

Zoe E. Withey (SEAL)

COMMONWEALTH OF PENNSYLVANIA

:
:
ss
:

COUNTY OF CLEARFIELD

On this, the _____ day of _____, 2001, before me, the undersigned officer, personally appeared RICHARD L. WITHEY and ZOE E. WITHEY, husband and wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

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

Notary Public

CERTIFICATE OF RESIDENCE

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

Attorney/Agent for Grantee

LEASE AGREEMENT

THIS AGREEMENT, made this 1st day of August, 1989, by and between Shannon Land and Mining Company, acting by and through their duly authorized agent, hereinafter called the "LESSOR",

A

N

D

Fred Long of Pike Township, Clearfield County, Pennsylvania, hereinafter called the "LESSEE".

W I T N E S S E T H:

That the LESSOR, for and in consideration of the monies to be paid by the LESSEE to the LESSOR, and in further consideration of the covenants hereinafter set forth which are to be done, kept and performed by the LESSEE, do hereby demise, lease and let unto the LESSEE the premises known and described as the former Fred Long House and Barn located near the Village of Bloomington in Pike Township, Clearfield County, Pennsylvania, upon the following terms and conditions:

1. That the term of this Lease Agreement shall commence on the date of execution of this Lease, and extend for a period of twelve (12) months from said date of commencement. Said Lease shall renew itself every twelve (12) months unless either party shall notify the other in writing at least thirty (30) days prior to the end of any twelve (12) month term of their

PAGE 03/03

intention to cancel said Lease. However, LESSEE may terminate this Lease by giving LESSOR thirty (30) days written notice of intention to terminate at the end of any calendar month. LESSOR specifically reserves the right to change the terms and conditions of this Lease, including an increase in the monies to be paid by giving the LESSEE thirty (30) days written notice prior to the expiration of any twelve (12) month term of their intention to do so, and the LESSEE holding over is thereby bound by the new terms for the renewal period. Notice under this Lease Agreement shall be deemed to be given by regular mail directed to the LESSOR at P. O. Box 368, Bigler, Pennsylvania, 16825 and to the LESSEE at the demised premises.

2. That the LESSEE shall pay to the LESSOR, without setoff or deduction, the sum equal to the yearly real estate taxes for the portion of the year that the LESSEE shall reside in the demised premises. The LESSOR shall pay the real estate taxes and then bill the LESSEE for LESSEE'S share. A copy of the real estate tax bill shall accompany the bill. In the event the LESSEE shall vacate the premises during the year, then the LESSOR shall reimburse the LESSEE for the unused portion of the monies paid. Payments shall be made to the LESSOR at P. O. Box 368, Bigler, Pennsylvania, 16825 or at the office of W. Keith Garman located in the Bradford Coal Co., Inc., office building.

3. That the LESSEE shall be responsible for the payment of all utilities, including but not limited to: electric, water, phone, cable TV, coal or wood for the furnace and the upkeep of the premises.

4. That the LESSEE hereby agrees to occupy the subject premises only as an apartment and not to assign, sublet or underlet the leased premises or any part thereof, without the written consent and approval of the LESSOR.

5. That the LESSEE shall keep the leased premises clean and in good order and repair and at the expiration of the term of this Agreement peaceably deliver up the premises in the same good order and repair as when originally leased, excepting only ordinary wear and tear.

6. That the LESSEE shall make no improvements or alterations on the leased premises without first obtaining written approval from the LESSOR, except for ordinary maintenance of the said premises.

7. That the LESSEE shall be responsible for damages by fire or other casualty to his personalty on the leased premises. In the event of total destruction to the premises by virtue of fire or other casualty, this Lease Agreement shall automatically terminate, and in the event of partial destruction, LESSOR may repair at their option if insurance proceeds are available. If the LESSOR chooses not to repair within thirty (30) days of the casualty, then this Lease shall automatically terminate.

8. That in the event of a taking by condemnation, in whole or in part, of the demised premises, this Lease shall terminate as of the date the right to possession accrues to the condemning authority. LESSEE hereby waives the right to participate in any condemnation award except for improvements

made by the LESSEE under this Lease.

9. That the LESSEE shall carry his own liability insurance for the leased premises and shall indemnify and save the LESSOR harmless from any and all losses, costs or damages on account of injury to persons or property occurring on the leased premises. In addition, the LESSEE hereby agrees to release the LESSOR from any and all liability for damages sustained by the LESSEE or any invitee of the LESSEE to person or property on the demised premises.

10. That in the event the LESSEE does not pay in full when due any and all installments of rent or any other charge, expense or cost agreed to be paid by LESSEE under the terms of this Lease, or if the LESSEE shall fail to keep or comply with any of the covenants, terms and conditions of this Lease, the LESSOR has the following remedies, all of which are cumulative and concurrent:

(a) That the LESSOR may terminate and declare void the Lease without any right on the part of the LESSEE or those claiming under LESSEE to reinstate the same by payment or other performances of the condition or conditions violated, and enter an amicable action of ejectment against the LESSEE in the Court of Common Pleas of Clearfield County, Pennsylvania, to recover possession of the demised premises, and the LESSEE does hereby authorize and empower any attorney of the said Court to enter an appearance for the LESSEE in said action of ejectment and to confess judgment, or judgments, therein as often as the LESSOR shall deem it necessary and in favor of the LESSOR for the

demised premises, together with costs of suit, and the LESSEE agrees that a writ of possession in such action with clause of execution for costs may appear for it in the said action to waive and release all errors and irregularities in the said action of ejectment and the proceedings relating thereto, and the LESSEE further agrees that any such action of ejectment, if resorted to, shall not in any manner impair any other rights of the LESSOR or any lawful remedy or remedies herein stipulated for or provided for, or which may be or may become by law provided, and in every such action of ejectment the LESSEE does hereby waive the benefit of all exemption laws and of all laws giving stays of execution and inquisition now in force, or which may hereafter be enacted.

(b) That the LESSOR may take possession and re-enter the subject premises without terminating this Lease and demise, let and lease the subject premises to a third party with the LESSEE remaining liable for any loss of rentals under this Lease and liable for costs of reletting, brokerage expenses and costs of preparing the premises for the new tenant. In addition, the LESSOR is released from any and all liability for re-entering the subject premises.

(c) That the LESSOR may accelerate the rental for the balance of the term, thus requiring it to be due and payable immediately without setoff or deduction.

(d) That the LESSOR may forthwith seize and levy upon all property, goods and chattels, without notice or demand, which may be found in or upon the leased premises that the LESSOR may proceed therewith and sell all goods and chattels as is permitted

by law in a case of distress for rent. That in addition, the LESSOR is authorized by the LESSEE to follow any property, goods or chattels removed from the leased premises by the LESSEE for a period of ninety (90) days after such removal for a purpose of proceeding in an action of distress for rent.

(e) That the LESSEE does hereby authorize and empower any attorney of any court of record of Pennsylvania, or elsewhere, without notice to the LESSEE, to appear for the LESSEE and as often as the LESSOR shall deem it necessary to confess judgment or judgments against the LESSEE and in favor of the LESSOR for any and for all such sum or sums of money with costs of suit and with an attorney's commission of ten (10%) percent of the amount due for collection thereof and with release of all errors and without stay of execution and inquisition and extension upon any levy on any real estate as hereby waived. These provisions, however, shall not be a bar to any other remedies that may become due from the LESSEE to the LESSOR under the terms of this Lease.

That the LESSEE hereby waives all rights of redemption and of exemption under the Landlord and Tenant Act of 1951, April 6, 1951, P. L. 60, or any other appropriate act now in existence or to be in existence in the future, all appeals, stays of execution, errors all notices required by statute, and release the LESSOR from wrongful entry of judgments, distraint or errors.

11. That the LESSEE shall have the right of first refusal to purchase the subject premises if in the future the LESSOR decides to sell the subject premises. This right of first

refusal to purchase shall cease if this Lease is cancelled by either party. The selling price of the subject premises shall be the price set at the sole discretion of the LESSOR.

12. This Lease is made with the specific condition that the LESSEE hereby agrees that any damage done to the LESSEE'S personalty by the mining operation on the subject premises or adjoining premises of the LESSOR, or premises controlled by the LESSOR, or those claiming under the LESSOR, shall be the sole responsibility of the LESSEE. And, LESSEE agrees to sign any forms or waivers necessary for the LESSOR or its agents or successors or assigns to acquire a mining permit on the subject premises.

13. The LESSEE shall have the right to farm the premises and graze livestock on the premises. However, the farming and grazing activities shall in no manner interfere with the mining activities on the subject premises. Any damage to crops, including but not limited to: hay, oats, etc., and any damage to livestock, shall be the sole responsibility of the LESSEE. The LESSEE shall have no rights whatsoever to collect for damages from the LESSOR or those claiming under the LESSOR.

14. That this Lease shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns as if they were named in each and every paragraph herein.

IN WITNESS WHEREOF, the parties hereto have executed
this Lease the day and year first above written.

[Handwritten Signature]
Witness

[Handwritten Signature]
FRED LONG

SHANNON LAND AND MINING COMPANY

Melissa J. Billotte
Witness

BY *E. David Nelson Agent*
E. DAVID NELSON, AGENT

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

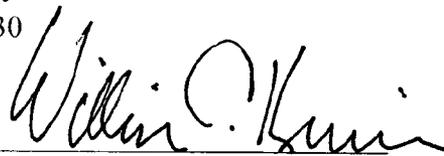
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer, New Matter and
Counterclaim was served on the following by regular First Class United States mail on
May 3, 2005:

Theron G. Noble, Esq.
Ferraccio & Noble
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adlt individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

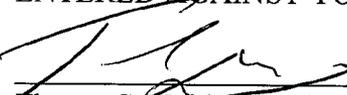
**REPLY TO NEW MATTER,
ANSWER TO COUNTER-CLAIM,
AND ADDITIONAL NEW MATTER**

Filed By:

Plaintiffs

To: Defendants

YOU ARE REQUIRED TO FILE A RESPONSE
TO THIS PLEADING WITHIN TWENTY (20)
DAYS HEREOF OR JUDGMENT COULD BE
ENTERED AGAINST YOU


Theron G. Noble, Esquire
Attorney for Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED ^{OK}
MAY 19 2005
M 11:20 AM
CC

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

**PLAINTIFF'S REPLY TO NEW MATTER, ANSWER TO
COUNTER-CLAIM AND ADDITIONAL NEW MATTER**

AND NOW, comes the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their REPLY TO NEW MATTER, ANSWER TO COUNTER-CLAIM and ADDITIONAL NEW MATTER:

Reply to New Matter

79. After reasonable investigation it is not known if the real estate taxes for this year have been paid, nor is it known whether all taxes will remain current while this lawsuit is being litigated.

As such, the same is denied and strict proof is demanded at time of trial. By way of further answer, the real estate taxes through last year (2004) were only paid when Plaintiffs, after repeated attempts with the defendant were rebuffed to have the taxes paid pursuant to the contract, filed and sought a court order for such payment.

80. After reasonable investigation it is not known whether the Stage III bonds have been or not have been released, nor is it known if they have not been released that the same will remain accurate while this lawsuit is being litigated. As such, strict proof of the same is demanded at time of trial. By way of further answer, defendants have repeatedly informed Plaintiffs and this Court that the Stage III bonds, especially for the Fred Long Farm, are in such a position to be released and the reason for not being so released has never been made clear.

81. The same is a legal conclusion for which no response is deemed necessary. By way of further response, the same is DENIED in that Defendants are obligated by law and by implied contractual terms of the 1991 agreement to cooperate and do all reasonable things to assure the release of the Stage III bonds and if they are not so doing can not take refuge in the fact that the Stage III bonds have not been released.

82. The same is a legal conclusion for which no response is deemed necessary.

83. Admitted in part, Denied in part. It is ADMITTED that the Defendants have been attempting since 2001 to "amend" the contract and force the Plaintiffs to accept terms which are not just and fair under the circumstances or contract. As such, it is ADMITTED that the defendants have done as stated herein but their implications, that such amendments were appropriate, just or fair are DENIED.

84. Admitted. The reasons for such refusal are as stated above.

85. Denied. For the reasons set forth in Plaintiffs' civil complaint, the same is DENIED.

86. Denied. For the reasons set forth in Plaintiffs' civil complaint, the same is denied.

87. Denied. First, Plaintiffs' do not know what Defendants reference as "an operations

agreement”, nor the import of such phrase. As such, that is specifically denied and strict proof is demanded at time of trial. Second, said land and buildings were to become the Witheys' at the completion of the 1991 agreement such that an equitable interest and title passed to the Witheys' in the 1991 agreement and Plaintiffs are not merely “tenants living rent free”. Strict proof of the same is demanded at time of trial.

88. Denied. It is admitted one aspect of the 1991 agreement, concerning the construction of a new home and not paying rent have been performed since 1991. However, defendants over glorify their contractual performance by implicating that they have abided by the 1991 agreement when in fact they have refused to deliver the property to the Witheys as called for, refused to pay real estate taxes without judicial intervention, refused to maintain the buildings and refused to provide proof of insurance. Strict proof of the same is demanded at time of trial.

89. Denied. Per paragraph 5 of the 1991 agreement, the Witheys are to receive the Fred Long Farm “together with the dwelling buildings thereon”. In addition, in that the “dwelling buildings” are attached to the real estate they have become part of the real estate and would be conveyed as part of any such conveyance. Strict proof of the same is demanded at time of trial.

90. Admitted.

91. Admitted.

92. Admitted in part, Denied in part. It is ADMITTED that Fred Long still has a leasehold interest in such premises but given his health and general well being, it can not be ADMITTED that he is “in possession” of the same. As such, strict proof of the same is demanded at time trial.

93. Admitted in part, Denied in part. It is ADMITTED that some responsibility for maintenance has been assumed by Fred Long through his lease. However, in that reasonable wear and tear is not his responsibility the general assertion by the defendants is DENIED and strict proof demanded at time of trial.

94. Denied. First, for the reason set forth above, the same is denied. Secondly, as between these parties, the 1991 contract impliedly calls for the buildings to be conveyed in good condition and repair and defendants, not Fred Long, owe such obligation to the Witheys, with whom the Witheys are in a contractual relationship.

95. Admitted.

96. Denied. Although the Witheys were aware of a lease agreement, the exact terms were not disclosed nor were they privy to such terms. By way of further response, as above, reasonable wear and tear is not the responsibility of Fred Long pursuant to his lease, which responsibility remains with the defendants. Strict proof of the same is demanded at time of trial.

97. The same is a legal conclusion for which no response is needed.

98. Plaintiffs hereby incorporate their responses to averments 95 - 97 as if the same were fully set forth at length.

99. Denied. It is denied that under the such lease that Fred Long had "exclusive right of possession and control" in that the lease contains many limitations on Mr. Long's possession and control. As such, the same is denied and strict proof is demanded at time of trial.

100. Denied. For the same reasons set forth in response to averment 96, the same is denied and strict proof is demanded at time of trial.

101. Denied. Although the Witheys were aware that Fred Long had a leasehold interest in a portion of the premises, they were not aware of the exact terms of the lease at the time they entered into the 1991 agreement and therefore did not "consent" to such terms. Furthermore, the same is actually immaterial in that what is at issue does not relate to a failure to perform routine care and maintenance but is associated with ordinary wear and tear which is expressly the defendants' responsibility in the 1989 agreement with Mr. Long and which typically is the landlords' responsibility. As such, strict proof of the same is demanded at time of trial.

102. For the reasons set forth above, the same is denied and strict proof is demanded at time of trial.

WHEREFORE, Plaintiffs request that judgment be entered in their favor as per the requests contained in their civil complaint.

Answer to Counter-Claim

103. Denied. The contract, which speaks for itself, in essence states that if a party needs to resort to the courts for a breach of contract, such as the Witheys have done per the real estate taxes and insurance issues, and they are successful in enforcing such rights, as the Witheys were, then that party is entitled to reasonable attorney's fees. As such, the same is DENIED and strict proof demanded at time of trial.

104. The same is immaterial and irrelevant given that Defendants have not asserted any breach of the 1991 agreement by the Witheys which is required in order for them to recover such fees. By way of further response, it is also noted that defendants were not successful in many other of

their preliminary objections.

105. Admitted in part, denied in part. First, the same is wholly irrelevant and immaterial. Second, it is ADMITTED that the Witheys have rejected the defendants unilateral, unfair and unjust offers of amendments. To the extent such averments implies that the Witheys were required to accept such amendments and have not been justified in such refusals, the same is DENIED and strict proof demanded at time of trial.

106. Denied. The Witheys have at all times honored the 1991 agreement and continue to do so. Strict proof of the same is demanded at time of trial.

107. Denied. For the reasons herein set forth the same is DENIED and strict proof is demanded at time of trial.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor as to Defendants' COUNTER-CLAIM.

Additional New Matter

108. That the Witheys have not nor are they in breach of the 1991 agreement.

109. That the 1991 agreement only provides reasonable attorney's fees for the non-breaching party who successfully pursues and obtains a judicial remedy.

110. That the 1989 lease agreement between Mr. Fred Long and Defendant Shannon Land and Mining only provides that Mr. Long is responsible to keep the premises in "good order and repair" from which "ordinary wear and tear" is excepted.

111. That as landlord and record owner of the premises that defendants are responsible to keep the buildings, leased to Mr. Fred Long, on the premises reasonably maintained.

112. Per the 1991 agreement, the defendants are to convey the "Fred Long Property" with its buildings in reasonable condition.

113. That when the Witheys entered into the 1991 agreement, they had not reviewed the 1989 lease between Shannon Land and Mining and Mr. Fred Long nor were they aware of its material terms and conditions.

114. That the Witheys, as part of the 1991 agreement, are to receive with the conveyance of the Fred Long Farm, all buildings attached thereupon.

115. That the Stage III bonds, subject of the 1991 agreement, should have been released by now.

116. That upon information and belief, defendants have not fully cooperated with DEP to obtain the release of said Stage III bonds.

117. That the defendants have failed to comply with DEP guidelines and regulations which is why the Stage III bonds have not yet been released.

118. That as to the premises known as the Fred Long Farm, the same is in DEP compliance and could be released from the Stage III bonds.

119. That per the 1991 agreement, defendants are impliedly required to cooperate and do all things reasonably necessary to obtain release of the Stage III bonds, subject matter of the 1991 agreement.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor as to their CIVIL COMPLAINT, as well as Defendants' counter-claim, together with the relief previously requested.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

VERIFICATION

We, RICHARD L. WITHEY and ZOE E. WITHEY, Plaintiffs, do hereby swear and affirm that we have read the foregoing REPLY TO NEW MATTER, ANSWER TO COUNTER-CLAIM and ADDITIONAL NEW MATTER and that the averments therein contained are true and correct to the best of our knowledge, information and belief. Furthermore, we are over the age of 18 years of age and we give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4901.

So made this 16 day of May, 2005.

By,

Richard L. Withey
Richard L. Withey, Plaintiff

Zoe E. Withey
Zoe E. Withey, Plaintiff

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

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AL HAMILTON CONTRACTING COMPANY, INC.;
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MINING COMPANY; a Pennsylvania partnership;
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No. 04- 1712 -CD

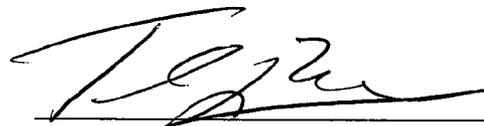
IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I did mail a true and correct copy of Plaintiffs', REPLY TO NEW MATTER, ANSWER TO COUNTER-CLAIM and ADDITIONAL NEW MATTER, to the below indicated person, being counsel of record for the defendants, this 18th day of May, 2005, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

No. 04-1712-CD

**Reply to Additional New Matter
of Plaintiffs**

Filed on behalf of:
Defendants

Counsel of record for this
party:

William C. Kriner, Esquire
219 East Market Street
P. O. Box 1425
Clearfield, PA 16830
(814) 768-7893
PA I.D. # 15559

Counsel of record for
Plaintiffs:

Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830
(814) 375-2221
PA I.D. # 55942

FILED NO CC
P/3:15/04
JUN 07 2005 @
William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

REPLY TO ADDITIONAL NEW MATTER OF PLAINTIFFS

108. Denied. On the contrary, the Plaintiffs have refused to accept the conveyance of the properties as contemplated in the 1991 agreement which is a violation of the agreement.

109. Denied. On the contrary, the remedy for legal fees is engaged “in the event either party breaches this agreement...” and permits either party “to elect to sue for damages...” There is no condition that a party suing be “the non-breaching party” as identified in the Plaintiff’s Additional New Matter.

110. Denied. On the contrary, Mr. Long under the 1989 agreement is: (1) responsible for “the upkeep of the premises” [paragraph 3]; (2) to “keep the leased premises clean and in good order and repair”[paragraph 5]; (3) at the end of the lease term deliver the premises “in the same good order and repair as when originally leased, excepting only ordinary wear and tear” [paragraph 5] and (4) while no improvements can

be made without written approval of Lessor, Mr. Long shall perform "ordinary maintenance of the said premises". The sum of all these provisions vests in Mr. Long responsibility for all repair and upkeep to the leased premises in a fashion that maintains the leased premises in the condition it existed in 1989.

111. Denied. For all the reasons set forth in the reply to paragraph 110 above, the reasonable maintenance of all buildings on the premises leased to Mr. Long in 1989 was the responsibility of Mr. Long alone. The reply to paragraph 110 is incorporated herein by reference as if fully set forth herein.

112. Denied. On the contrary, there exists no provision concerning the condition of buildings on the former Fred Long Farm. The only statement about buildings in conveying the 66 acres of surface is "with the dwelling buildings thereon" [paragraphs 5 & 6] without identifying what buildings there would be or the condition of said buildings at the time of conveyance. As further response, if no buildings existed at the time of conveyance, there would be no breach of the requirements of the 1991 agreement.

113. After reasonable investigation, Defendants are without knowledge or information as to what information the Plaintiffs possessed as to the content of the 1989 agreement with Mr. Long. Strict proof of their lack of knowledge thereof is demanded at trial. By way of further answer, Plaintiff Zoe Withey is the daughter of Mr. Long and was fully aware of all facts and circumstances leading up to the 1991 lease between Plaintiffs and Defendants.

114. Admitted in part; denied in part. It is admitted that "dwelling buildings" existing at the time of conveyance of the 66 acres of surface are to be included, however,

it is denied that the agreement's language in any way or manner includes an obligation as to specific buildings or the condition of any buildings as they existed in 1991.

115. Denied. The Stage III bonds are not released because of the existence of a pond that has not yet been removed from the property of another.

116. Denied. On the contrary, there are ongoing negotiations with DEP for the removal of the pond and the release of the bonding obligation with respect to the permit that covers the Fred Long Farm.

117. Denied. There is not a violation of DEP regulations that require enforcement action by DEP. Rather, the bond has not been released because of the pond on the property of another.

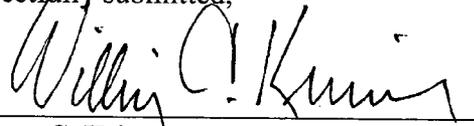
118. Denied. The Fred Long property is covered by a mining permit that includes the pond on the property of another. There can be no legal severance of the Fred Long property from the permit. By further answer, Defendant Hamilton first proposed in 2001 to amend the agreement of 1991, as was envisioned in the agreement in case of such a circumstance, so that the conveyance contemplated by the agreement at the release of the Stage III bonds could be completed.

119. Denied. The release of the Stage III bonds is a condition precedent to the obligation to convey real property under the 1991 agreement. The 1991 agreement was an operations agreement whereby Plaintiffs agreed to accept the construction of a new home in order to leave the 1.14 acres they owned and possessed which enabled Defendant Hamilton to conduct mining operations on the Fred Long Farm. If mining operations never occurred or were completed, or if the Stage III bonds were never released, no obligation existed requiring Plaintiffs or Defendants to convey to each other respective

real estate. There is no implied covenant to obtain release of the bonds on the part of Hamilton in the 1991 agreement since the enforcement and discharge of mining regulations is outside the purview of private contracts any private contracts are not binding on regulators or regulated parties. Nevertheless, Hamilton has been striving since 2001 to have the 1991 agreement amended, as provided in said agreement, to permit the real property to be conveyed without the release of the Stage III bonds.

WHEREFORE, Defendants requests judgment be entered in its favor and against the Plaintiff on the Plaintiffs' Complaint and on the Defendant's Counterclaim as previously prayed for in the Defendant's Answer, New Matter and Counterclaim filed in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William C. Kriner", written over a horizontal line.

William C. Kriner
Attorney for Defendants
PO Box 1425
Clearfield, PA 16830
814-768-7893
ID # 15559

Verification

I verify that the foregoing Reply to Additional New Matter of Plaintiffs is true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 PA. C.S.A. Section 4904 relating to unsworn falsification to authorities and is given pursuant to the provisions for verification of pleadings as defined and provided for in Rule 1024 of the Pennsylvania Rules of Civil Procedure.

Al Hamilton Contracting Company
By

C. Alan Walker, President
C. Alan Walker, President

June 7, 2005

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

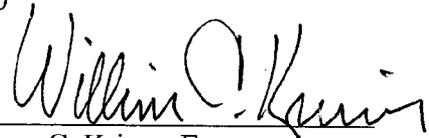
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Additional New Matter of
Plaintiffs was served on the following by regular First Class United States mail on June
7, 2005:

Theron G. Noble, Esq.
Ferraccio & Noble
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adlt individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

**MOTION FOR LEAVE
OF COURT TO AMEND
CIVIL COMPLAINT**

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED^{no}_{cc}

m/11:21:04
JUN 22 2005

William A. Shaw
Prothonotary, Clerk of Courts

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

FILED
013:06:01
JUN 24 2005

William A. Shaw
Prothonotary/Clerk of Courts
ICE Atty Noble

RICHARD L. WITHEY, and)
ZOE E. WITHEY,)

PLAINTIFFS,)

v.)

No. 04- 1712 -CD

AL HAMILTON CONTRACTING COMPANY, INC.;)
a Pennsylvania corporation; SHANNON LAND AND)
MINING COMPANY; a Pennsylvania partnership;)
C. ALAN WALKER, an adult individual; and)
SUSAN W. KRINER; a adult individual.)

IN EQUITY AND AT LAW

DEFENDANTS.)

RULE RETURNABLE

Now, this 24th day of June, 2005, upon consideration of the attached Plaintiff's MOTION FOR LEAVE OF COURT TO AMEND CIVIL COMPLAINT, a RULE is hereby issued upon the Defendants to SHOW CAUSE why the PETITION should not be granted. RULE RETURNABLE, for filing written response, is set for the 15th day of July, 2005 and argument on the MOTION set for the 22 day of July, 2005, at 9 : 00 , A.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

NOTICE

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

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

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641

By The Court,
Judith J. Ammann

Judge...

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

MOTION FOR LEAVE OF COURT TO AMEND CIVIL COMPLAINT

AND NOW, comes the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire of Ferraraccio & Noble, who avers as follows in support of their **MOTION FOR LEAVE OF COURT TO AMEND CIVIL COMPLAINT**:

Background

1. That a CIVIL COMPLAINT was filed in this matter on October 29, 2004.

2. That the crux of the case involves a contract case in which the parties were to convey to each other some real estate after coal removal operations were completed on one of the parcels.

3. One of the “side” but important issues is whether mineral rights, namely gas rights, were to be conveyed to Plaintiffs in the parcel they were to receive.
4. Tied with the gas right issue, Plaintiffs sought in their civil complaint an accounting for gas royalties which were received from the time Plaintiffs claimed they should have been owner of the parcel which generated said royalties.
5. That defendants filed timely preliminary objections alleging in pertinent part that (i) as a matter of law Plaintiffs were not entitled to the gas rights and (ii) a request for an accounting was not the correct procedural vehicle to make such a claim.
6. On March 22, 2005, this honorable court ruled on said preliminary objections, in pertinent part stating as follows (see Paragraph 3 of said ORDER):

DEFENDANT’S PRELIMINARY OBJECTIONS TO COUNT VII OF THE PLAINTIFF’S COMPLAINT WHEREIN THE PLAINTIFFS ARE REQUESTING AN ACCOUNTING AS TO OIL AND GAS PROCEEDS IS HEREBY GRANTED. PLAINTIFF’S REQUEST FOR AN ACCOUNTING IS DISMISSED. THIS RULING IS BASED UPON THE COURT’S REVIEW OF THE LANGUAGE IN PARAGRAPH #5 OF THE AGREEMENT ENTERED INTO BETWEEN THE PARTIES (EXHIBIT “A” TO PLAINTIFF’S COMPLAINT) WHEREIN IT STATES THAT THE DEFENDANT “HAMILTON WILL ARRANGE FOR THE CONVEYANCE OF SURFACE OF THE FORMER FRED LONG FAR...”(EMPHASIS ADDED) TO THE PLAINTIFFS. SURFACE IS A DISTINCT INTEREST IN REAL ESTATE UNDER PENNSYLVANIA LAW AND BY IMPLICATION ALSO INCLUDES THE RIGHT OF SURFACE SUPPORT. SMITH V. GLEN ALDEN COAL CO.,

32 A.2d 227 (Pa. 1943). HOWEVER, ABSENT SPECIFIC LANGUAGE TO THE CONTRARY, THE USE OF THE WORD SURFACE CANNOT BE INTERPRETED TO REQUIRE , AS A MATTER OF LAW, THAT DEFENDANTS CONVEY THE OIL AND GAS RIGHTS TO THE PLAINTIFFS. AS THE COURT HAS DETERMINED THAT THE PLAINTIFFS HAVE NO RIGHT UNDER THE TERMS OF THE AGREEMENT TO A CONVEYANCE OF THE OIL AND GAS RIGHTS, THEIR REQUEST FOR AN ACCOUNTING OF ANY MONIES RECEIVED UNDER ANY OIL AND GAS LEASE BY AND OF THE DEFENDANTS IS MOOT.

7. In paragraph 2 of said ORDER, the Court had already determined that the facts of this situation do not meet the criteria for an accounting.

8. That Defendants filed a timely responsive pleading to the CIVIL COMPLAINT, Plaintiffs responded by timely filing a reply to new matter and raising additional new matter to which defendants have timely responded. As such, pleadings are now closed.

9. That Plaintiffs now seek to include in their CIVIL COMPLAINT a request that gas and oil rights not be reserved in the conveyance from defendants to plaintiffs and that such request not be part and parcel of a request for an accounting.

Amendment I: Averment 47

10. That Plaintiffs seek to amend averment 47 so that it would read as follows:

47. That defendants should be ordered to convey the Fred Long property to the Witheys, only excepting and reserving coal, solely excepting any such reservations which appeared in the chain of title as of the time the 1991 agreement was entered.

11. It is Plaintiffs' position, as the Court stated in its opinion, that surface is a distinct interest in real estate but the oil and gas rights are included with the surface unless they have been previously separated. Hutchinson v. Kline, 199 Pa. 564 (1901).

12. In the case presently before the Court, the gas rights have always been part and parcel of the surface and should be included in the conveyance sought by the Plaintiffs, unless the gas rights had been separated from the surface prior to the 1991 agreement, which the Plaintiffs allege did not occur and in support hereof offer the following information as to the relevant chain of title:

The first separation of any interest from the surface of these premises occurred in 1883, when Moses Wise, et.al., conveyed the "coal rights" to S. R. Peale, by deed recorded at 35-32. In this conveyance from Moses Wise to S.R. Peale, nothing other than "all the coal" was conveyed. All other conveyances of the surface "excepted and reserved" the coal rights.

As to conveyances concerning coal and other minerals, for the first time, in 1899, Bloomington Coal and Coke Company, for whom S.R. Peale was president, conveyed to Peale, Peacock & Kerr, "all the coal and other minerals" in the subject premises. This was recorded at Deed Book 104-419. It references the deed recorded at Book 35, page 32. However, "and other minerals" was not included in the Moses Wise to S.R. Peale.

Defendant Shannon Land and Mining then obtained some of the coal rights from Peale Peacock & Kerr by deed of 1954, recorded at Book 436, page 3. Shannon Land and Mining then united the title to coal rights to the surface by deed of 1988, recorded at Book 1258, page 349.

13. The only reference to any “minerals” in the chain of title for the subject premises was the 1899 conveyance from Bloomington Coal and Coke Company to Peale, Peacock & Kerr.

However, in the S.R. Peale, i.e. Bloomington Coal and Coke Company, chain of title, the only interest was “all the coal” per the 1883 conveyance by Moses Wise, et.al..

14. Based upon the chain of title, Plaintiffs herein allege that 1991 agreement, stating that they are to receive the surface, therefore means they are to get all interests in the premises solely excepting the coal rights which were removed from the chain of title in 1883.

15. Plaintiffs do not contest that they are only to receive the “surface” of the Fred Long Farm. However, to be perfectly clear, the oil and gas, and everything else other than coal, travel with the surface in that there has not been any severance of these items in the surface of the Fred Long Farm chain of title.

16. To put this another way, Plaintiffs do not seek to have gas, oil or other mineral rights included in the conveyance, only that defendants not be permitted to “except and reserve” as they have proposed to do. Plaintiffs only seek the surface rights from which no legitimate basis can be made to except and reserve anything other than coal.

Amendment II: Unjust Enrichment

16. As a side point, if the Plaintiffs are entitled to (i) the surface without any exception except for coal; and (ii) a conveyance earlier than when it receives the same, then defendants have breached the 1991 agreement.

17. As a result of that breach by the defendants, they have been unjustly enriched by any money they received incidental to the gas leases starting from the point in time that the surface should have been conveyed.

18. As such, Plaintiffs should be entitled to seek compensation for the this money which have unjustly enriched the defendants.

19. Plaintiffs request they be permitted to plead a count for unjust enrichment, being Count V, replacing the initial request for an accounting.

Request for Certification

19. Given the dynamics of the Fred Long Farm, the issue concerning the gas rights is a controlling question of law the resolution of which will materially advance this matter.

20. In the event that this Honorable Court does not agree with the Plaintiffs position, a position upon which Plaintiffs are convinced they are legally and factually correct, Plaintiffs respectfully request that this Court certify this issue for appeal pursuant to Pa.R.A.P. 1312.

21. Plaintiffs understand and acknowledge this Court's ruling on this point concerning the Preliminary Objections. However, in that the same was coupled with the request for accounting, and not presented with chain of title information which was not of record at that time, Plaintiffs request this amendment or in the alternative that this matter be certified

WHEREFORE, Plaintiffs request that they either be granted leave of Court to amend their civil complaint; or the issue as to what travels with the surface be certified for appeal.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I did mail a true and correct copy of Plaintiffs' MOTION FOR LEAVE OF COURT TO AMEND CIVIL COMPLAINT, to the below indicated person, being counsel of record for the defendants, this 21st day of June, 2005, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adlt individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

CERTIFICATE OF SERVICE

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED ^{NO}
m/1:25/05 ^{cc}
JUN 29 2005 ^{js}

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I did mail a true and correct copy of the RULE RETURNABLE issued upon Plaintiffs' MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT to the below indicated person, being counsel of record for the defendants, this 28th day of June, 2005, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

CA

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

:
: No. 04-1712-CD
:
: **Motion for Continuance**
:
: Filed on behalf of:
: Defendants
:
: Counsel of record for this
: party:
: William C. Kriner, Esquire
: 219 East Market Street
: P. O. Box 1425
: Clearfield, PA 16830
: (814) 592-0637
: PA I.D. # 15559
:
: Counsel of record for
: Plaintiffs:
:
: Theron G. Noble, Esq.
: 301 East Pine Street
: Clearfield, PA 16830
: (814) 375-2221
: PA I.D. # 55942

FILED¹⁰⁰
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JUL 05 2005
Atty Kriner
(CK)

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

MOTION FOR CONTINUANCE

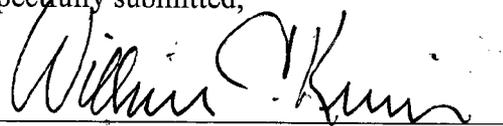
NOW COMES, the Defendants in the above captioned matter, requesting the
Honorable Court for a continuance, and in support thereof, sets forth the following:

1. That on 24 June, 2005, the Court issued a Rule Returnable against Defendants based on a Motion for Leave of Court to Amend Civil Complaint filed by the Plaintiffs.
2. That the Rule requires a written response by 15 July 2005 and sets argument on the Motion for 22 July 2005.
3. That the Rule was served on counsel for the Defendant by regular mail on 28 June 2005.
4. That the Rule was received by counsel for the Defendant on 29 July 2005.
5. That counsel for the Defendants is scheduled for a continuing legal education seminar in Harrisburg on 22 July 2005.
6. That counsel for the Defendants will be out of the country on a Christian mission trip from 26 July to 12 August 2005.

7. That the Defendants have not requested any prior continuances in this matter.
8. That the granting of a continuance with not be prejudicial to Plaintiffs.
9. That the Defendants request a continuance of the argument on the matter of Motion for Leave to Amend Civil Complaint until 15 August 2005 or a date as soon thereafter as convenient to the Honorable Court.
10. That a form of Order required by Clearfield County Local Rules of Court 208.3(b) (1) and (5) is attached hereto.
11. That a form of Certification required by Clearfield County Local Rules of Court 208.2(d) is attached hereto.

WHEREFORE, Defendants request the Honorable Court for a continuance of the argument now set for 22 July 2005.

Respectfully submitted,



William C. Kriner
Attorney for Defendants
PO Box 1425
Clearfield, PA 16830
(814) 592-0637
PA ID # 15559

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

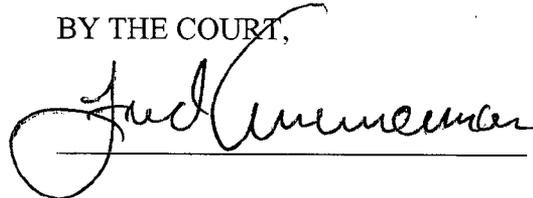
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

ORDER

AND NOW, this 6th day of July, 2005, upon consideration of the foregoing
Motion for Continuance, it is hereby ORDERED that the argument shall be held on the
Motion for Leave to Amend Civil Complaint on the 19 day of August, 2005, at
1:30, P.M., in Courtroom No. 1, Clearfield County Courthouse, and notice of
this Order shall be provided to all parties by the moving party.

BY THE COURT,



FILED ^{icc}
019-39614 ^{Adv Kriner}
JUL 07 2005 ^{GW}

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

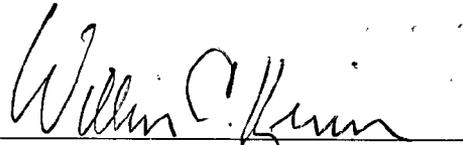
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATION

The undersigned, William C. Kriner, Esq., Attorney for Defendants, hereby certifies to the Court that on Tuesday morning, 5 July 2005, he discussed the filing of the foregoing Motion with Theron G. Noble, Esq., Attorney for the Plaintiffs, seeking to obtain concurrence with this Motion. Mr. Noble denied concurrence.

This certification is made in compliance with Clearfield County Local Rule of Court No. 208.2(d).



William C. Kriner
Attorney for Defendants

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

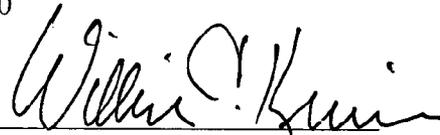
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Continuance, Certification
& Order were served on the following by regular First Class United States mail on July 5,
2005:

Theron G. Noble, Esq.
Ferraccio & Noble
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.;
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adult individual

Defendants

:
: No. 04-1712-CD
:
: **Certificate of Service**
:
: Filed on behalf of:
: Defendants
:
: Counsel of record for this
: party:
: William C. Kriner, Esquire
: 219 East Market Street
: P. O. Box 1425
: Clearfield, PA 16830
: (814) 592-0637
: PA I.D. # 15559
:
: Counsel of record for
: Plaintiffs:
:
: Theron G. Noble, Esq.
: 301 East Pine Street
: Clearfield, PA 16830
: (814) 375-2221
: PA I.D. # 55942

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William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

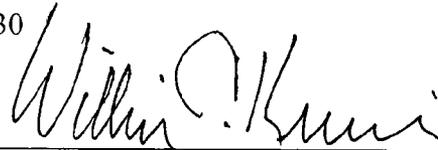
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that the Order dated July 6, 2005, scheduling argument on Motion for Leave to Amend Civil Complaint was served on the following by regular First Class United States mail on July 7, 2005:

Theron G. Noble, Esq.
Ferraccio & Noble
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

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LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

:
: No. 04-1712-CD
:

: **Defendant's Answer and Legal Memorandum in**
: **Opposition to Plaintiffs' Motion for Leave of**
: **Court to Amend Civil Complaint**
:

: Filed on behalf of:
: Defendants
:

: Counsel of record for this
: party:
:

: William C. Kriner, Esquire
: 219 East Market Street
: P. O. Box 1425
: Clearfield, PA 16830
: (814) 768-7893
: PA I.D. # 15559
:

: Counsel of record for
: Plaintiffs:
:

: Theron G. Noble, Esq.
: 301 East Pine Street
: Clearfield, PA 16830
: (814) 375-2221
: PA I.D. # 55942
:

FILED ^{NO}
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JUL 18 2005 ^(WR)

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

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adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

**ANSWER TO MOTION FOR LEAVE OF COURT TO AMEND CIVIL
COMPLAINT**

NOW COMES, Defendants in the above captioned action with an Answer to the
Plaintiffs' Motion for Leave of Court to Amend Civil Complaint as follows:

1. Admitted.

2. Denied. On the contrary, it is alleged, that the agreement between the parties of
1991 is an operations agreement whereby Plaintiffs exchanged mining right prohibitions
in and around their 1.14 acres in consideration for Defendant Hamilton erecting for them,
without cost, a new dwelling in which they could live rent free. The exchange of real
property by conveyance was not the "crux" of the contract between the parties but was
conditioned on matters that were not in existence at the time of the agreement between
the parties.

3. Denied. On the contrary, it is alleged that the plain language of the agreement states that the Plaintiffs were to receive "surface only" of the Fred Long Farm in the event conditions were met to permit the exchange of real property between the parties. No oil, gas, coal, clay, fireclay or any minerals of any nature and kind were to be conveyed by deed exchange to the Plaintiffs by Defendants.

4. Denied. On the contrary, it is alleged, that since no conveyance of anything but surface was to be made to the Plaintiffs, there is no right or authority for the Plaintiffs to be entitled to an accounting for oil and gas revenues obtained by the Defendant or any other parties. Count VII of the Plaintiffs' Complaint was dismissed by the Court in the 22 March 2005 Order.

5. Admitted.

6. Admitted.

7. Denied. On the contrary, it is alleged that Paragraph 2 of the Order of 22 March 2005 deals with Count V of the Plaintiffs' Complaint which concerns an accounting for barn damage. The Court's granting of the preliminary objection was based on the failure of Plaintiffs to meet the legal standards for an accounting under Williams v. Finlow, Mueller & Co., 292 Pa. 244, 141A.47(1928). The decision to dismiss is not based on the "facts of the situation" as alleged by the Plaintiffs but on the legal relationship of the parties under the 1991 agreement.

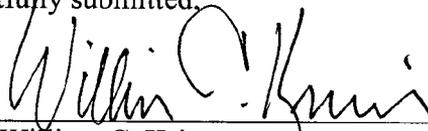
8. Admitted.

9 through 21. The allegations in these paragraphs go to the subject matter of the proposed amendments by the Plaintiffs as well as a request to certify for appeal, and are not allegations of why or whether a right to amend should be granted by the Honorable Court. To the extent an answer is required, they are denied. By way of further answer, and further enunciated and argued in the legal memorandum accompanying this answer, the Defendants allege:

- (a) The cause of action represented in Count VII of the Plaintiffs' Complaint was dismissed as a matter of law;
- (b) Recitation of additional facts does not change the legal relationship of the Parties in the 1991 agreement;
- (c) Recitation of additional facts does not create additional legal rights for Plaintiffs;
- (d) Plaintiffs' Motion is no more than a legal challenge to the Court's 22 March 2005 decision;
- (e) The 22 March 2005 Order of the Court was an interlocutory Order;
- (f) Plaintiffs have failed to properly and timely attempt to appeal an interlocutory order;
- (g) The cause of action dismissed in Count VII of the Plaintiffs' Complaint does not meet any of the criteria for appealing interlocutory orders;
- (h) The cause of action in Count VII of the Plaintiffs' Complaint does not involve a controlling question of law where there is substantial ground of difference of opinion in the Commonwealth.

WHEREFORE, the Motion for Leave of Court to Amend Civil Complaint filed
by the Plaintiffs must be denied.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William C. Kriner", written over a horizontal line.

William C. Kriner
Attorney for Defendants
P. O. Box 1425
Clearfield, PA 16830
PA I.D. # 15559

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

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LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Answer and Legal Memorandum in Opposition to Plaintiffs' Motion for Leave of Court to Amend Civil Complaint was served on the following by regular First Class United States mail on July 14th, 2005:

Theron G. Noble, Esq.
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830


William C. Kriner, Esq.
Attorney for Defendants
P.O. Box 1425
Clearfield, PA 16830
(814) 768-7893
PA ID # 15559

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

RICHARD L. WITHEY, et al :
VS. : NO. 04-1712-CD
AL HAMILTON CONTRACTING :
COMPANY, INC., et al :

O R D E R

NOW, this 19th day of August, 2005, following argument on the Plaintiffs' Motion to Amend Civil Complaint; the Court noting that the Court has previously determined by implication that the issues contained in the proposed Amended Complaint relative oil and gas rights are not valid, it is the ORDER of this Court that said motion be and is hereby denied.

BY THE COURT,

President Judge

FILED ^{CP} 2cc,
0/10:08/01 Atty: Noble
AUG 22 2005 Kriner

William A. Shaw
Prothonotary/Clerk of Courts

8

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

RICHARD L. WITHEY and
ZOE E. WITHEY

-VS-

No. 04-1712-CD

AL HAMILTON CONTRACTING
COMPANY, INC., a
Pennsylvania corporation;
SHANNON LAND AND MINING
COMPANY, a Pennsylvania
partnership; C. ALAN WALKER,
an adult individual; and
SUSAN W. KRINER, an adult
individual

O R D E R

NOW, this 30th day of August, 2005, it is the
ORDER of this Court that the Plaintiffs' request that the
Court certify the issues contained within the Plaintiffs'
amended complaint for appeal pursuant to Rule 1312 of
Appellate Procedure be and is hereby denied.

BY THE COURT,



President Judge

FILED^{2cc}
01/11/2100
SEP 01 2005
Atty's:
Noble
Krones

William A. Shaw
Prothonotary/Clerk of Courts 

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adlt individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED NO
m/12:47/6/00 cc
SEP 30 2000

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

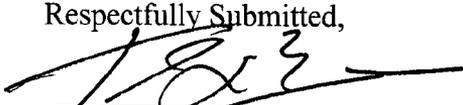
TO: William A. Shaw, Prothonotary

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I did mail a true and correct copy of Plaintiffs' FIRST SET OF DISCOVERY MATERIALS, to the below indicated person, being counsel of record for the defendants, this 29th day of September, 2005, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,


Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adlt individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED NO
MAR 22 2006
171

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

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MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

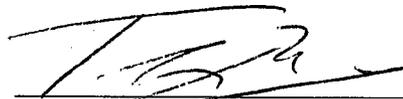
IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I did propound on all defendants Plaintiffs' THIRD SET OF DISCOVERY MATERIALS, to the below indicated person, being counsel of record for the defendants, this 20th day of March, 2005, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

27

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

MOTION TO COMPEL

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED *no cc*
m/12:19/06
MAY 02 2006 *cc*

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND
AND MINING COMPANY; a Pennsylvania
partnership; C. ALAN WALKER, an adult
individual; and SUSAN W. KRINER; a adult
individual,
DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

RULE TO SHOW CAUSE

Now, this 3RD day of May, 2006, upon consideration of the attached Defendant's MOTION TO COMPEL, a RULE is hereby issued upon the Plaintiff to SHOW CAUSE why the MOTION should not be granted. RULE RETURNABLE, for filing written response, is set for the 26th day of May, 2006 and argument on the MOTION set for the 6th day of June, 2006, at 11 :00, A.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

NOTICE

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

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

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641

FILED
010256
MAY 05 2006

By The Court,


Judge...

William A. Shaw
Prothonotary/Clerk of Courts
ICC Atty. Noble

4. Although Defendants have responded, usually in a timely manner, they have objected to various requests for various reasons.
5. Rather than “piecemeal” the defendant’s various discovery objections, Plaintiffs bring forward all Defendant’s objections for which Plaintiffs believe discovery should be permitted.
6. Plaintiffs in their first set of discovery materials included a “request for production of documents” which therein included true and correct copies of (i) all documents submitted by any of the defendants to any governmental agency in application for a mining permit for the “Bloomington job” (SEE REQUEST #6); (ii) of the permit or permits issued by any governmental agency to any of the defendants concerning the “Bloomington Job” (SEE REQUEST #7); and (iii) any authorizations which were received by, given to or given by any of the defendants which enable or assisted any of the defendants in receiving a permit or permits for the “Bloomington Job”. A true and correct copy of Plaintiffs’ said requests as well as Defendants’ Objections thereto is attached as Exhibit “A”.
7. Defendants’ objected to the same on the basis that the permitting for the job has “no bearing” on the case at hand.
8. That the evidence sought not only might lead to admissible evidence, but is most likely admissible evidence for two reasons. First, defendants claim that they are currently under no obligation to transfer the property because the Stage III bonds have not been released. The information sought will directly relate as to what was required to release the bonds and is currently required, or better put, what remains to be done. It should also be noted that Plaintiffs believe as a theory in this case that Defendants have failed to take or perform the last few

ministerial type duties to have the bonds released in order to prevent the contractual requirement to convey the property to Plaintiffs. As support of this allegation, Plaintiffs note that of an approximately \$14,000 bond(s), only \$305 have not been released and Defendants have not performed any act since 1998 to have said bond released. Second, as the Court is aware, one defendant owns the land (Shannon Land and Mining) while another had the house built (Hamilton). Each of these defendants has a common nexus in that Defendant C. Alan Walker controlled and/or dominated these entities. However, at some point in this litigation it will become important to determine exactly what each of these defendant entities did or did not do in this contract/transaction. The information herein sought will greatly assist to determine exactly what role each defendant entity had in this process.

9. At other times in response to other of Plaintiff's discovery requests, defendants again referenced these documents but refused to provide the same. (See Interrogatories 3 and 4 of Plaintiff's third set of discovery requests as well as Defendants' objections to the Third Set of Request for Production of Documents, attached hereto as Exhibit "B").

WHEREFORE, Plaintiffs request that Defendants be ORDERED to produce the documents relative to the permitting for the mining process known as "The Bloomington Job".

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Any and all documents concerning any contracts, agreements, letters, memorandums or the like between defendants in this case concerning the Withey Home and/or the Fred Long Farm; None exists.

2. Any and all contracts, letters, agreements, memorandums or the like between any of the defendants and Neff Construction Company concerning the building of the home for the Plaintiffs on the Fred Long Farm;

Attached.

3. Any tax filings, letters, agreements or memorandums between any of the defendants and any taxing authority concerning the transaction, or any portion thereof, relating to the "1991 Agreement";

None exists.

4. A true and correct copy of all partnership agreements between defendant Shannon Land and Mining Company and its partners between November 1, 1991 and the present;

None exists.

5. A true and correct copy of any and all insurance claims filed by any defendant on either the Fred Long Farm or The Withey Home since November 27, 1991 to present;

Attached.

6. A true and correct copy of all documents submitted by any of defendants to any governmental agency in application for a mining permit for the "Blommington Job";

*See below.

7. A true and correct copy of the permit or permits issued by any governmental agency to any of the defendants concerning the "Blommington Job";

Objection. Same as no. 6 above.

8. A true and correct copy of any letters, memorandums, reports or the like which were generated by or received by any of the defendants in attempt to remove the Stage III bonds on the "Blommington Job";

Attached.

9. A true and correct copy of any authorizations which were received by, given to or given by any of the defendants which enable or assisted any of the defendants in receiving a permit or permits for the "Blommington Job";

Objection. Same as no. 6 above.

10. Any and all documents which show or tend to show the coal reserves and or length of time to remove the coal on the "Blommington Job";

Defendants are not aware of any such documents.

11. A true and correct copy of any documents submitted, since November 27, 1991, by any defendant from which any taxing authority assessed either the real property or any buildings upon the real property of the Fred Long Farm; and

None exists.

*6. Objection. This request for production is objected to on the ground that the discovery sought will cause unreasonable annoyance, oppression, burden and expense to Defendants because the mining application and permitting has no impact on this case except as to Stage III bonds. The Stage III bond issue raised in request no. 8 has been addressed. Furthermore, the documents herein requested are available for public review at the offices of DEP and the SCS.

Exhibit "A"

3. Did Richard Withey sign any documents, permits, authorizations or otherwise, to permit Defendant Al Hamilton Contracting, Inc., to remove coal pursuant to Permit No. 17803166? In the event your response is in the affirmative, identify any and all such documents.

Answer As part of the permitting process Richard Withey executed a Building Variance Authorization for Mining and a Contractual Consent of Landowner.

4. Did Zoe Withey sign any documents, permits, authorizations or otherwise, to permit Defendant Al Hamilton Contracting, Inc., to remove coal pursuant to Permit No. 17803166? In the event your response is in the affirmative, identify any and all such documents.

Answer As a part of the permitting process Zoe Withey executed a Building Variance Authorization for Mining and a Contractual Consent of Landowner.

5. Identify the last activity performed by any defendant to satisfy any condition necessary to have the remaining \$305 for the bond associated with Permit No. 17803166 released, including the date of such activity and who performed the activity.

Answer The bond remaining is \$345 not \$305 as posited in Interrogatory 5. The last activity to obtain bond release was performed by Al Hamilton Contracting Company on May 26, 1998, which was final seeding of the mine site.

Exhibit "B"

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Any and all documents identified in response to any interrogatory herein;

* See below.

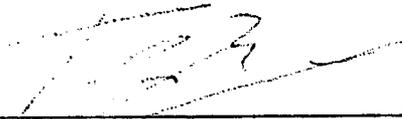
2. True and correct copies of any and all documents which address the quality, quantity or location of coal subject to be removed pursuant to the Bloomington Job;

* See below.

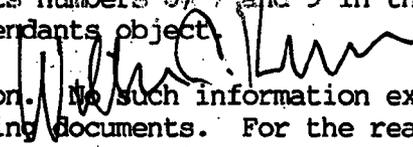
3. True and correct copies of any and all documents submitted or received by municipal, county or school district taxing authorities which caused or evidenced that the home built by Neff Construction was to be assessed to Defendant Al Hamilton Contracting;

Defendant Al Hamilton Contracting Company has no knowledge of any such information except the tax bills received by Al Hamilton Contracting, the most recent hereto attached.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

- 
- * 1. Objection. The only documents identified herein are in Answers 3 and 4. For the reasons set forth in the objections to Request for Production of Documents numbers 6, 7 and 9 in the Plaintiffs' First Set of Interrogatories, the Defendants object.
- 
- * 2. Objection. No such information exists except for that included in permitting documents. For the reasons set forth in the objections to Request for Production of Documents numbers 6, 7 and 9 in the Plaintiffs' First Set of Interrogatories, the Defendants object.

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

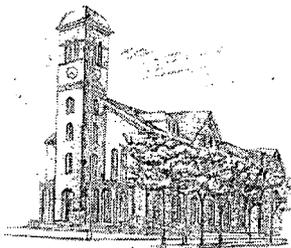
CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I did propound on all defendants Plaintiffs' MOTION TO COMPEL, to the below indicated person, being counsel of record for the defendants, this 29th day of April, 2006, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,


Theron G. Noble, Esquire
Ferraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 5/15/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I serve a certified copy of the RULE TO SHOW CAUSE issued upon Plaintiffs' MOTION TO COMPEL, to the below indicated person, being counsel of record for the defendants, this 6th day of May, 2006, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

FILED

MAY 08 2006
m/2:00/w
William A. Shaw
Prothonotary/Clerk of Courts
W.C. C/C

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.,
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER; an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

:
: No. 04-1712-CD
:
: **Defendants' Answer to Motion to Compel**
:
: Filed on behalf of:
: Defendants
:
: Counsel of record for this
: party:
: William C. Kriner, Esquire
: 219 East Market Street
: P. O. Box 1425
: Clearfield, PA 16830
: (814) 768-7893
: PA I.D. # 15559
:
: Counsel of record for
: Plaintiffs:
:
: Theron G. Noble, Esq.
: 301 East Pine Street
: Clearfield, PA 16830
: (814) 375-2221
: PA I.D. # 55942

FILED No cc
019:05/61
MAY 24 2006 (10)

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

DEFENDANTS' ANSWER TO MOTION TO COMPEL

NOW COME, the Defendants in the above captioned matter by and through their legal counsel, William C. Kriner, Esquire, filing the following Answer to Motion to Compel filed by the Plaintiffs:

1. Admitted.

2. Denied. On the contrary, the Plaintiffs entered into an operations agreement whereby Defendant Al Hamilton Contracting Company ["AHC"] agreed to build a new home for the Plaintiffs in exchange for the Plaintiffs releasing certain mining rights. Defendant Shannon is not a party to the agreement and any exchange of properties was a contingency that was not the basis of the agreement between AHC and the Plaintiffs.

3. Admitted.

4. Denied. On the contrary, the Defendants have uniformly responded in a timely manner.

5. The statement in paragraph 5 of the Plaintiffs' Motion recites the "state of mind" of the Plaintiffs and a strategy in pleading and is not an allegation to which a response is required. However, if a response is required, it is denied.

6. Admitted.

7. Denied. On the contrary the Defendants' objections were based on valid objections under the Rules of Civil Procedure [Rule 4011 (b)]. The requests objected to are not relevant to the case at hand and are not "reasonably calculated to lead to the discovery of admissible material." Furthermore, the requested materials are a matter of public record available for review from at least two sources, DEP and SCS.

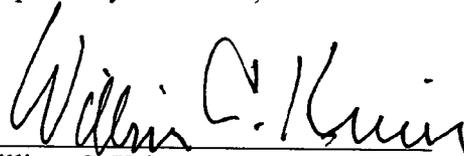
8. Denied. In large part, the statements set forth in paragraph 8 of the Plaintiffs' motion are legal arguments and not factual allegations to which a response is required. However, the statement that production of the documents "not only might lead to admissible evidence, but is most likely admissible evidence..." is denied. The Defendants have provided all the information requested as to the Stage III bond releases and there is no other information in the permit documents concerning same. In addition, the permit documents have no connection to Defendant Shannon since they are in the name of AHC and AHC is the contracting party with the Plaintiffs. Therefore, permit documentation will not provide information with respect to the 1991 agreement. Finally, the Defendants have twice through legal counsel of the Plaintiffs attempted to transfer real estate to Plaintiffs by amending the agreement of 1991, which amendment was foreseen and permitted, but twice the Plaintiffs have refused the conveyance. Therefore, status of Stage III bonds is not keeping Defendants from conveying real estate.

9. Denied. On the contrary, the Defendants did not refuse to provide information but filed timely, valid objections under the Rules of Civil Procedure.

10. That the Motion to Compel fails to contain the certification required by 46 J.D.R.C.P. 208.2(d) as to motions generally and the certification required by 46 J.D.R.C.P. 208.2(e) as to motions regarding discovery.

WHEREFORE, Defendants request the Honorable Court to dismiss the Plaintiffs' Motion to Compel from a substantive and/or procedural basis.

Respectfully submitted,



William C. Kriner
Attorney for Defendants
P.O. Box 1425
Clearfield, PA 16830
814-768-7893
I. D. # 15559

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

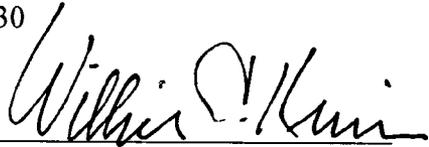
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Answer to Motion to
Compel was served on the following by regular First Class United States mail on May
24, 2006:

Theron G. Noble, Esq.
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830


William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

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a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

No. 04-1712-CD

**Joint Motion for Partial Settlement
and Order**

Filed on behalf of:
Plaintiffs & Defendants

Counsel of record for Plaintiffs:

Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830
(814) 375-2221
PA I.D. # 55942

Counsel of record for
Defendants:

William C. Kriner, Esq.
219 East Market St., P.O.Box 1425
Clearfield, PA 16830
(814) 768-7893
PA I.D. # 15559

FILED No cc
0/2:5594
OCT 12 2006 @

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

JOINT MOTION FOR PARTIAL SETTLEMENT

NOW COMES, the Plaintiffs by their legal counsel, Theron Noble, Esq., and the Defendants by their legal counsel, William C. Kriner, Esq., filing the following Joint Motion for Partial Settlement in the above captioned matter:

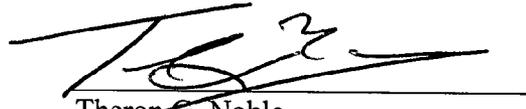
1. The parties agree that it is in their best interests to complete the conveyance of the real estate contemplated in the 1991 agreement between the Plaintiffs and Defendant Al Hamilton Contracting Company. The deeds to be executed and exchanged are attached to this motion.
2. That both Defendants agree to join the conveyance to the Plaintiffs.
3. That the conveyance of the real property will settle and satisfy Counts II and VIII of the Plaintiffs' Complaint in the above captioned matter.
4. That there remains to be litigated Counts III, IV, VI and IX of the Plaintiffs' Complaint as well as the Defendants' Counter Claim.

5. That the parties agree that the Plaintiffs shall have a period of thirty (30) days from the date of an Order of Court granting this motion to file an amended complaint concerning the barn damage under Count VI of the Plaintiffs' Complaint.
6. That there presently is before the Court the Plaintiffs' Motion to Compel.
7. The parties agree that all discovery in this case should be completed within one hundred twenty (120) days from the date of an Order of Court granting this motion, or within one hundred twenty (120) days of the Court's Order on Plaintiffs' Motion to Compel, whichever is last in time.
8. The parties agree that the Plaintiffs' right to appeal from the 22 March 2005 Order of this Court as it exists at this time shall be preserved.

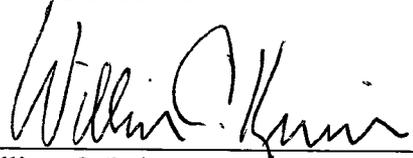
WHEREFORE, the parties hereto pray the Honorable Court to grant this joint motion and order the following:

- A. That the conveyance of real estate contemplated in the 1991 agreement between the Plaintiffs and Defendant Al Hamilton Contracting Company shall be completed by and through execution and delivery of the deeds attached to this motion;
- B. That the execution and delivery of the deeds as aforesaid shall settle and satisfy Counts II and VIII of the Plaintiffs' Complaint;
- C. That there shall be preserved for the Plaintiffs the right to appeal, as it exists at this time, from the 22 March 2005, Court Order entered in this matter;

- D. That the subject matter raised in the Plaintiffs' Complaint Counts III, IV, VI and IX as well as the Defendants' Counter Claim and the answers, affirmative defenses, new matter and replies thereto shall be preserved and litigated in due course;
- E. That any and all factual and legal positions raised by the parties in their respective pleadings shall be preserved;
- F. That the Plaintiffs shall have the right to amend Count VI of their complaint as they deem fit concerning the issue of barn damage within thirty (30) days of this Court's Order;
- G. That all discovery in this matter shall be completed within one hundred twenty (120) days of this Court's Order, or within one hundred twenty (120) days of the Court's Order on the Motion to Compel filed by the Plaintiffs, whichever is last in time.



Theron G. Noble
Attorney for Plaintiffs
301 East Pine Street
Clearfield, PA 16830
814-375-2221
PA I.D. No. 55942



William C. Kriner
Attorney for Defendants
219 East Market Street
Clearfield, PA 16830
814-768-7893
PA I.D. No. 15559

COPY

THIS DEED,

MADE the ____ day of _____, in the year two thousand six (2006) between **C. ALAN WALKER**, of Lawrence Township, Clearfield County, Pennsylvania, and **SUSAN W. KRINER**, of Lawrence Township, Clearfield County, Pennsylvania, trading and doing business as **SHANNON LAND AND MINING COMPANY**, of Bigler, Pennsylvania, and **AL HAMILTON CONTRACTING COMPANY**, a Pennsylvania business corporation, having its principal place of business at Woodland, Pennsylvania, parties of the first part, hereinafter called the "GRANTORS",

AND

RICHARD L. WITHEY and ZOE E. WITHEY, husband and wife, of R. R. # 1, Box 488, Olanta, PA 16863, as tenants by the entireties, parties of the second part, hereinafter called the "GRANTEES".

WITNESSETH:

That for and in consideration of the sum of One and no/100 (\$1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey to the said Grantees, their heirs and assigns,

ALL that certain tract or parcel of land situate in the Township of Pike, County of Clearfield and State of Pennsylvania, bounded and described as follows:

BEGINNING at hazel in line of land now or formerly of William Price; thence South along land now or formerly of Thomas Long eighty- three and one-third (83 1/3) degrees East one hundred twenty-two and eight-tenths (122.8) perches to post corner of land now or formerly of Alfred Long; thence along said land now or formerly of Long South eighty-eight (88) degrees East sixty-eight (68) perches to post in public road; thence along said public road and land now or formerly of John Owens North one and one-half (1-1/2) degrees West sixty-nine and five-tenths (69.5) perches to post; thence along land now or formerly of Michael Wise Estate North six and one-half (6-1/2) degrees West forty-nine and nine-tenths (49.9) perches to a white pine stump; thence along land now or formerly of Michael Wise Estate North sixty (60) degrees West fifty-four and eight-tenths (54.8) perches to a post corner of land now or formerly of said Wise Estate; thence South along lands now or formerly of W. J. Owens and Adam Smith and William Price sixty-four and one-tenth (64.1) degrees West one hundred eighty-five and three-tenths (185.3) perches to hazel and place of beginning. Containing one hundred three (103) acres and sixty-two (62) perches but after deductions for the reservations hereinafter recited containing, according to the Mapping Office of Clearfield County, sixty-six (66) acres.

The said premises being further identified by Clearfield County Assessment Map Number 126-H11-21.

RESERVING and EXCEPTING, therefrom, however, all the coal, in, under and upon said premises, the same having been sold to S. R. Peale, by deed dated June 4, 1883; and also reserving and excepting, therefrom, however, all that certain piece or parcel of land bounded and described as follows, to wit: BEGINNING at a post; thence South forty-six and one-fourth ($46\frac{1}{4}$) degrees West sixty-five and five-tenths (65.5) perches to a witch hazel; thence South eighty-three and one-half ($83\frac{1}{2}$) degrees East forty-seven (47) perches to post; thence North one (1) degree East fifty and four-tenths (50.4) perches to post and beginning. Containing seven (7) acres and fifty-four (54) perches, neat.

ALSO RESERVING and EXCEPTING, therefrom however, all that certain piece of land bounded and described as follows, to wit: BEGINNING at a red oak in line of Bowman and D. D. Long; thence along said line North eighty-seven (87) degrees eighteen (18) minutes West eight hundred ninety-four (894) feet to post in center of public road leading from New Millport to Curwensville, Pa.; thence by said road North three (3) degrees forty-five (45) minutes East two hundred seventy-one (271) feet to post in center of road; thence North five (5) degrees thirty (30) minutes East three hundred forty-five (345) feet to post in center of road and point in line between Brolin and Bowman properties; thence by said line North forty-two (42) degrees forty-five (45) minutes East eight hundred eighty-five (885) feet to post; thence along other land of Bowman ten (10) degrees, thirty (30) minutes East nineteen hundred fourteen (1914) feet to red oak and the place of beginning. Being the same premises conveyed by Anthony Hile by his deed dated the 27th day of August A.D. 1914 and recorded in the office for recording of deeds in Deed Book No. 238, Page 298, to Alfred Brolin.

ALSO RESERVING and EXCEPTING, therefrom, however, all that certain piece of land which Maude E. Bowman conveyed to Frank Bloom, bounded and described as follows: BEGINNING at a post on public road; thence North two hundred two and six-tenths (202.6) feet to post; thence North five (5) degrees forty (40) minutes West eight hundred thirty-four (834) feet to post; thence North forty-two (42) degrees forty-five (45) minutes West three hundred forty (340) feet to post at public road; thence South five (5) degrees thirty (30) minutes West three hundred seventy-nine and three-tenths (379.3) feet to post; thence South fourteen (14) degrees East four hundred forty-eight and six-tenths (448.6) feet to post; thence South three (3) degrees forty-five (45) minutes West two hundred seventy-one and five-tenths (271.5) feet to post and place of beginning. Containing three and fifty-one one-hundredths (3.51) acres.

ALSO EXCEPTING and RESERVING, therefrom, the school lot, as well as one and six one-hundredths (1.06) acres, used as a cemetery and church.

ALSO EXCEPTING AND RESERVING oil and gas lying in, under and upon the subject premises together with all rights necessary to remove said oil and gas.

ALSO EXCEPTING and RESERVING any other exceptions and/or reservations which appear in the chain of title.

BEING the same premises conveyed from Fred Long and Mary Jane Long, his wife, to C. Alan Walker, et al., as Shannon Land and Mining Company, by Deed dated July 1, 1988, and recorded in Clearfield County Deeds and Records Book 1258, at Page 349.

Anne Walker Macko being one of the partners of Shannon Land and Mining Company died on February 27, 2004, and as a matter of law, her interest in the subject premises vested in the two remaining partners, to wit, C. Alan Walker and Susan W. Kriner.

The Grantor, Al Hamilton Contracting Company, joins in this conveyance for releasing and transferring all right, title and interest it may possess in a house assessed by Clearfield County as No. 126-H11-21-DW-01, as well as hereby granting, conveying and releasing all of its interest to the subject premises pursuant to a certain agreement, made November 27, 1991, recorded August 3, 1993, at volume 1547, page 522, in the office of the Recorder of Deeds, Clearfield County, Pennsylvania.

For the purpose of complying with the Act of July 17, 1957, P.L. 984; 52 P.S. Supp. 1551, as amended, of the General Assembly of Pennsylvania, and for no other purpose, there is incorporated herein the following:

THIS DOCUMENT DOES NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO COAL OR RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT IN THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

TOGETHER with all and singular the improvements, ways, streets, alleys, passages, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of the parties of the first part, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof.

TO HAVE AND TO HOLD the said lot or piece of ground above described with the messuage or tenement thereon erected unto the said parties of the second part, their successors and assigns forever.

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

On this, the ___ day of _____, 2006, before me, the undersigned officer, personally appeared SUSAN W. KRINER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

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

Notary Public

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

On this, the ___ day of _____, 2006, before me, the undersigned officer, personally appeared C. ALAN WALKER, who acknowledged himself to be the President of AL HAMILTON CONTRACTING COMPANY, a corporation, and that he as such President being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

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

Notary Public

CERTIFICATE OF RESIDENCE

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

Attorney for Grantees

COPY

DEED

MADE the _____ day of _____, in the year two thousand six (2006), between **RICHARD L. WITHEY and ZOE E. WITHEY**, husband and wife, of R. R. # 1, Box 488, Olanta, PA 16863, parties of the first part, hereinafter called "GRANTORS",

AN D

C. ALAN WALKER, of Lawrence Township, Clearfield County, Pennsylvania, and **SUSAN W. KRINER**, of Lawrence Township, Clearfield County, Pennsylvania, trading and doing business as **SHANNON LAND AND MINING COMPANY**, of Bigler, PA 16825, parties of the second part, hereinafter called "GRANTEES".

WITNESSETH:

That for and in consideration of the sum of One and no/100 (\$1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey to the said Grantees, their heirs, successors and assigns,

ALL that certain piece, parcel or tract of real estate, situate in the Township of Pike, County of Clearfield and State of Pennsylvania, bounded and described as follows:

BEGINNING at a point on the centerline of Pa. Route 453 running between Olanta and Curwensville and being at the Northwest corner of the premises herein below described; thence along line of land of James N. Rummings South 84 degrees 46 minutes East 166.5 feet to an iron pin; thence along other land of the Grantor herein, South 6 degrees 12 minutes West 330 feet to an iron pin; thence North 84 degrees 46 minutes West 166.5 feet to the centerline of Pa. Route 453; thence along the centerline of said route, North 6 degrees 12 minutes East 330 feet to a point and place of beginning. Containing 1.14 acres.

RESERVING the coal and mining and removal rights conveyed by previous deeds, duly entered of record.

BEING the same premises conveyed to the Grantors herein by Deed of Jennie Long and Forest Orin McGarry and Fay G. McGarry, dated October 17, 1972, and recorded in Clearfield County Deed Book 610, at Page 105.

CERTIFICATE OF RESIDENCE

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

Attorney/Agent for Grantee

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

FILED ^{2cc}
013:30/61 Atty's:
OCT 16 2006 Noble
Kriner

William A. Shaw
Prothonotary/Clerk of Courts 

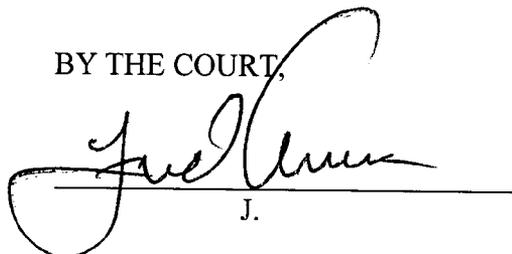
ORDER

AND NOW, this 13 day of October, 2006, upon
consideration of the aforesaid Joint Motion for Partial Settlement, it is hereby ORDERED
and DECREED as follows:

1. That the parties hereto shall execute and deliver to the respective parties the deeds attached to the Joint Motion within ten (10) days of this Order;
2. That Counts II and VII of the Plaintiffs' Complaint in this matter shall be settled and satisfied upon delivery of the aforesaid deeds;
3. That the rights of the Plaintiffs to appeal this Court's Order of 22 March 2005, as they presently exist, shall be preserved;
4. That the subject matter raised in Counts III, IV, VI and IX of the Plaintiffs' Complaint and the Defendants' Counter Claim as well as all answers, affirmative defenses, new matter and replies thereto shall be preserved;
5. That any and all factual and legal positions raised by the parties in their respective pleadings shall be preserved.
6. That the Plaintiffs shall have the right to amend Count VI of their complaint as they see fit as to barn damage within thirty (30) days of this Order; and

7. That all discovery in this matter shall be completed within one hundred twenty (120) days of this Court's Order, or within one hundred twenty (120) days of the Court's Order on the Motion to Compel filed by the Plaintiffs, whichever is last in time.

BY THE COURT,



J.

FILED

OCT 16 2006

William A. Shaw
Prothonotary/Clerk of Courts

10/16/06

_____ are responsible for serving all appropriate parties.

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

_____ Plaintiff(s) Plaintiff(s) Attorney _____ Other

_____ Defendant(s) Defendant(s) Attorney

_____ Special Instructions:

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

AMENDED CIVIL COMPLAINT

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED *REC*
MJ 11:17:04
NOV 07 2006 *LM*

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adult individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

AMENDED CIVIL COMPLAINT

NOW COMES, the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their CIVIL COMPLAINT:

The Parties

1. First plaintiff is Richard L. Withey, who does, and at all material times, did reside at 4 McKee Road, Olanta, Clearfield County Pennsylvania, 16863.
2. Second plaintiff is Zoe E. Withey, who does, and at all material times, did reside at 4 McKee Road, Olanta, Clearfield County Pennsylvania, 16863.
3. That at all relevant and material times, Plaintiffs were husband and wife living together at the aforementioned physical address, albeit with a different mailing address given the changes with the 911 system, and jointly referred sometimes hereinafter as "Withey".

4. First defendant is Al Hamilton Contracting Company, Inc., upon information and belief, a duly formed and existing Pennsylvania Corporation, with principal place of business located at 1988 Dale Road, Woodland, Clearfield County, Pennsylvania 16825, hereinafter referred to as "Hamilton".
5. Second defendant is Shannon Land and Mining Company, upon information and belief, a duly formed and existing Pennsylvania partnership, with partners being the hereinafter named third, fourth and fifth defendants, with principal place of business also located 1988 Dale Road, Woodland, Clearfield County, Pennsylvania 16825, hereinafter referred to as "Shannon".
6. That third defendant is C. Alan Walker, upon information and belief, an adult individual, who does and at all material times did reside at 1018 Country Club Road, Clearfield, Clearfield County, Pennsylvania 16830, hereinafter referred to as "Walker".
7. That fourth defendant is Susan Kriner, upon information and belief, an adult individual, who does and at all material times did reside at 2512 Meadow Road, Clearfield, Clearfield County, Pennsylvania 16830, hereinafter referred to as "Kriner".
8. That fifth defendant is the Estate of Anne Walker Macko, a duly formed and probated estate, with fiduciaries being William Kriner, 2512 Meadow Road, Clearfield County, Pennsylvania 16830, and Derick Walker, 179 Walker Road, Bigler, Clearfield County, Pennsylvania, hereinafter referred to as "Macko".

Background

9. That upon information and belief, at all relevant and material times, Walker, Kriner and Macko were and are officers, directors and shareholders of Hamilton.
10. That upon information and belief, at all relevant and material times, Walker, Kriner and Macko owned a controlling interest of the issued and outstanding shares of Hamilton.
11. That Hamilton and Shannon, beside being similarly owned and controlled, upon information and belief, often times engage in business activities which are mutually beneficial, specifically that Shannon owns or otherwise controls the land upon which Hamilton conducts mining operations.
12. That upon information and belief, at least some of the employees of Hamilton and Shannon also perform tasks for the other company of which they are not employed.
13. Alternatively, upon information and belief, there are employees of Hamilton and Shannon which are simultaneously employed by both entities.

14. That Hamilton and Shannon are allied companies, with the individual defendants herein named being the principals of each company.
15. That upon information and belief, at all relevant and material times, being November 27, 1991 to the present, Walker, Kriner and Macko were partners, and the only partners, in Shannon.
16. That Hamilton's business focus is coal mining operations.
17. That the Witheys are owners of record of a certain tract of land, containing approximately 1.14 acres, located in Pike Township, Clearfield County, Pennsylvania, hereinafter referred to as "the Pike Township tract".
18. That in the early 1990s, the defendants desired to mine coal in close proximity to the Pike Township tract.
19. That for reasons of convenience or need, defendants desired the Witheys to authorize such coal mining operation and permit use of the Pike Township tract, which at that time was serving as the Witheys homestead, for defendants' business purposes.
20. That in connection with defendants' above stated desires, plaintiffs and defendants entered into a certain agreement, on November 27, 1991, hereinafter "the 1991 agreement", a true and correct copy of which is attached hereto as Exhibit "A", the terms of which are hereby incorporated as if fully set forth at length, which in essence transferred equitable title of the Pike Township tract from the Witheys to the defendants, in exchange for which the defendants were to convey approximately 66 acres, hereinafter identified as "the Fred Long farm", also located in Pike Township, Clearfield County, Pennsylvania, to the Witheys.
21. That Shannon was aware of the commitment made by Hamilton that the Fred Long farm would be conveyed to the Witheys, prior to and at the time the 1991 agreement was entered into by Hamilton and the Witheys. Attached hereto as Exhibit "B" is a letter from Shannon stating its intent to deliver the Fred Long farm to the Witheys.
22. That Shannon did not object and implicitly agreed to the commitment that its property would be transferred to the Witheys at the completion of the terms contained in the 1991 agreement and would be the entity, upon information and belief, that Hamilton would direct the Witheys to convey the Pike Township tract.
23. That Hamilton and others associated with Shannon acted as Shannon's agent, disclosed or undisclosed, binding Shannon to the 1991 agreement, making Shannon a party eo nomine to the 1991 agreement.

24. That although Shannon was at all relevant and material times the record owner of Fred Long farm, for the home built for the Witheys on the Fred Long farm property, the real estate taxes were issued to Hamilton at the direction of Hamilton and/or Shannon.

25. This cause of action concerns the defendants failures to complete said transfers as well as to breach other terms and conditions of the 1991 agreement.

Count I: Request for Injunctive Relief
(In Equity)
Irreparable Harm

26. That the averments of paragraphs 1 - 25, inclusive, are hereby incorporated as if again fully set forth at length.

27. That per the 1991 agreement, defendants constructed a home upon the Fred Long farm in which the Witheys have been living since its completion and using the same as their homestead.

28. That per the 1991 agreement, defendants amongst other tasks were to pay the real estate taxes, including the taxes on the Witheys' home on the Fred Long farm property, (see paragraph 4) and maintain liability and hazard insurance (see paragraph 8).

29. That defendants have failed to pay the real estate taxes since 2001 on the Witheys' home on the Fred Long farm, identified as Map# H11-000-00021-DW-01 and control # 126093318. Attached hereto as Exhibit "C" are various documents from the Tax Claim Office showing such default.

30. That despite the Witheys requests to be provided with assurances that defendants have maintained such hazard and liability insurance on the Fred Long farm premises, defendants have failed to produce such assurance. Attached hereto as Exhibit "D" is a letter from the Witheys requesting assurances as to the real estate taxes and insurance issues.

31. That upon information and belief, defendants have failed to maintain adequate hazard and liability insurance, and do not presently maintain such insurance, on the Fred Long farm. Furthermore, in that the Witheys are not the record owners, they do not have an insurable interest in the Fred Long farm and are prevented from obtaining insurance themselves.

32. That Hamilton is financially unstable, upon information and belief, having filed for and received bankruptcy protection.

33. That in the event defendant refuses to pay for taxes on the Witheys' home on the Fred Long farm, the property would be sold at tax sale and defendants would lose their home, through no fault of their own, and would suffer irreparable harm and would have no opportunity for recovery against Hamilton due to its financial circumstances.

34. That in the event defendants have failed to maintain insurance protection on the Fred Long property, the Witheys would suffer irreparable harm, again given Hamilton's financial circumstances, in the event the Fred Long farm would suffer catastrophic loss.

35. That the Witheys have a clear and unambiguous right, per the 1991 agreement, to have the real taxes paid on the Fred Long farm and have the same insured.

36. That the Witheys have demanded that defendants abide by their agreement and upon information and belief, have failed to do so.

WHEREFORE, Plaintiffs request that this Court grant their request for an injunction and ORDER as follows:

- 1. That Defendants shall within ten (10) days hereof pay all outstanding real estate taxes on the Fred Long property;**
- 2. Within three days hereof, deliver to the Witheys proof that the Fred Long farm is reasonably insured for fire and hazard;**
- 3. Pay to the Witheys, per paragraph 8 of the 1991 agreement, their reasonable attorney's fees in conjunction with the litigation of this matter;**
- 4. Any other relief this Court determines to be just and proper under the circumstances.**

Count II: Request for Specific Performance
(In Equity)
Completion of the 1991 Agreement

37. That the averments of paragraphs 1 - 36, inclusive, are hereby incorporated as if again fully set forth at length.

38. That per paragraph 5 of the 1991 agreement, Hamilton was to convey the Fred Long farm property to the Witheys and the Witheys were to convey the Pike Township tract, upon completion of Hamilton's mining operations and release of Stage III bonds concerning said

operations. See paragraph 5 of Exhibit "A".

39. That upon information and belief, Hamilton has completed all mining operations on and near the Pike Township tract and the Stage III bonds have been released.

40. That upon information and belief, all conditions precedent required by the 1991 for defendants to convey the Fred Long farm to the Witheys have been performed.

41. That defendants have refused to deliver sufficient title to the Fred Long farm to the Witheys despite their demand.

42. That the Witheys stand willing, ready and able to convey the Pike Township tract to the Defendants as part of the agreement.

43. That this Honorable Court might need to make determinations as to what is to be included in the conveyance of the Fred Long farm to the Witheys especially relative to mineral rights as defendants have proposed to except and reserve mineral rights to which the 1991 agreement is silent.

44. That although Shannon is the owner of record of the Fred Long property, and has been at all relevant and material times, given the allied company relationship between Hamilton and Shannon, as well as the principal relationship between the individual defendants and each defendant business, Shannon agreed through its agents to convey the Fred Long farm to the Witheys despite the fact that it is not a signatory to the 1991 agreement.

45. That the Fred Long farm is unique and the Witheys have no other reasonable remedy at law.

46. That the equities of the circumstances require defendants to convey the Fred Long farm to the Witheys.

47. That defendants should be ordered to convey the Fred Long property to the Witheys, without any exceptions or reservations, solely excepting any such reservations which appeared in the chain of title as of the time the 1991 agreement was entered.

WHEREFORE, Plaintiffs demand that this Honorable Court grant their request for SPECIFIC PERFORMANCE and ORDER as follows:

1. Defendants convey all of their interest in the Fred Long farm, per the 1991 agreement, to the Witheys without exceptions and reservations appearing in the chain of title prior to the 1991 Agreement;

2. Defendants be ordered to pay Plaintiff's reasonable attorney fees pursuant to the 1991 agreement;

3. That this Honorable Court make a determination as to how the transfer taxes be allocated with the conveyance(s) in that the 1991 agreement is silent as to the same;

4. That the defendants be ordered to satisfy any and all liens on the Pike Township tract, which have resulted since the time of the 1991 agreement; and

5. Any other order which is just and proper under the circumstances.

Count III: Breach of Contract

(at Law)

Conveyances post 1991 Agreement

48. That the averments of paragraphs 1 - 47, inclusive, are hereby incorporated as if again fully set forth at length.

49. That upon information and belief, defendants entered into other contracts and conveyances concerning the Fred Long property, after the 1991 agreement.

50. That the result of the contracts and conveyances by the defendants, concerning the Fred Long farm, after the 1991 agreement, deny the Witheys the full benefit of their bargain under the 1991 agreement and for which the Witheys should be compensated in an amount to be determined at time of trial.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against Defendants, jointly and severally, in an amount to be determined, believed to be in excess of \$20,000, together with costs, interest and attorneys fees.

Count IV: Breach of Contract

(At Law)

Real Estate Taxes

51. That the averments of paragraphs 1 - 50, inclusive, are hereby incorporated as if again fully set forth at length.

52. That pursuant to paragraph 4 of the 1991 agreement, the Witheys were entitled to live in the home constructed on the Fred Long farm, "tax-free".

53. That the defendants were responsible to pay the real estate taxes on the Fred Long farm per the 1991 agreement.

54. That defendants have not paid the real estate taxes since 2001 on the Witheys' home located on Fred Long farm property. A true and correct copy of the letter and notice concerning the delinquent taxes are attached hereto as Exhibit "C".

55. To protect their interest, the Witheys were forced to pay the 2002 real estate taxes, with penalty, in the amount of \$1,311.85, to prevent the Fred Long farm property from going to tax sale. A true and correct copy of the check issued by the Witheys is attached hereto as Exhibit "E".

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against the defendants, jointly and severally, in the amount of \$1,311.85, together with costs, interest and reasonable attorneys fees.

Count V: Request for an Accounting
(In Equity)
Insurance Proceeds

56. That the averments of paragraphs 1 - 55, inclusive, are hereby incorporated as if again fully set forth at length.

57. That per the 1991 agreement, at paragraph 8, defendants agreed to maintain fire and liability insurance on the Fred Long farm as well as the Pike Township tract.

58. That per the 1991 agreement, at paragraph 5, at the end of the transaction, the Witheys were to receive the "dwelling buildings thereon" (emphasis added).

59. Although the 1991 agreement is silent to the same, Pennsylvania law would require that the buildings be delivered upon the premises in reasonable condition, normal wear and tear excepted.

60. That one of the structures, best described as a barn, has suffered severe damage caused by the weather.

61. That such damage should have been covered by insurance if the defendants had maintained

such insurance.

62. If the defendants did maintain such insurance and received such payment, said money rightfully belongs to the Witheys as part of their bargained for consideration and they should receive an accounting for such payment.

WHEREFORE, Plaintiff requests that in the event defendants received insurance proceeds for damage to the barn on the Fred Long farm, they be ordered as follows:

- 1. Make an accounting to the Witheys for any insurance proceeds received by the defendants for such damage;**
- 2. Pay to the Witheys any such sums received as a result of such damage to the barn;**
- 3. Pay the Witheys reasonable attorney's fees incurred in this matter; and**
- 4. Any other relief this Court determines as fair and just under the circumstances.**

Count VI: Breach of Contract
(At law)
Failure to Repair

63. That the averments of paragraphs 1 - 62, inclusive, are hereby incorporated as if again fully set forth at length.

64. That Defendants, upon information and belief, maintained the required insurance on the Fred Long Farm premises, made the insurance claim as to the barn damage, previously referenced, and received a check for said damage.

65. That upon receiving said insurance check, defendants did nothing to repair or replace said barn nor in any manner remedy the damage done to the barn, thereby breaching, directly and/or indirectly their obligation to maintain said structure and/or provide insurance protection.

66. That as a matter of law, the barn is considered part of the real estate and was to be conveyed to the Witheys as part of the 1991 Agreement.

67. That as a result of the Defendants' failure to properly maintain the barn by repairing it with the insurance proceeds, the barn essentially fell down.

68. That as a result of the Defendant's failure to properly maintain the barn, they should pay to the Witheys, who have now been denied the benefit of their full bargain pursuant to the 1991 agreement, an amount, in excess of \$20,000, to be more fully determined at time of trial, the amount necessary to build a similar structure to the barn as it was at the time of the 1991 agreement.

69. Similarly, Defendants have also failed to perform other repairs on the buildings on the premises, some of which caused by weather others by just reasonable wear and tear; and said buildings are in need of repair, for such things as roofs, furnaces and the like, in an amount in excess of \$20,000, to be more fully determined at time of trial.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an amount in excess of \$20,000, together with costs and reasonable attorneys fees.

Count VII: Request for Accounting
(In Equity)
Mineral Rights

70. That the averments of paragraphs 1 - 69, inclusive, are hereby incorporated as if again fully set forth at length.

71. That pursuant to paragraph 5 of the 1991 Agreement, the conveyances from the Witheys to the defendants, and from the defendants to the Witheys, were to be free and clear of all encumbrances.

72. That the Witheys are entitled to the mineral rights as to the Fred Long farm.

73. That since 1991, the defendants have entered into lease agreements, true and correct copies of which are attached hereto as Exhibit "F", for the minerals located on the Fred Long farm property.

74. That the defendants should account to the Witheys for all mineral royalties received by any of them from said leases, commencing at the time it is determined that defendants should have conveyed the Fred Long farm property to the Witheys, being the time the Stage III bonds were, or reasonably should have been released.

WHEREFORE, Plaintiffs request defendants' they be ordered as follows:

1. Make an accounting to the Witheys for any and all royalties received pursuant to the attached leases from the time period the Stage III bond were, or should have been released;

2. **Pay the Witheys reasonable attorney's fees incurred in this matter; and**
3. **Any other relief this Court determines as fair and just under the circumstances.**

Count VIII: Breach of Contract

(At Law)

Fair Market Value of Fred Long Property

75. That the averments of paragraphs 1 - 74, inclusive, are hereby incorporated as if again fully set forth at length.

76. That in the event this honorable Court would determine that for any reason Plaintiffs are not entitled to the specific performance earlier requested, than in such event defendants should pay to the Witheys the fair market value of the Fred Long farm, together with improvement thereupon in the condition they should have been in, in an amount to be determined at time of trial.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an amount in excess of \$20,000, together with costs and reasonable attorneys fees.

Count IX: Breach of Contract

(At Law)

Reasonable Attorney's Fees

77. That the averments of paragraphs 1 - 76, inclusive, are hereby incorporated as if again fully set forth at length.

78. That per the 1991 agreement, specifically at paragraph 9, in the event one party breaches the agreement and the other party sues to enforce their rights, the non-breaching party has the right to recover reasonable attorneys fees against the breaching party.

79. That for the reasons set forth herein, defendants have breached the 1991 agreement.

80. That defendant should pay to the Witheys their reasonable attorneys fees incurred in connection with this litigation, in an amount to be determined.

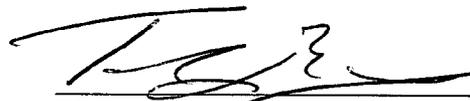
WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an amount in excess of \$20,000, together with costs and reasonable attorneys fees.

Miscellaneous Averments

81. That jurisdiction is proper.
82. That venue is proper.
83. That defendants are jointly and severally liable to the Witheys.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against defendants, jointly and severally, in an amount in excess of \$20,000, together with interest, where applicable, costs of suit, and attorney's fees as well as Plaintiffs be granted specific performance, injunctive relief, accountings, and any other relief deemed just and appropriate under the circumstances.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

VOL 1547 PAGE 522

AGREEMENT

THIS AGREEMENT, made and entered into this 27th day of November, 1991, by and between RICHARD L. WITHEY and ZOE E. WITHEY, husband and wife, of Pike Township, Clearfield County, Pennsylvania, parties of the first part, hereinafter referred to as "WITHEY",

AND

AL HAMILTON CONTRACTING COMPANY, a Pennsylvania business corporation, having its principal place of business at R. D. 1, Box 87, Woodland, Clearfield County, Pennsylvania, party of the second part, hereinafter referred to as "HAMILTON".

W I T N E S S E T H :

WHEREAS, HAMILTON is conducting surface mining operations in close proximity to the home of WITHEY; and

WHEREAS, HAMILTON wishes to obtain various authorizations to mine within three hundred (300) feet of the WITHEY home; and

WHEREAS, HAMILTON has agreed to provide alternate housing for WITHEYS during mining operations under authorizations signed by WITHEY.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. That this Agreement shall represent authorization by WITHEY for HAMILTON to conduct surface mining activities on

the 1.14 acres of real property owned by WITHEY in Pike Township, Clearfield County, Pennsylvania.

2. That contemporaneous with the execution of this Agreement WITHEYS will sign any and all necessary authorizations for HAMILTON to conduct surface mining activities within three hundred (300) feet of the present WITHEY home in Pike Township, Clearfield County, Pennsylvania, which will include execution of a Supplemental "C" and a building variance authorization. WITHEYS also agree to sign any and all other documents required to conduct mining within three hundred (300) feet of their home.

3. That HAMILTON agrees to construct for WITHEYS alternative housing on property formerly of Fred Long located in Pike Township, Clearfield County, Pennsylvania. HAMILTON agrees to execute a construction agreement with Neff Construction Company, of Curwensville, Pennsylvania, to construct said home when this Agreement is executed. Said home will be constructed in a manner agreed to by the parties and at a location on the former Fred Long property mutually acceptable to WITHEYS and HAMILTON. HAMILTON further agrees to be solely responsible and liable for payment in full of any and all obligations incurred for the construction of said home by Neff Construction. HAMILTON further agrees to indemnify and save the WITHEYS harmless from any and all debts, liabilities, or obligations (including attorneys' fees and legal costs of WITHEY) incurred with respect to the construction of said home by Neff Construction.

4. That upon completion of the construction project by Neff Construction Company, WITHEYS will be permitted to immediately occupy the new dwelling. WITHEYS shall live in said dwelling rent-free and tax-free, but will be required to pay any and all utilities used at said dwelling.

5. Upon completion of all mining activities on the Blommington Job of HAMILTON and the release of Stage III bonds from Permot No. 17803166, HAMILTON will arrange for the conveyance of surface of the former Fred Long Farm of approximately 66 acres, together with the dwelling buildings thereon, to WITHEYS and WITHEYS shall convey the present house and 1.14 acres of surface in Pike Township from WITHEY to HAMILTON, SHANNON LAND AND MINING COMPANY, or a nominee. The conveyances shall be made free and clear of all liens and encumbrances and pass marketable title. A description of each property is attached hereto.

6. That the WITHEYS covenant and agree that the providing of alternative new housing during mining within three hundred (300) feet of the WITHEY home and the conveyance to WITHEYS of surface to sixty-six (66) acres, formerly identified as the Fred Long Property, together with the dwelling buildings thereon, with marketable title free and clear of all liens and encumbrances, will represent consideration for said mining, and no royalty or payment of any nature or kind will be owed by HAMILTON to WITHEY for the mining of coal or the conducting of mining activities on the 1.14 acres of WITHEYS.

7. That conveyance of the 66 acres and new dwelling house may occur sooner than the time period identified in

Paragraph 4 above upon written agreement by both parties.

8. That HAMILTON covenants and agrees to maintain liability and fire insurance on both the home being constructed by Neff Construction and the present WITHEY home and 1.14 acres in Pike Township, Clearfield County, Pennsylvania. Said duty and obligation to carry insurance shall cease and terminate upon the delivery of the Deed to the 66 acres of the formerly Fred Long Farm to the WITHEYS.

9. That in the event that either party breaches this Agreement, and as a result of said breach either party has the right to elect to sue for damages or seek any other remedies or relief as may be available to them, and if the party choosing such remedy is successful in enforcing their rights, then the responsible party shall be liable for legal fees and any and all other costs of litigation incurred in enforcing their rights under this Agreement.

10. That this Agreement may not be assigned or transferred by either party without first obtaining the written consent of the other to so transfer.

11. That this agreement constitutes the entire understanding of the parties hereto and any amendment of this agreement shall be in writing executed by both parties.

12. That this agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns as if they were named in each and every provision herein.

VOL 1547 PAGE 526

13. That the parties agree to execute a Memorandum of Agreement outlining those matters which are required by law for recordability, which Memorandum shall memorialize and represent this Agreement, and which may be recorded by the WITHEYS if they so desire.

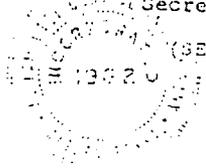
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed the day and year first above written.

Richard L. Withey (SEAL)
Richard L. Withey

Zoe E. Withey (SEAL)
Zoe E. Withey

AL HAMILTON CONTRACTING COMPANY
By
C. Alan Walker, C.E.O.
C. Alan Walker
C.E.O.

ATTEST:
[Signature]
Secretary



CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 8:31 AM 8-3-92
BY [Signature]
FEES [Signature]
Karen L. Starck, Recorder

I hereby CERTIFY that this document is recorded in the Recorder's Office of Clearfield County, Pennsylvania.



[Signature]
Karen L. Starck
Recorder of Deeds

Entered of Record Aug 3 1992, 8:30 AM Karen L. Starck, Recorder

SHANNON LAND AND MINING COMPANY

P. O. Box 368
Bigler, PA 16825

PHONE: (814) 857-7681

FAX: (814) 857-5003

September 13, 2000

Mr. & Mrs. Richard L. Withey
R. R. #1, Box 488
Olanta, PA 16863

Exhibit "B"

RE: Agreement dated 11/27/91

Dear Dick and Zoe:

I had our attorney, Mr. William C. Kriner, review the agreement dated November 27, 1991 between you and Al Hamilton Contracting Company regarding the former Fred Long Farm in Pike Township.

The Fred Long Farm is owned by Shannon Land and Mining Company. Shannon Land and Mining Company is not a party in the agreement dated 11/27/91 and is not bound by the terms thereof. Paragraph 5, on Page 3 states that: "Hamilton will arrange for the conveyance of surface of the former Fred Long Farm of approximately 66 acres, together with the dwelling buildings thereon, to Withey's."

In the meantime, Shannon Land and Mining Company may do whatever they desire to the Fred Long property; i.e., cut trees, build roads, put in water lines, power lines, etc. We feel it would not be proper to sell a tract of land to Bill Elensky and then deny him water and electric service or a good road to his property.

We fully intend to transfer the Fred Long Farm to you in the future. Until the property is titled to you, it remains the property of Shannon Land and Mining Company.

Sincerely,



E. David Nelson, Manager
Properties & Reserves
SHANNON LAND AND MINING COMPANY

EDN/smr
cc: C. A. Walker
wd/sep00/withey

Clearfield County Tax Claim Bureau



230 EAST MARKET STREET
SUITE 121
Clearfield, Pennsylvania 16830

TELEPHONE (814) 765-2641
FAX (814) 765-2640

MAY 20, 2004

Exhibit "C" *4 pages*

Map # 126-H11-000-00021-DW-01
Municipality: PIKE TOWNSHIP
Control: # 126.0-93318
Description: H
Owner: AL HAMILTON CONTRACTING CO.

To Whom It May Concern:

This letter is to verify that there are delinquent taxes, on the above referenced assessment. Taxes due are for 2002- 2003. A statement is enclosed.

Sincerely,

Jeffrey C. Graham
Jeffrey C. Graham
Asst. Director

05/20/2004
Searched Jeb

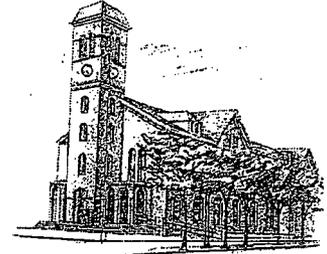
STATEMENT VALID AS TO CURRENT ACCOUNTS.
SUBJECT TO CORRECTIONS AND CHANGES.

Clearfield County Tax Claim Bureau

230 East Market Street - Suite 121

Clearfield, Pennsylvania 16830

Phone: (814) 765-2641 Ext. 5998



-Customer Copy-

Receipt # 175191

Tuesday, May 25, 2004

Received Of:

AL HAMILTON CONTRACTING CO.

Control # 126093318

Claim # 2002-007714

Map # H11-000-00021-DW-01

In The Amount Of:

\$1,311.85

Property Desc H

	County	District	School
TAX	0.00	0.00	1156.72
INTEREST	0.00	0.00	130.13
COST / PENALTY	25.00		
CURRENT YEAR	0.00	0.00	0.00
OVERBID	0.00		
TOTAL	<u>\$1,311.85</u>		

MaryAnne Herdock

Director of Tax Claim Bureau

RECEIPT VALID ONLY UPON PAYMENT OF LEGAL TENDER

ANY CHECK RETURN UNPAID BY YOUR BANK WILL BE SUBJECT TO A TWENTY DOLLAR (\$20.00) RETURNED CHECK FEE

Total Received On All Claims For 12609331 On 5/25/04 \$1,311.85

May 25, 2004

C. Alan Walker, CEO
Al Hamilton Contracting Co.
1988 Dale Road
Woodland, PA 16881

Exhibit "D"

RE: 1993 Agreement

Dear Mr. Walker:

As you know, we have been attempting to get you and your company to comply with the terms of our 1993 Agreement. According to Paragraph 4 of said Agreement we are not to have any tax liability on the premises. However, you have refused to pay the 2002 and 2003 taxes, resulting in a Tax Sale being scheduled. Based upon advice of counsel we have proceeded to pay the 2002 taxes to prevent further escalation of our damages. We hereby demand that you reimburse us the amount paid for the 2002 taxes within 30 days hereof. Furthermore, we further demand that you pay the 2003 taxes within 30 days, otherwise we shall pursue appropriate legal action. You should note that under Paragraph 9 of said Agreement we will hold you and your company responsible for our reasonable attorney's fees incurred therein.

Lastly, and of utmost concern is the homeowner's insurance which you are also required to maintain pursuant to Paragraph 8 of said Agreement. Under these circumstances we sincerely question whether you have protected our interest as required. Therefore, we demand that you produce a certificate of insurance within 5 days hereof. In the event you do not do so we will have no choice other than to obtain insurance, again holding you responsible and pursuing appropriate legal action.

With regards,

Sincerely,

Richard and Zoe Withey

Richard L. Withey
Zoe Withey

Exhibit "E"

RICHARD L. WITHEY 05-81
ZOE E. WITHEY
R.R. 1, BOX 488 PH. 814-238-2632
OLANTA, PA 16863

60-629/313
12212245

2430

DATE *May 25, 04*

PAY TO THE
ORDER OF

Tax Claims Bureau

\$ *1311.85*
~~100~~

One Thousand Three Hundred Eleven and 85/100

DOLLARS

Chairman's Club



Curwensville Office
407 Walnut Street
Curwensville, PA 16833

MEMO

Richard L. Withey

⑆031306294⑆ ⑆ 2 21224 5⑈ 2430

⑆0000131185⑆

Ck# 2430

Date 05/27/04

Amt \$1,311.85

OIL AND GAS AGREEMENT

APR 1999 30791

Date: 6/1/99 SHANNON LAND & MINING CO
Landowners (and address): P.O. Box 368 BIGLER, PA 16825

Phone No: 814-857-7681

Gas Co.: Kriebel Resource, P.O. Box 785, Clarion, Pennsylvania 16214

1. Leasing Clause: Landowners in consideration of One (\$1.00) Dollar in hand paid by the Gas Co., receipt of which is hereby acknowledged, grant and convey unto the Gas Co., its heirs, executors, administrators, successors, and assigns, and warrant generally title to, all the oil, gas, surface and Drilling Rights in, on and under all that certain piece, parcel, or tract of land situate in TIXE Township, CLEARFIELD County, Pennsylvania, bounded and described as follows:
On the North by lands of N/E SR 17037 SMALL TRACTS
On the East by lands of N/E CLEARTRU M.C.I. Co.
On the South by lands of N/E SHANNON LAND AND MINING
On the West by lands of N/E MCGARRY SHANNON LAND & MINING
Containing 66 Acres, more or less, also referred to by Tax Map No. 126-H11-21 and herein collectively referred to as "Property".

2. Drilling Rights: In execution, "Property" shall include all oil, gas and surface rights owned or claimed by landowners in and under lands which are adjacent, contiguous to or form a part of the lands above described Gas Co. is hereby granted the exclusive right of drilling and operating the Property alone or conjointly with neighboring lands for producing oil and gas by any means, and all rights necessary, convenient and incident thereto, including but not limited to, the right to conduct geological and geophysical surveys and explorations on the Property; to drill new wells, recondition producing wells and redrill and use abandoned wells pipe and equipment on the property; to construct and maintain buildings, plants, drips, tanks, generators, compressor stations, gages, meters, regulators, tools, appliances, materials and other equipment used in exploring for and producing oil and gas, and pipelines, telephone lines, electric power lines, leading from adjoining lands on and across the Property and other lands which rights shall continue at Gas Co.'s option after the termination of this Agreement, which option shall be exercised through continued use of the then existing pipelines, telephone lines and electric power lines which may be repaired or replaced, or by Gas Co. giving written notice of exercise and similar rights for roadways which rights shall continue there after so long as Gas Co., its heirs and assigns desire to maintain the same; the right to use water, oil and gas and other materials from the Property for operating purposes, and Gas Co. is released of all damages, including but not limited to land, surface improvements and waters and has the right of removing either during or at any time after the term hereof, all casing, tubing, machinery, buildings, structures and property of the Gas Co. and its assigns and employees. In the event that Gas Co. constructs a meter site, pipeline or road on Landowners Property for the benefit of an adjacent property, and prior to the drilling of a well on the said Property, Gas Co. shall pay Landowners for the said improvements at the rate of Two Hundred Dollars per meter site and Five Dollars per rod for roads and pipelines. All of the above described rights shall be herein referred to as "Drilling Rights". Landowners release any right of indemnification that they may have against Gas Co.

3. Existing Wells: It is understood and agreed that this Agreement does not convey any right, title or interest to Gas Co. in any existing well on the Property.

4. Term: Gas Co. has the right to enter upon the Property to drill for oil and gas at any time within 36 months from 6/1/99 hereof and as long thereafter as (1) oil or gas or either of them is produced from the Property or any lands pooled or unitized therewith, (2) operations continue for the production of oil or gas, (3) Gas Co. shall continue to pay Landowners \$5.00 FIVE dollars per acre per year as delayed rentals, (4) an application for a drilling permit is pending with the appropriate authorities, and Lessee, after grant of such permit, commences drilling operations within a reasonable time thereafter and continues same with due diligence, provided said permit application was filed prior to the expiration of the primary term, (5) a completed oil or gas well would be capable of producing oil or gas from any portion of the premises or any lands pooled or unitized therewith, but for acts of God, unavailability or interruption of markets or pipelines, or any other causes, which have caused Lessee not to commence production from such well or to suspend production from such well, (6) or until all oil and gas has been removed from the Property, whichever shall last occur.

5. Unitization: Gas Co. is hereby granted the right to pool and unitize all or any part of the Property with any other lease or leases, land or lands, mineral estates, or any of them whether owned by Gas Co. or others, so as to create one or more drilling or production units. The commencement of drilling, completion of or production from a well on any portion of the unit created under the terms of this paragraph shall (except for the reserve gas clause described below) have the same effect upon the terms of this Agreement as if a well were commenced, drilled, completed, or producing on the Property. As to each drilling or production unit designated by Gas Co., Landowners agree to accept and shall receive out of the production or the proceeds from the production from such units, such portion of the royalties specified herein, as the number of acres of the Property which may be included from time to time in any such unit bears to the total number of acres included in such unit. Gas Co. may at any time increase or decrease that portion of the acreage covered by this Agreement which is included in any drilling or production unit, or exclude it altogether.

6. Royalty: Gas Co. agrees to pay landowners a royalty equal to one-eighth part of the oil and gas produced, saved and marketed from a well on the Property, with said one-eighth part to be valued at the price received by Gas Co. at the wellhead at the time of production, for said oil and gas in its natural state after deducting from such proceeds, severance, ad valorem and other applicable taxes, together with the reasonable costs incurred by the Gas Co. in preparing such oil and gas for market including, but not limited to, the cost of any necessary treatment or compression and the cost of transporting such oil and gas to the point of sale. In no event shall royalty be required to be paid to Landowners based upon a price higher than the Gas Co. is permitted by law to receive. Settlement therefore shall be made quarterly for production during the preceding calendar quarter. Unless Landowners deliver written notice to Gas Co. of a dispute with respect to royalty payments or of an alleged breach of any of the terms of this Agreement within sixty (60) days from the date the same is paid or the alleged breach occurs, then said payment shall be binding upon Landowners and the alleged breach shall be deemed to be waived.

7. Payment of Royalties: All payments may be made by check mailed to Landowners at the above address or deposited to their credit, or the credit of their heirs and assigns in any state or national bank or by check mailed to them at the above address or in such manner as Landowners and Gas Co. shall otherwise agree. Provided, however, that Gas Co. can apply any money it may owe or which may become due by Landowners to satisfy liens or clear encumbrances against the Property, and set off any money it may owe Landowners in the event that Landowners owe Gas Co. money because of an overpayment of royalty or otherwise.

8. Force Majeure: Gas Co. shall be excused from performance, and this agreement shall not be in breach, and the term thereof shall be extended, if it shall be prevented from operating on the Property by law, by operation of force majeure (including, without limitation, lightning, earthquake, fire, storm, flood, washout) or by any cause beyond Gas Co.'s control. Gas Co. shall thereafter exercise reasonable diligence to resume operations. In the event the title to the Property is for any reason clouded by or action is filed in any court of law or equity, involving the title to said Property or any part thereof, the time of such delay or the continuance of said cloud or court action shall not be counted in computing the term of this agreement or the obligations thereunder, and Gas Co. shall not be obligated to perform any of its covenants and conditions. Landowners shall provide Gas Co. with a copy of the certificate and abstract of title for the Property that Landowners or Landowner's attorney may have, if requested by Gas Co.

9. Surrender: It is agreed that upon the payment of One (\$1.00) Dollar, Gas Co., its successors and assigns, may terminate this agreement and thereby be released of all covenants and obligations herein set forth even if unfulfilled by (1) determining that the oil and gas has been exhausted from the Property; or (2) reconveying the oil and gas and remaining privileges given to Landowners.

10. Drilling Permits: Landowners, for themselves, their heirs, executors, administrators, successors and assigns, agree to execute any and all documents that may from time to time be helpful or necessary in order for Gas Co. to obtain the governmental approvals to carry on operations.

11. Entire Contract: No presumption shall be deemed to exist in favor of or against either party hereto as a result of the preparation and/or negotiation of this agreement. No inference or covenant shall be implied as to either party hereto since the full contractual obligations and covenants of each party is herein fully and expressly set forth.

12. Conveyance of Property: No change in ownership of the Property or royalties shall be binding on Gas Co. until a person acquiring any interest has furnished Gas Co. with proof satisfactory to Gas Co. of such change in ownership. Landowners agree not to enter into any oil and gas agreement with any other party with regard to the Property until this agreement is terminated. If Landowners do not have title to all of the Property and rights described above, payments hereunder may be made to Landowners in proportion to the interest held by Landowners.

13. Adverse Claims: If the Property is subject to an instrument granting rights to a party other than Gas Co. or in the event of dispute or litigation as to title or as to royalties or other sums payable hereunder or any part thereof, royalties and other payments may be held in escrow by Gas Co. until such instrument has been released or canceled as to the Property and until such dispute or litigation is terminated. The sum so paid in escrow by Gas Co. shall be deemed payment of royalties and other sums due hereunder.

14. Counterparts: In the event there is more than one Landowner, then this agreement may be executed by Landowners in one or more counterparts each of which shall constitute an original, but all of which when taken together shall constitute one agreement.

15. Additional Provisions: It is further understood and agreed that SEE Addendum

16. Option to Lease: If Landowners receive an offer to lease the oil and gas concerning any portion of the Property described herein at any time while this agreement remains in full force and effect, or within six (6) months thereafter, Landowners hereby agree to notify Gas Co. in writing immediately of offeror's name and the terms offered. Gas Co. shall have fifteen (15) days to accept or reject the said offer to lease the oil and gas covered by the offer at the price, terms, and conditions specified in the offer. Failure of Landowners to provide such notice to Gas Co. shall terminate any lease entered into between Landowners and such offeror.

17. No Third Party Payments: Landowners hereby warrant that (i) the Property is not encumbered by any enforceable oil or gas lease of record or otherwise and that (ii) they are not currently receiving any bonus, rental, production royalty or shut-in royalty as the result of any prior oil or gas lease covering any or all of the subject Property, and that there have been no wells drilled upon the subject Property or upon any lands with which the Property has been combined in a drilling or production unit.

18. Heirs and Assigns: All provisions of this agreement shall extend to and be binding upon the heirs, executors, administrators, successors, sublessees and assigns of the parties hereto, provided, however, that an assignment or sublease of this agreement in whole or in part shall release and discharge Gas Co. from any and all obligations or liabilities hereunder. Witness the proper execution of this agreement on the date above written with intent to be legally bound.

WITNESS
WITNESS
WITNESS
WITNESS
WITNESS

E. David Nelson, Agent (SEAL)
LANDOWNER
25-1200339
LANDOWNER (SEAL)
SS #
LANDOWNER (SEAL)
SS #
LANDOWNER (SEAL)
SS #
By Gregory B. [Signature] (SEAL)
GAS CO.

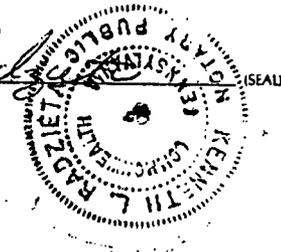
Exhibit "F"
4 pages

STATE OF PA
COUNTY OF CLEARFIELD

On this 15th day of JUNE, 19 99, before me, Kenneth L Radzieta
the undersigned officer, personally appeared E DAVID NELSON

_____ satisfactorily proven to me to be the person _____ whose name _____
subscribed to the within instrument, and acknowledged that DIS
executed the same for the purposes therein contained.
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notarial Seal
Kenneth L. Radzieta, Notary Public
Clarion Boro, Clarion County
My Commission Expires Dec. 18, 2000
Member Pennsylvania Association of Notaries

Kenneth J Radzieta
Notary Public


COMMONWEALTH OF PENNSYLVANIA
COUNTY OF _____

BE IT REMEMBERED, that on the _____ day of _____, 19 _____, before me, the subscriber, a Notary Public,
personally appeared _____, the subscribing witness to the execution of the above indenture, who
being duly sworn upon his oath according to law, doth depose and say that he did see _____
the Landowners) above named, sign and seal, and as _____ act and deed deliver the above indenture for the uses and purposes
therein mentioned, and that the name of this deponent thereunto set and subscribed as a witness is of this deponents own proper handwriting and that the foregoing Agreement
to be their act and deed for the purpose therein mentioned and desire that the same might be recorded as such.

WITNESS, my hand, and official seal the date first above written.
NOTARY PUBLIC _____ (SEAL)

KAREN L. STARK
REGISTER AND RECORDER
CLEARFIELD COUNTY, PA
PENNSYLVANIA
INSTRUMENT NUMBER
1999106830
RECORDED ON
Jun 28, 1999
11:55:08 AM
RECORDING FEES - \$12.00
RECORDER
COUNTY IMPROVEMENT FUND \$1.00
RECORDED
IMPROVEMENT FUND \$1.00
STATE/UNIT TAX \$0.58
TOTAL \$15.58
SUBSCRIBING WITNESSES
David Nelson

Oil and Gas Agreement

From _____ To _____
Date, _____ 19 _____
Term _____
No. Acres _____ Location, _____
On Waters of _____
District or Township _____
County _____ State _____
Received for Record _____
Recorded, _____ page _____
In Book _____
Case 0000

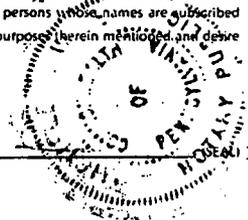
COMPANY ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF Clarion : SS:

On this 16 day of June, 19 99, before me:
_____ the undersigned officer, personally appeared _____

_____ to me known to be the same persons whose names are subscribed
to the foregoing instrument and in due form of law acknowledged the execution of the foregoing Agreement to be their act and deed for the purposes
therein mentioned and desire that the same might be recorded as such.

WITNESS, my hand, and official seal the date first above written.
Michele A. Wice, Notary Public
Clarion Boro, Clarion County
My Commission Expires June 18, 2000
Member Pennsylvania Association of Notaries

Michele A. Wice
NOTARY PUBLIC


AFFIDAVIT No. 35362 OIL AND GAS AGREEMENT

Date: 7-5-02

Landowners (and address): SHANNON LAND & MINING CO 814-867-7681
PO Box 368
BISLER, Pa 16825

Gas Co.: Kriebel Resources, P.O. Box 765, Clarion, Pennsylvania 16214

1. **Leasing Clause.** Landowners in consideration of One (\$1.00) Dollar in hand paid by the Gas Co., receipt of which is hereby acknowledged, grant and convey unto the Gas Co., its heirs, executors, administrators, successors, and assigns, and warrant generally title to, all the oil, gas, surface and Drilling Rights in, on and under all that certain piece, parcel, or tract of land situate in PIKE Township, CLEARFIELD County, Pennsylvania, bounded and described as follows:

On the North by lands of n/l SR 17037 SMALL TRACTS

On the East by lands of n/l CLEARTRU MCT CO

On the South by lands of n/l SHANNON LAND & MINING CO

On the West by lands of n/l MCGARRY Shannon Land & Mining Co

Containing 66 Acres, more or less, also referred to by Tax Map No. 126-411-21 and herein collectively referred to as "Property".

2. **Drilling Rights.** In addition, "Property" shall include all oil, gas and surface rights owned or claimed by landowners in and under lands which are adjacent, contiguous to or form a part of the lands above described. Gas Co. is hereby granted the exclusive right of drilling and operating the Property alone or conjointly with neighboring lands for producing oil and gas by any means, and all rights necessary, convenient and incident thereto, including but not limited to, the right to conduct geological and geophysical surveys and explorations on the Property; to drill new wells, recondition producing wells and re-drill and use abandoned wells and equipment on the property; to construct and maintain buildings, plants, ditches, tanks, generators, compressor stations, gates, meters, regulators, tools, appliances, materials and other equipment used in exploring for and producing oil and gas, and pipelines, telephone lines, electric power lines, leading from adjoining lands on and across the Property and other lands which rights shall continue at Gas Co.'s option after the termination of this Agreement, which option shall be exercised through continued use of the then existing pipelines, telephone lines and electric power lines which may be repaired or replaced, or by Gas Co. giving written notice of exercise and similar rights for roadways which rights shall continue there after so long as Gas Co., its heirs and assigns desire to maintain the same; the right to use water, oil and gas and other materials from the Property for operating purposes, and Gas Co. is released of all damages, including but not limited to land, surface improvements and waters and has the right of removing either during or at any time after the term hereof, all casing, tubing, machinery, buildings, structures and property of the Gas Co. and its assigns and employees. In the event that Gas Co. constructs a meter site, pipeline or road on Landowners Property for the benefit of an adjacent property, and prior to the drilling of a well on the said Property, Gas Co. shall pay Landowners for the said improvements at the rate of two Hundred Dollars per meter site and Five Dollars per rod for roads and pipelines. All of the above described rights shall be herein referred to as "Drilling Rights". Landowners release any right of indemnification that they may have against Gas Co.

3. **Existing Wells.** It is understood and agreed that this Agreement does not convey any right, title or interest to Gas Co. in any existing well on the Property.

4. **Term.** Gas Co. has the right to enter upon the Property to drill for oil and gas at any time within 36 months from 6-1-02 hereof and as long thereafter as (1) oil or gas or either of them is produced from the Property or any lands pooled or unitized therewith, (2) operations continue for the production of oil or gas, (3) Gas Co. shall continue to pay Landowners Eight (\$ 8.00) dollars per acre per year as delayed rentals, (4) an application for a drilling permit is pending with the appropriate authorities, and Lessee, after grant of such permit, commences drilling operations within a reasonable time thereafter and continues same with due diligence, provided said permit application was filed prior to the expiration of the primary term, (5) a completed oil or gas well would be capable of producing oil or gas from any portion of the premises or any lands pooled or unitized therewith, but for acts of God, unavailability or interruption of materials or pipelines, or any other causes, which have caused Lessee not to commence production from such well or to suspend production from such well, (6) or until all oil and gas has been removed from the Property, whichever shall last occur.

5. **Unitization.** Gas Co. is hereby granted the right to pool and unitize all or any part of the Property with any other lease or leases, land or lands, mineral estates, or any of them whether owned by Gas Co. or others, so as to create one or more drilling or production units. The commencement of drilling, completion of or production from a well on any portion of the unit created under the terms of this paragraph shall have the same effect upon the terms of this Agreement as if a well were commenced, drilled, completed, or production on the Property. As to each drilling or production unit designated by Gas Co., Landowners agree to accept and shall receive out of the production or the proceeds from the production from such units, such portion of the royalties specified herein, as the number of acres of the Property which may be included from time to time in any such unit bears to the total number of acres included in such unit. Gas Co. may at any time increase or decrease that portion of the acreage covered by this Agreement which is included in any drilling or production unit, or exclude it altogether.

6. **Royalty.** Gas Co. agrees to pay landowners a royalty equal to one-eighth part of the oil and gas produced, saved and marketed from a well on the Property, with said one-eighth part to be valued at the price received by Gas Co. at the wellhead at the time of production, for said oil and gas in its natural state after deducting from such proceeds, severance, ad valorem and other applicable taxes, together with the reasonable costs incurred by the Gas Co. in preparing such oil and gas for market including, but not limited to, the cost of any necessary treatment or compression and the cost of transporting such oil and gas to the point of sale. In no event shall royalty be required to be paid to Landowners based upon a price higher than the Gas Co. is permitted by law to receive. Settlement therefore shall be made quarterly for production during the preceding calendar quarter. Unless Landowners deliver written notice to Gas Co. of a dispute with respect to royalty payments or of an alleged breach of any of the terms of this Agreement within sixty (60) days from the date the same is paid or the alleged breach occurs, then said payment shall be binding upon Landowners and the alleged breach shall be deemed to be waived.

7. **Payment of Royalties.** All payments may be made by check mailed to Landowners at the above address or deposited to their credit, or the credit of their heirs and assigns in any state or national bank, or by check mailed to them at the above address or in such manner as Landowners and Gas Co. shall otherwise agree. Provided, however, that Gas Co. can apply any money it may owe or which may become due to Landowners to satisfy liens or clear encumbrances against the Property, and set off any money it may owe Landowners in the event that Landowners owe Gas Co. money because of an overpayment of royalty or otherwise.

8. **Force Majeure.** Gas Co. shall be excused from performance, and this agreement shall not be in breach, and the term thereof shall be extended, if it shall be prevented from operating on the Property by law, by operation of force majeure (including, without limitation, lightning, earthquake, fire, storm, flood, washout) or by any cause beyond Gas Co.'s control. Gas Co. shall thereafter exercise reasonable diligence to resume operations. In the event the title to the Property is for any reason clouded by or action is filed in any court of law or equity, involving the title to said Property or any part thereof, the time of such delay or the continuance of said cloud or court action shall not be counted in computing the term of this agreement or the obligations thereunder, and Gas Co. shall not be obligated to perform any of its covenants and conditions. Landowners shall provide Gas Co. with a copy of the certificate and abstract of title for the Property that Landowners or Landowner's attorney may have, if requested by Gas Co.

9. **Surrender.** It is agreed that upon the payment of One (\$1.00) Dollar, Gas Co., its successors and assigns, may terminate this agreement and thereby be released of all covenants and obligations herein set forth even if unfulfilled by (1) determining that the oil and gas has been exhausted from the Property; or (2) reconveying the oil and gas and remaining privileges given to Landowners.

10. **Drilling Permits.** Landowners, for themselves, their heirs, executors, administrators, successors and assigns, agree to execute any and all documents that may from time to time be helpful or necessary in order for Gas Co. to obtain the governmental approvals to carry on operations.

11. **Entire Contract.** No presumption shall be deemed to exist in favor of or against either party hereto as a result of the preparation and/or negotiation of this agreement. No inference or covenant shall be implied as to either party hereto since the full contractual obligations and covenants of each party is herein fully and expressly set forth.

12. **Continuance of Property.** No change in ownership of the Property or royalties shall be binding on Gas Co. until a person acquiring any interest has furnished Gas Co. with proof satisfactory to Gas Co. of such change in ownership. Landowners agree not to enter into any oil and gas agreement with any other party with regard to the Property until this agreement is terminated. If Landowners do not have title to all of the Property and rights described above, payments hereunder may be made to Landowners in proportion to the interest held by Landowners.

13. **Adverse Claims.** If the Property is subject to an instrument granting rights to a party other than Gas Co. or in the event of dispute or litigation as to title or as to royalties or other sums payable hereunder or any part thereof, royalties and other payments may be held in escrow by Gas Co. until such instrument has been released or cancelled as to the Property and until such dispute or litigation is terminated. The sum so paid in escrow by Gas Co. shall be deemed payment of royalties and other sums due hereunder.

14. **Counterparts.** In the event there is more than one Landowner, then this agreement may be executed by Landowners in one or more counterparts each of which shall constitute an original, but all of which when taken together shall constitute one agreement.

15. **Affidavit of Non-Production.** Landowners hereby warrant that (i) the Property is not encumbered by any enforceable oil or gas lease of record or otherwise and that (ii) they are not currently receiving any bonus, rental, production royalty, or shut-in royalty as the result of any prior oil and gas lease covering any or all of the subject property, and that there have been no wells drilled upon the subject Property or upon lands with which the Property has been combined in a drilling or production unit.

16. **Additional Provisions.** It is further understood and agreed that SEE Addendum to be part of the OIL & GAS AGREEMENT, but not to be recorded

17. **Option to Lease.** If Landowners receive an offer to lease the oil and gas concerning any portion of the Property described herein at any time while this agreement remains in full force and effect, or within six (6) months thereafter, Landowners hereby agree to notify Gas Co. in writing immediately of offeror's name and the terms offered. Gas Co. shall have fifteen (15) days to accept or reject the said offer to lease the oil and gas covered by the offer at the price, terms, and conditions specified in the offer. Failure of Landowners to provide such notice to Gas Co. shall terminate any lease entered into between Landowners and such offeror.

18. **Heirs and Assigns.** All provisions of this agreement shall extend to and be binding upon the heirs, executors, administrators, successors, sublessees and assigns of the parties hereto, provided, however, that an assignment or sublease of this agreement in whole or in part shall release and discharge Gas Co. from any and all obligations or liabilities hereunder. Witness the proper execution of this agreement on the date above written with intent to be legally bound.

WITNESS _____ E. David Nelson, Agent (SEAL)
LANDOWNER
SS # 25-1200339

WITNESS _____ (SEAL)
LANDOWNER
SS # _____

WITNESS _____ (SEAL)
LANDOWNER
SS # _____

WITNESS _____ (SEAL)
LANDOWNER
SS # _____
By Spigary B. Babel (SEAL)
GAS CO.

STATE OF PA

COUNTY OF CLEARFIELD

On this 5th day of April, 2002, before me, a Notary Public, the undersigned officer, personally appeared E. DAVID NELSON

satisfactorily proven to me to be the person whose name subscribed to the within instrument, and acknowledged that HIS executed the same for the purposes therein contained.

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

Notarial Seal
Kenneth L. Radzieta, Notary Public
Clarion Boro, Clarion County
My Commission Expires Feb. 7, 2005
Member, Pennsylvania Association of Notaries

Kenneth J Radzieta (SEAL)
Notary Public

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF

BE IT REMEMBERED, that on the day of 20, before me, the subscriber, a Notary Public, personally appeared the subscribing witness to the execution of the above indenture, who being duly sworn upon his oath according to law, doth depose and say that he did see the Landowner(s) above named, sign and seal, and as act and deed deliver the above indenture for the uses and purposes therein mentioned, and that the name of this deponent thereunto set and subscribed as a witness is of this deponents own proper handwriting and that the foregoing Agreement to be their act and deed for the purpose therein mentioned and desire that the same might be recorded as such.

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER 200207808
RECORDED ON May 15, 2002 12:06:44 PM
Total Pages: 2
RECORDING FEES - \$13.00
RECORDER COUNTY IMPROVEMENT FUND \$1.00
RECORDER IMPROVEMENT FUND \$1.00
STATE WRIT TAX \$0.50
TOTAL \$15.50
CUSTOMER REC'D & LANDED

SUBSCRIBING WITNESS
WITNESS, my hand, and official seal the date first above written.
NOTARY PUBLIC (SEAL)

Oil and Gas Agreement

From To
On Waters of
District or Township
County
State
Received for Record
Recorded
In Book page

GIEN RICHEY

COMPANY ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Clarion

SS:

On this 26 day of April, 2002, before me; a Notary Public the undersigned officer, personally appeared Gregory R. Kriebel to me known to be the same persons whose names are subscribed to the foregoing instrument and in due form of law acknowledged the execution of the foregoing Agreement to be their act and deed for the purposes therein mentioned and desire that the same might be recorded as such.

Notarial Seal
Michele A. Wice, Notary Public
Clarion County
My Commission Expires June 19, 2004
Member, Pennsylvania Association of Notaries

Michele A. Wice (SEAL)
NOTARY PUBLIC

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

)
)
)
)
)
) No. 04- 1712 -CD
)
)
)

IN EQUITY AND AT LAW

VERIFICATION

I, Theron G. Noble, Esquire, Attorney for Plaintiffs, do hereby swear and affirm that I have read the foregoing AMENDED CIVIL COMPLAINT, that the averments therein contained are true and correct to the best of my knowledge, information and belief. Furthermore, I am over the age of 18 years of age and we give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4901.

So made this 4th day of November, 2006.

By,



Theron G. Noble, Esquire,
Attorney for Plaintiffs

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04-__1712____-CD

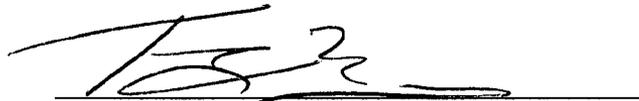
IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of the AMENDED CIVIL COMPLAINT, to the below indicated person, being counsel of record for the defendants, this 4th day of November, 2006, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

CA

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

:
: No. 04-1712-CD
:
: **Preliminary Objections to Plaintiffs'**
: **Amended Complaint**
:
: Filed on behalf of:
: Defendants
:
: Counsel of record for this
: party:
:
: William C. Kriner, Esquire
: 219 East Market Street
: P. O. Box 1425
: Clearfield, PA 16830
: (814) 768-7893
: PA I.D. # 15559
:
: Counsel of record for
: Plaintiffs:
:
: Theron G. Noble, Esq.
: 301 East Pine Street
: Clearfield, PA 16830
: (814) 375-2221
: PA I.D. # 55942

FILED No. CC
M/12:50/30
NOV 21 2006 (GR)

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

PRELIMINARY OBJECTIONS TO PLAINTIFFS' AMENDED COMPLAINT

NOW COME, Defendants by and through their legal counsel, William C. Kriner, Esq., filing Preliminary Objections to the Plaintiffs' Amended Complaint in this matter, of which this is a statement:

1. That the parties hereto filed a Joint Motion for Partial Settlement in this matter.
2. That the Court issued an Order based on said Joint Motion for Partial Settlement, paragraph 6 of which authorized the Plaintiffs to file an amendment of Count VI of their original complaint "as they see fit as to barn damage."
3. The Plaintiffs filed an amended complaint for Count VI on November 4, 2006.

MOTION TO STRIKE

4. That Paragraph 69 alleges a failure of the Defendants to make repairs to other buildings on the premises other than the barn.

5. That the right to amend the complaint was limited to the question of barn damage which was the focus of the original complaint and what was authorized by Order of Court.

6. Paragraph 69 is outside the authorization of the Court for amendment purposes.

WHEREFORE, the Defendants request the Honorable Court to strike paragraph 69 of the Plaintiffs' Amended Complaint for failure to conform to the Court's Order.

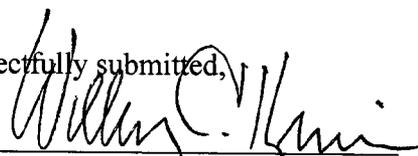
INSUFFICIENT PLEADING

7. That Rule 1019 (f) requires averments of time and place and items of special damage to be specifically pleaded.

8. That paragraphs 64 and 65 generally allege facts as to the existence and/or occurrence of insurance, claims, insurance proceeds, and damage to the barn in question without the specificity required in the Rule.

WHEREFORE, the Defendants request the Honorable Court to Order the Plaintiffs to plead matters of time, place and special damage with the specificity required by the rules.

Respectfully submitted,



William C. Kriner

Attorney for the Defendants

PO Box 1425

Clearfield, PA 16830

814-768-7893

PA # 15559

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

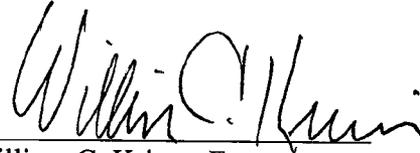
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual; and THE ESTATE OF
ANNE WALKER MACKO

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Preliminary Objections to Plaintiffs' Amended Complaint was served on the following by regular First Class United States mail on the 20th day of November, 2006:

Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

**VERIFICATION TO
AMENDED CIVIL COMPLAINT**

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED NO
m) 11:02/07
NOV 27 2006
cc

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of Plaintiff's VERIFICATION to the AMENDED CIVIL COMPLAINT, to the below indicated person, being counsel of record for the defendants, this 24th day of November, 2006, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

CA

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

: **REPLY TO PO'S AND IN
ALTERNATIVE FOR LEAVE
OF COURT TO AMEND, NUNC
PRO TUNC**

: Filed By:

: Plaintiffs

JURY TRIAL DEMANDED

: Counsel of Record:

: Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED *no cc*
m 11:05/01
DEC 04 2006 *(CK)*

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and)	
ZOE E. WITHEY,)	
)	
PLAINTIFFS,)	
)	
v.)	No. 04- <u>1712</u> -CD
)	
AL HAMILTON CONTRACTING COMPANY, INC.;)	IN EQUITY AND AT LAW
a Pennsylvania corporation; SHANNON LAND AND)	
MINING COMPANY; a Pennsylvania partnership;)	
C. ALAN WALKER, an adult individual; and)	
SUSAN W. KRINER; a adult individual,)	
)	
DEFENDANTS.)	

**PLAINTIFF'S REPLY TO DEFENDANTS' PRELIMINARY OBJECTIONS TO
AMENDED COMPLAINT AND IN THE ALTERNATIVE, MOTION FOR
LEAVE OF COURT TO INCLUDE AMENDMENT NUNC PRO TUNC**

AND NOW, comes the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their REPLY TO DEFENDANTS' PRELIMINARY OBJECTIONS TO AMENDED CIVIL COMPLAINT:

MOTION TO STRIKE

- 1 - 4. Admitted.
5. Denied. Said ORDER also states that "any and all factual and legal positions raised by the parties in their respective pleadings shall be preserved".
6. Denied. That Plaintiffs had specifically raised the issue of the damage done to the premises leased to Mr. Fred Long¹, Plaintiff Mrs. Withey's father, in a prior pleading,

¹ The premises, commonly referred to as "The Fred Long Farm" throughout these proceedings, includes

namely REPLY TO NEW MATTER AND ADDITIONAL NEW MATTER. See Exhibit "A" attached hereto.

WHEREFORE, Plaintiffs request that Defendants' MOTION TO STRIKE be DENIED.

7. The same is a legal conclusion for which no response is required.

8. The same is a legal conclusion for which no response is required. However, to the extent such a response is deemed required, the same is DENIED and Plaintiffs offer the following: (i) Plaintiffs have fairly and accurately depicted their cause of action to the Defendants' in said averments and elsewhere in the Amended Complaint such that Defendants are (a) placed on notice of Plaintiff's claims; (b) can adequately prepare a defense; and (c) not be surprised at trial; and (ii) the information is information which is exclusively in the possession of Defendants.

WHEREFORE, Plaintiffs request that Defendants' MOTION FOR MORE SPECIFIC PLEADING be DENIED.

Motion For Leave of Court to Amend, Nunc Pro Tunc

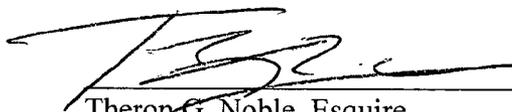
9. In the alternative, if this Honorable Court would construe its October ORDER to not encompass Plaintiffs' action as to the damage to the premises rented to Mr. Fred Long, Plaintiffs' would request leave of court to so amend to include said damage, pursuant to Pa.R.Civ.P. 1033, which permits liberal amendment to complaints.

not only the Withey home but also a second home which was occupied by Mr. Fred Long for many years.

10. That in the interests of judicial economy, said amendment should be granted nunc pro tunc so as to avoid the requirement of re-filing said pleading.

WHEREFORE, in the alternative, Plaintiffs would request leave of court, nunc pro tunc, to incorporate the damage to the "Fred Long Home".

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

COPY

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adult individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

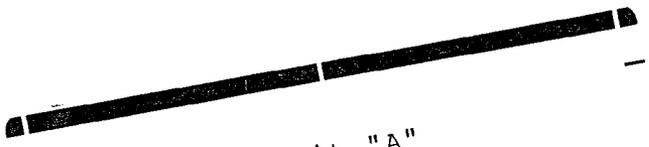
REPLY TO NEW MATTER,
ANSWER TO COUNTER-CLAIM,
AND ADDITIONAL NEW MATTER

Filed By:

Plaintiffs

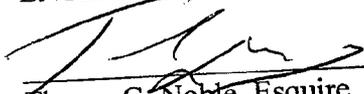
Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942


Exhibit "A"

To: Defendants

YOU ARE REQUIRED TO FILE A RESPONSE
TO THIS PLEADING WITHIN TWENTY (20)
DAYS HEREOF OR JUDGMENT COULD BE
ENTERED AGAINST YOU


Theron G. Noble, Esquire
Attorney for Plaintiffs

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

**PLAINTIFF'S REPLY TO NEW MATTER, ANSWER TO
COUNTER-CLAIM AND ADDITIONAL NEW MATTER**

AND NOW, comes the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their REPLY TO NEW MATTER, ANSWER TO COUNTER-CLAIM and ADDITIONAL NEW MATTER:

Reply to New Matter

79. After reasonable investigation it is not known if the real estate taxes for this year have been paid, nor is it known whether all taxes will remain current while this lawsuit is being litigated.

As such, the same is denied and strict proof is demanded at time of trial. By way of further answer, the real estate taxes through last year (2004) were only paid when Plaintiffs, after repeated attempts with the defendant were rebuffed to have the taxes paid pursuant to the contract, filed and sought a court order for such payment.

80. After reasonable investigation it is not known whether the Stage III bonds have been or not have been released, nor is it known if they have not been released that the same will remain accurate while this lawsuit is being litigated. As such, strict proof of the same is demanded at time of trial. By way of further answer, defendants have repeatedly informed Plaintiffs and this Court that the Stage III bonds, especially for the Fred Long Farm, are in such a position to be released and the reason for not being so released has never been made clear.

81. The same is a legal conclusion for which no response is deemed necessary. By way of further response, the same is DENIED in that Defendants are obligated by law and by implied contractual terms of the 1991 agreement to cooperate and do all reasonable things to assure the release of the Stage III bonds and if they are not so doing can not take refuge in the fact that the Stage III bonds have not been released.

82. The same is a legal conclusion for which no response is deemed necessary.

83. Admitted in part, Denied in part. It is ADMITTED that the Defendants have been attempting since 2001 to "amend" the contract and force the Plaintiffs to accept terms which are not just and fair under the circumstances or contract. As such, it is ADMITTED that the defendants have done as stated herein but their implications, that such amendments were appropriate, just or fair are DENIED.

84. Admitted. The reasons for such refusal are as stated above.

85. Denied. For the reasons set forth in Plaintiffs' civil complaint, the same is DENIED.

86. Denied. For the reasons set forth in Plaintiffs' civil complaint, the same is denied.

87. Denied. First, Plaintiffs' do not know what Defendants reference as "an operations

agreement", nor the import of such phrase. As such, that is specifically denied and strict proof is demanded at time of trial. Second, said land and buildings were to become the Witheys' at the completion of the 1991 agreement such that an equitable interest and title passed to the Witheys' in the 1991 agreement and Plaintiffs are not merely "tenants living rent free". Strict proof of the same is demanded at time of trial.

88. Denied. It is admitted one aspect of the 1991 agreement, concerning the construction of a new home and not paying rent have been performed since 1991. However, defendants over glorify their contractual performance by implicating that they have abided by the 1991 agreement when in fact they have refused to deliver the property to the Witheys as called for, refused to pay real estate taxes without judicial intervention, refused to maintain the buildings and refused to provide proof of insurance. Strict proof of the same is demanded at time of trial.

89. Denied. Per paragraph 5 of the 1991 agreement, the Witheys are to receive the Fred Long Farm "together with the dwelling buildings thereon". In addition, in that the "dwelling buildings" are attached to the real estate they have become part of the real estate and would be conveyed as part of any such conveyance. Strict proof of the same is demanded at time of trial.

90. Admitted.

91. Admitted.

92. Admitted in part, Denied in part. It is ADMITTED that Fred Long still has a leasehold interest in such premises but given his health and general well being, it can not be ADMITTED that he is "in possession" of the same. As such, strict proof of the same is demanded at time trial.

93. Admitted in part, Denied in part. It is ADMITTED that some responsibility for maintenance has been assumed by Fred Long through his lease. However, in that reasonable wear and tear is not his responsibility the general assertion by the defendants is DENIED and strict proof demanded at time of trial.

94. Denied. First, for the reason set forth above, the same is denied. Secondly, as between these parties, the 1991 contract impliedly calls for the buildings to be conveyed in good condition and repair and defendants, not Fred Long, owe such obligation to the Witheys, with whom the Witheys are in a contractual relationship.

95. Admitted.

96. Denied. Although the Witheys were aware of a lease agreement, the exact terms were not disclosed nor were they privy to such terms. By way of further response, as above, reasonable wear and tear is not the responsibility of Fred Long pursuant to his lease, which responsibility remains with the defendants. Strict proof of the same is demanded at time of trial.

97. The same is a legal conclusion for which no response is needed.

98. Plaintiffs hereby incorporate their responses to averments 95 - 97 as if the same were fully set forth at length.

99. Denied. It is denied that under the such lease that Fred Long had "exclusive right of possession and control" in that the lease contains many limitations on Mr. Long's possession and control. As such, the same is denied and strict proof is demanded at time of trial.

100. Denied. For the same reasons set forth in response to averment 96, the same is denied and strict proof is demanded at time of trial.

101. Denied. Although the Witheys were aware that Fred Long had a leasehold interest in a portion of the premises, they were not aware of the exact terms of the lease at the time they entered into the 1991 agreement and therefore did not "consent" to such terms. Furthermore, the same is actually immaterial in that what is at issue does not relate to a failure to perform routine care and maintenance but is associated with ordinary wear and tear which is expressly the defendants' responsibility in the 1989 agreement with Mr. Long and which typically is the landlords' responsibility. As such, strict proof of the same is demanded at time of trial.

102. For the reasons set forth above, the same is denied and strict proof is demanded at time of trial.

WHEREFORE, Plaintiffs request that judgment be entered in their favor as per the requests contained in their civil complaint.

Answer to Counter-Claim

103. Denied. The contract, which speaks for itself, in essence states that if a party needs to resort to the courts for a breach of contract, such as the Witheys have done per the real estate taxes and insurance issues, and they are successful in enforcing such rights, as the Witheys were, then that party is entitled to reasonable attorney's fees. As such, the same is DENIED and strict proof demanded at time of trial.

104. The same is immaterial and irrelevant given that Defendants have not asserted any breach of the 1991 agreement by the Witheys which is required in order for them to recover such fees. By way of further response, it is also noted that defendants were not successful in many other of

their preliminary objections.

105. Admitted in part, denied in part. First, the same is wholly irrelevant and immaterial. Second, it is ADMITTED that the Witheys have rejected the defendants unilateral, unfair and unjust offers of amendments. To the extent such averments implies that the Witheys were required to accept such amendments and have not been justified in such refusals, the same is DENIED and strict proof demanded at time of trial.

106. Denied. The Witheys have at all times honored the 1991 agreement and continue to do so. Strict proof of the same is demanded at time of trial.

107. Denied. For the reasons herein set forth the same is DENIED and strict proof is demanded at time of trial.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor as to Defendants' COUNTER-CLAIM.

Additional New Matter

108. That the Witheys have not nor are they in breach of the 1991 agreement.

109. That the 1991 agreement only provides reasonable attorney's fees for the non-breaching party who successfully pursues and obtains a judicial remedy.

110. That the 1989 lease agreement between Mr. Fred Long and Defendant Shannon Land and Mining only provides that Mr. Long is responsible to keep the premises in "good order and repair" from which "ordinary wear and tear" is excepted.

111. That as landlord and record owner of the premises that defendants are responsible to keep the buildings, leased to Mr. Fred Long, on the premises reasonably maintained.

112. Per the 1991 agreement, the defendants are to convey the "Fred Long Property" with its buildings in reasonable condition.

113. That when the Witheys entered into the 1991 agreement, they had not reviewed the 1989 lease between Shannon Land and Mining and Mr. Fred Long nor were they aware of its material terms and conditions.

114. That the Witheys, as part of the 1991 agreement, are to receive with the conveyance of the Fred Long Farm, all buildings attached thereupon.

115. That the Stage III bonds, subject of the 1991 agreement, should have been released by now.

116. That upon information and belief, defendants have not fully cooperated with DEP to obtain the release of said Stage III bonds.

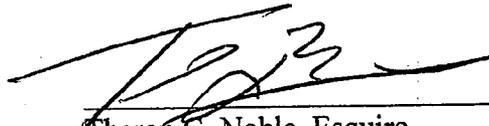
117. That the defendants have failed to comply with DEP guidelines and regulations which is why the Stage III bonds have not yet been released.

118. That as to the premises known as the Fred Long Farm, the same is in DEP compliance and could be released from the Stage III bonds.

119. That per the 1991 agreement, defendants are impliedly required to cooperate and do all things reasonably necessary to obtain release of the Stage III bonds, subject matter of the 1991 agreement.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor as to their CIVIL COMPLAINT, as well as Defendants' counter-claim, together with the relief previously requested.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

VERIFICATION

We, RICHARD L. WITHEY and ZOE E. WITHEY, Plaintiffs, do hereby swear and affirm that we have read the foregoing REPLY TO NEW MATTER, ANSWER TO COUNTER-CLAIM and ADDITIONAL NEW MATTER and that the averments therein contained are true and correct to the best of our knowledge, information and belief. Furthermore, we are over the age of 18 years of age and we give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4901.

So made this 16 day of May, 2005.

By,

Richard L. Withey
Richard L. Withey, Plaintiff

Zoe E. Withey
Zoe E. Withey, Plaintiff

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

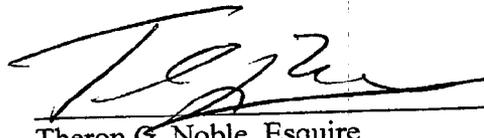
IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I did mail a true and correct copy of Plaintiffs', REPLY TO NEW MATTER, ANSWER TO COUNTER-CLAIM and ADDITIONAL NEW MATTER, to the below indicated person, being counsel of record for the defendants, this 18th day of MAY, 2005, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of Plaintiff's REPLY TO DEFENDANT'S PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT, AND IN ALTERNATIVE FOR LEAVE OF COURT TO AMEND, NUNC PRO TUNC, to the below indicated person, being counsel of record for the defendants, this 2nd day of December, 2006, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY, INC., a Pennsylvania
corporation; SHANNON LAND AND
MINING COMPANY, a Pennsylvania
partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER,
an adult individual;

Defendants

ORDER

AND NOW, this 12th day of December, 2006, upon consideration of the Preliminary
Objections of the Defendants and the Plaintiffs' Reply to Preliminary Objections, it is hereby
ORDERED that argument shall be heard on said Preliminary Objections on
January 11, 2007, at 9:30 o'clock A.M. in Court Room
No. 1 of the Clearfield County Court House.

Notice of the entry of this Order shall be provided to the Plaintiffs by the Defendants.

BY THE COURT,

Judith J. Ammerman

FILED
DEC 13 2006

icc
Atty Kriner

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.,
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

:
: No. 04-1712-CD
:
: **Certificate of Service**
:
: Filed on behalf of:
: Defendants
:
: Counsel of record for this
: party:
: William C. Kriner, Esquire
: 219 East Market Street
: P. O. Box 1425
: Clearfield, PA 16830
: (814) 592-0637
: PA I.D. # 15559
:
: Counsel of record for
: Plaintiffs:
:
: Theron G. Noble, Esq.
: 301 East Pine Street
: Clearfield, PA 16830
: (814) 375-2221
: PA I.D. # 55942

FILED NOCC
01/03/05
JAN 10 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that the Order dated December 12, 2006, scheduling argument on Preliminary Objections was served on the following by regular First Class United States mail on December 12, 2006 :

Theron G. Noble, Esq.
Ferraccio & Noble
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

January 10, 2007

CA

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

RICHARD L. WITHEY and ZOE E. WITHEY,
Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.,
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN W.
KRINER; an adult individual; and THE ESTATE OF
ANNE WALKER MACKO,
Defendants

*
*
*
*
*
*
*
*
*

NO. 04-1712-CD

ORDER

NOW, this 11th day of January, 2007, following argument on the Preliminary
Objections filed to the Plaintiffs' Amended Complaint, it is the ORDER of this court as
follows:

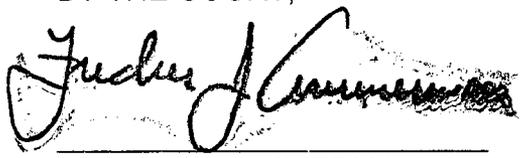
1. The Motion to strike paragraph 69 of the Amended Complaint is hereby granted, without prejudice to the Plaintiffs to file an appropriate Petition for Leave of Court to Amend. The request for Leave to Amend as set forth in the Plaintiffs' Reply to Preliminary Objections is dismissed as being procedurally incorrect.
2. The preliminary objection relative insufficient pleading under Rule 1019(f) is granted. Plaintiffs shall file a further Amended Complaint and shall plead the matters with specificity.

FILED
019:3751
JAN 12 2007
ICC Atty's:
Noble
Kriner

William A. Shaw
Prothonotary/Clerk of Courts

Ⓞ

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

JAN 12 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/12/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

2A

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

**MOTION FOR LEAVE OF
COURT TO AMENDED
AMENDED CIVIL COMPLAINT**

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED *no cc*
11/11/03/04
FEB 01 2007

William A. Shaw
Prothonotary/Clerk of Courts

CA

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

RICHARD L. WITHEY, and)
ZOE E. WITHEY,)
PLAINTIFFS,)

No. 04- 1712 -CD

v.)

AL HAMILTON CONTRACTING COMPANY, INC.;)
a Pennsylvania corporation; SHANNON LAND AND)
MINING COMPANY; a Pennsylvania partnership;)
C. ALAN WALKER, an adult individual; and)
SUSAN W. KRINER; a adult individual,)
DEFENDANTS.)

IN EQUITY AND AT LAW

RULE TO SHOW CAUSE

Now, this 5 day of February, 2007, upon consideration of the attached MOTION FOR LEAVE OF COURT TO AMEND AMENDED CIVIL COMPLAINT, a RULE is hereby issued upon the Defendant to SHOW CAUSE why the MOTION should not be granted. RULE RETURNABLE, for filing written response, is set for the 20th day of February, 2007, and hearing will be held on the 20th day of February, 2007, commencing at 10:00, A.M., Courtroom No.1, Clearfield County Courthouse.

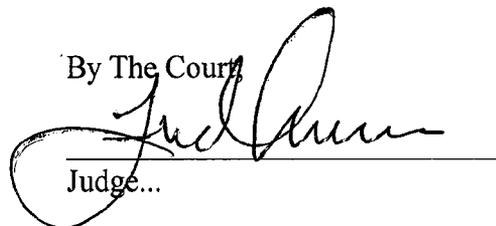
NOTICE

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

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

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641

By The Court


Judge...

FILED ^{icc}
01/09/07 ^{Any Noble}
FEB 06 2007 ^{CS}

William A. Shaw
Prothonotary/Clerk of Courts

FILED

FEB 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/6/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

MOTION FOR LEAVE OF COURT TO AMEND CIVIL COMPLAINT

AND NOW, comes the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire of Ferraraccio & Noble, who avers as follows in support of their **MOTION FOR LEAVE OF COURT TO AMEND AMENDED CIVIL COMPLAINT**:

Exhibit "A"

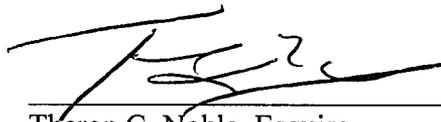
Background

1. That a CIVIL COMPLAINT was filed in this matter on October 29, 2004.
2. That the crux of the case involves a contract case in which the parties were to convey to each other some real estate after coal removal operations were completed on one of the parcels.

3. Pursuant to the October 11, Order of this Court, Plaintiff filed an AMENDED CIVIL COMPLAINT.
4. That Plaintiff did so and Defendant filed a timely Preliminary Objection.
5. This Court sustained Defendant's Preliminary Objection.
6. Plaintiff now proposes to Amend their Amended Civil Complaint, as attached hereto as Exhibit "A", essentially to: (a) to incorporate and specifically plead the barn damage; (b) to add a count relative to faulty construction issues; and (c) "clean up" the complaint as to what issues remain given the exchange of deeds.
7. That Plaintiff counsel discussed with Defense Counsel this matter and counsel was "non committal" as to his position.

WHEREFORE, Plaintiffs request that they be granted leave of Court to amend their amended civil complaint.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adult individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

No. 04-_____ -CD

IN EQUITY AND AT LAW

SECOND AMENDED CIVIL COMPLAINT

NOW COMES, the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their CIVIL COMPLAINT:

The Parties

1. First plaintiff is Richard L. Withey, who does, and at all material times, did reside at 4 McKee Road, Olanta, Clearfield County Pennsylvania, 16863.
2. Second plaintiff is Zoe E. Withey, who does, and at all material times, did reside at 4 McKee Road, Olanta, Clearfield County Pennsylvania, 16863.
3. That at all relevant and material times, Plaintiffs were husband and wife living together at the aforementioned physical address, albeit with a different mailing address given the changes with the 911 system, and jointly referred sometimes hereinafter as "Withey".

4. First defendant is Al Hamilton Contracting Company, Inc., upon information and belief, a duly formed and existing Pennsylvania Corporation, with principal place of business located at 1988 Dale Road, Woodland, Clearfield County, Pennsylvania 16825, hereinafter referred to as "Hamilton".

5. Second defendant is Shannon Land and Mining Company, upon information and belief, a duly formed and existing Pennsylvania partnership, with partners being the hereinafter named third, fourth and fifth defendants, with principal place of business also located 1988 Dale Road, Woodland, Clearfield County, Pennsylvania 16825, hereinafter referred to as "Shannon".

6. That third defendant is C. Alan Walker, upon information and belief, an adult individual, who does and at all material times did reside at 1018 Country Club Road, Clearfield, Clearfield County, Pennsylvania 16830, hereinafter referred to as "Walker".

7. That fourth defendant is Susan Kriner, upon information and belief, an adult individual, who does and at all material times did reside at 2512 Meadow Road, Clearfield, Clearfield County, Pennsylvania 16830, hereinafter referred to as "Kriner".

8. That fifth defendant is the Estate of Anne Walker Macko, a duly formed and probated estate, with fiduciaries being William Kriner, 2512 Meadow Road, Clearfield County, Pennsylvania 16830, and Derick Walker, 179 Walker Road, Bigler, Clearfield County, Pennsylvania, hereinafter referred to as "Macko".

Background

9. That upon information and belief, at all relevant and material times, Walker, Kriner and Macko were and are officers, directors and shareholders of Hamilton.

10. That upon information and belief, at all relevant and material times, Walker, Kriner and Macko owned a controlling interest of the issued and outstanding shares of Hamilton.

11. That Hamilton and Shannon, beside being similarly owned and controlled, upon information and belief, often times engage in business activities which are mutually beneficial, specifically that Shannon owns or otherwise controls the land upon which Hamilton conducts mining operations.

12. That upon information and belief, at least some of the employees of Hamilton and Shannon also perform tasks for the other company of which they are not employed.

13. Alternatively, upon information and belief, there are employees of Hamilton and Shannon which are simultaneously employed by both entities.

14. That Hamilton and Shannon are allied companies, with the individual defendants herein named being the principals of each company.
15. That upon information and belief, at all relevant and material times, being November 27, 1991 to the present, Walker, Kriner and Macko were partners, and the only partners, in Shannon.
16. That Hamilton's business focus is coal mining operations.
17. At the commencement of this action, the Witheys were the owners of record of a certain tract of land, containing approximately 1.14 acres, located in Pike Township, Clearfield County, Pennsylvania, hereinafter referred to as "the Pike Township tract".
18. That in the early 1990s, the defendants desired to mine coal in close proximity to the Pike Township tract.
19. That for reasons of convenience or need, defendants desired the Witheys to authorize such coal mining operation and permit use of the Pike Township tract, which at that time was serving as the Witheys homestead, for defendants' business purposes.
20. That in connection with defendants' above stated desires, plaintiffs and defendants entered into a certain agreement, on November 27, 1991, hereinafter "the 1991 agreement", a true and correct copy of which is attached hereto as Exhibit "A", the terms of which are hereby incorporated as if fully set forth at length, which in essence transferred equitable title of the Pike Township tract from the Witheys to the defendants, in exchange for which the defendants were to convey approximately 66 acres, hereinafter identified as "the Fred Long farm", also located in Pike Township, Clearfield County, Pennsylvania, to the Witheys.
21. That Shannon was aware of the commitment made by Hamilton that the Fred Long farm would be conveyed to the Witheys, prior to and at the time the 1991 agreement was entered into by Hamilton and the Witheys. Attached hereto as Exhibit "B" is a letter from Shannon stating its intent to deliver the Fred Long farm to the Witheys.
22. That Shannon did not object and implicitly agreed to the commitment that its property would be transferred to the Witheys at the completion of the terms contained in the 1991 agreement and would be the entity, upon information and belief, that Hamilton would direct the Witheys to convey the Pike Township tract.
23. That Hamilton and others associated with Shannon acted as Shannon's agent, disclosed or undisclosed, binding Shannon to the 1991 agreement, making Shannon a party eo nomine to the 1991 agreement.

24. That although Shannon was at all relevant and material times the record owner of Fred Long farm, for the home built for the Witheys on the Fred Long farm property, the real estate taxes were issued to Hamilton at the direction of Hamilton and/or Shannon.

25. This cause of action concerns the defendants failures to timely complete said transfers as well as to breach other terms and conditions of the 1991 agreement.

Count I: Breach of Contract
(at Law)
Conveyances post 1991 Agreement

26. That the averments of paragraphs 1 - 26, inclusive, are hereby incorporated as if again fully set forth at length.

27. That upon information and belief, defendants entered into other contracts and conveyances concerning the Fred Long property, after the 1991 agreement.

28. That the result of the contracts and conveyances by the defendants, concerning the Fred Long farm, after the 1991 agreement, deny the Witheys the full benefit of their bargain under the 1991 agreement and for which the Witheys should be compensated in an amount to be determined at time of trial.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against Defendants, jointly and severally, in an amount to be determined, believed to be in excess of \$20,000, together with costs, interest and attorneys fees.

Count II: Breach of Contract
(At Law)
Real Estate Taxes

29. That the averments of paragraphs 1 - 28, inclusive, are hereby incorporated as if again fully set forth at length.

30. That pursuant to paragraph 4 of the 1991 agreement, the Witheys were entitled to live in the home constructed on the Fred Long farm, "tax-free".

31. That the defendants were responsible to pay the real estate taxes on the Fred Long farm per the 1991 agreement.

32. That defendants have not paid the real estate taxes since 2001 on the Witheys' home located on Fred Long farm property. A true and correct copy of the letter and notice concerning the delinquent taxes are attached hereto as Exhibit "C".

33. To protect their interest, the Witheys were forced to pay the 2002 real estate taxes, with penalty, in the amount of \$1,311.85, to prevent the Fred Long farm property from going to tax sale. A true and correct copy of the check issued by the Witheys is attached hereto as Exhibit "E".

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against the defendants, jointly and severally, in the amount of \$1,311.85, together with costs, interest and reasonable attorneys fees.

Count III: Breach of Contract
(At law)
Barn Damage

34. That the averments of paragraphs 1 - 33, inclusive, are hereby incorporated as if again fully set forth at length.

35. That in 1993, the barn located on the Fred Long premises received damage caused by wind.

36. That defendants made a claim relative to the insurance proceeds and received the sum of \$1,505.89 for such wind damage to the barn.

37. That defendants did not perform any repairs nor perform any remedial measures concerning the barn.

38. That defendants pursuant to the 1991 agreement and/or Pennsylvania law were responsible to (a) perform the repairs and/or remedial work to preserve the barn; and/or (b) deliver the premises to the Witheys in the same condition as at the time the 1991 agreement was executed.

39. That as a result of the wind damage of 1993 and the defendants failure to repair or correct the damage, as time progressed, the barn deteriorated and needed to be torn down due to safety reasons.

40. That the Witheys should be compensated, in amounts to be determined at time of trial, for (a) the cost to tear down and remove the barn; and (b) to replace the barn in similar condition as at the time of the 1991 agreement.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an amount in excess of \$20,000, together with costs and reasonable attorneys fees.

Count IV: Request for an Accounting
(In Equity)
Insurance Proceeds

41. That the averments of paragraphs 1 - 40, inclusive, are hereby incorporated as if again fully set forth at length.
42. That per the 1991 agreement, at paragraph 8, defendants agreed to maintain fire and liability insurance on the Fred Long farm as well as the Pike Township tract.
43. That per the 1991 agreement, at paragraph 5, at the end of the transaction, the Witheys were to receive the premises which would have included the barn pursuant to Pennsylvania law.
44. That such damage should have been covered by insurance if the defendants had maintained such insurance.
45. If the defendants did maintain such insurance and received such payment, in the alternative to Count III hereof, said money rightfully belongs to the Witheys as part of their bargained for consideration and they should receive an accounting for such payment.

WHEREFORE, Plaintiff requests that in the event defendants received insurance proceeds for damage to the barn on the Fred Long farm, they be ordered as follows:

- 1. Make an accounting to the Witheys for any insurance proceeds received by the defendants, including interest, for such damage;**
- 2. Pay to the Witheys any such sums received as a result of such damage to the barn;**
- 3. Pay the Witheys reasonable attorney's fees incurred in this matter; and**
- 4. Any other relief this Court determines as fair and just under the circumstances.**

Count V: Breach of Contract
(At law)
Faulty Construction

46. That the averments of paragraphs 1 - 45, inclusive, are hereby incorporated as if again fully set forth at length.

47. That defendants agreed, pursuant to the 1991 agreement, specifically clause 3, to build a new home for the Witheys on the Fred Long premises.

48. That the home to be built for the Witheys would be required to be built in a reasonable and workmanlike manner.

49. That the roof needed to be replaced in 2006 because faulty shingles, which should have lasted 25 years according to reasonable standards, had become cracked and caused leaking, for which the Witheys were required to expend approximately \$7,700.

50. That the molding, in the front porch area of the house, had been improperly fastened, causing the "J channel" to become loose and twisting into the porch area, which needed to be repaired, again in 2006, at a cost of \$1,300.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an approximate amount of \$9,000, together with costs and reasonable attorneys fees.

Count VI: Breach of Contract
(At Law)
Reasonable Attorney's Fees

51. That the averments of paragraphs 1 - 50, inclusive, are hereby incorporated as if again fully set forth at length.

52. That per the 1991 agreement, specifically at paragraph 9, in the event one party breaches the agreement and the other party sues to enforce their rights, the non-breaching party has the right to recover reasonable attorneys fees against the breaching party.

53. That for the reasons set forth herein, defendants have breached the 1991 agreement.

54. That defendant should pay to the Witheys their reasonable attorneys fees incurred in connection with this litigation, in an amount to be determined.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an amount in excess of \$20,000, together with costs and

reasonable attorneys fees.

Count V: Request for Accounting
(In Equity)
Mineral Rights

55. That the averments of paragraphs 1 - 54, inclusive, are hereby incorporated as if again fully set forth at length.

56. That pursuant to paragraph 5 of the 1991 Agreement, the conveyances from the Witheys to the defendants, and from the defendants to the Witheys, were to be free and clear of all encumbrances.

57. That the Witheys are entitled to the mineral rights as to the Fred Long farm.

58. That since 1991, the defendants have entered into lease agreements, true and correct copies of which are attached hereto as Exhibit "F", for the minerals located on the Fred Long farm property.

59. That the defendants should account to the Witheys for all mineral royalties received by any of them from said leases, commencing at the time it is determined that defendants should have conveyed the Fred Long farm property to the Witheys, being the time the Stage III bonds were, or reasonably should have been released.

60. That as per Count II of Plaintiff's "Amended Civil Complaint", seeking specific performance, the Plaintiffs were also entitled to receive the Fred Long premises without the reservation of mineral rights for defendants, which issue has been preserved for appeal as per this honorable Court's ORDER of October, 2006.

WHEREFORE, Plaintiffs request defendants' they be ordered as follows:

- 1. Make an accounting to the Witheys for any and all royalties received pursuant to the attached leases from the time period the Stage III bond were, or should have been released;**
- 2. Pay the Witheys reasonable attorney's fees incurred in this matter; and**
- 3. Any other relief this Court determines as fair and just under the circumstances.**

Miscellaneous Averments

60. That jurisdiction is proper.

61. That venue is proper.

62. That defendants are jointly and severally liable to the Witheys.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against defendants, jointly and severally, in an amount in excess of \$20,000, together with interest, where applicable, costs of suit, and attorney's fees as well as Plaintiffs be granted accountings, and any other relief deemed just and appropriate under the circumstances.

Respectfully Submitted,

Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

VOL 1547 PAGE 522

AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of November, 1991, by and between RICHARD L. WITHEY and ZOE E. WITHEY, husband and wife, of Pike Township, Clearfield County, Pennsylvania, parties of the first part, hereinafter referred to as "WITHEY",

AND

AL HAMILTON CONTRACTING COMPANY, a Pennsylvania business corporation, having its principal place of business at R. D. 1, Box 87, Woodland, Clearfield County, Pennsylvania, party of the second part, hereinafter referred to as "HAMILTON".

W I T N E S S E T H :

WHEREAS, HAMILTON is conducting surface mining operations in close proximity to the home of WITHEY; and

WHEREAS, HAMILTON wishes to obtain various authorizations to mine within three hundred (300) feet of the WITHEY home; and

WHEREAS, HAMILTON has agreed to provide alternate housing for WITHEYS during mining operations under authorizations signed by WITHEY.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. That this Agreement shall represent authorization by WITHEY for HAMILTON to conduct surface mining activities on

VOL 1547 PAGE 523

the 1.14 acres of real property owned by WITHEY in Pike Township, Clearfield County, Pennsylvania.

2. That contemporaneous with the execution of this Agreement WITHEYS will sign any and all necessary authorizations for HAMILTON to conduct surface mining activities within three hundred (300) feet of the present WITHEY home in Pike Township, Clearfield County, Pennsylvania, which will include execution of a Supplemental "C" and a building variance authorization. WITHEYS also agree to sign any and all other documents required to conduct mining within three hundred (300) feet of their home.

3. That HAMILTON agrees to construct for WITHEYS alternative housing on property formerly of Fred Long located in Pike Township, Clearfield County, Pennsylvania. HAMILTON agrees to execute a construction agreement with Neff Construction Company, of Curwensville, Pennsylvania, to construct said home when this Agreement is executed. Said home will be constructed in a manner agreed to by the parties and at a location on the former Fred Long property mutually acceptable to WITHEYS and HAMILTON. HAMILTON further agrees to be solely responsible and liable for payment in full of any and all obligations incurred for the construction of said home by Neff Construction. HAMILTON further agrees to indemnify and save the WITHEYS harmless from any and all debts, liabilities, or obligations (including attorneys' fees and legal costs of WITHEY) incurred with respect to the construction of said home by Neff Construction.

VOL 1547 PAGE 524

4. That upon completion of the construction project by Neff Construction Company, WITHEYS will be permitted to immediately occupy the new dwelling. WITHEYS shall live in said dwelling rent-free and tax-free, but will be required to pay any and all utilities used at said dwelling.

5. Upon completion of all mining activities on the Blommington Job of HAMILTON and the release of Stage III bonds from Permot No. 17803166, HAMILTON will arrange for the conveyance of surface of the former Fred Long Farm of approximately 66 acres, together with the dwelling buildings thereon, to WITHEYS and WITHEYS shall convey the present house and 1.14 acres of surface in Pike Township from WITHEY to HAMILTON, SHANNON LAND AND MINING COMPANY, or a nominee. The conveyances shall be made free and clear of all liens and encumbrances and pass marketable title. A description of each property is attached hereto.

6. That the WITHEYS covenant and agree that the providing of alternative new housing during mining within three hundred (300) feet of the WITHEY home and the conveyance to WITHEYS of surface to sixty-six (66) acres, formerly identified as the Fred Long Property, together with the dwelling buildings thereon, with marketable title free and clear of all liens and encumbrances, will represent consideration for said mining, and no royalty or payment of any nature or kind will be owed by HAMILTON to WITHEY for the mining of coal or the conducting of mining activities on the 1.14 acres of WITHEYS.

7. That conveyance of the 66 acres and new dwelling house may occur sooner than the time period identified in

Paragraph 4 above upon written agreement by both parties.

8. That HAMILTON covenants and agrees to maintain liability and fire insurance on both the home being constructed by Neff Construction and the present WITHEY home and 1.14 acres in Pike Township, Clearfield County, Pennsylvania. Said duty and obligation to carry insurance shall cease and terminate upon the delivery of the Deed to the 66 acres of the formerly Fred Long Farm to the WITHEYS.

9. That in the event that either party breaches this Agreement, and as a result of said breach either party has the right to elect to sue for damages or seek any other remedies or relief as may be available to them, and if the party choosing such remedy is successful in enforcing their rights, then the responsible party shall be liable for legal fees and any and all other costs of litigation incurred in enforcing their rights under this Agreement.

10. That this Agreement may not be assigned or transferred by either party without first obtaining the written consent of the other to so transfer.

11. That this agreement constitutes the entire understanding of the parties hereto and any amendment of this agreement shall be in writing executed by both parties.

12. That this agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns as if they were named in each and every provision herein.

VOL 1547 PAGE 526

13. That the parties agree to execute a Memorandum of Agreement outlining those matters which are required by law for recordability, which Memorandum shall memorialize and represent this Agreement, and which may be recorded by the WITHEYS if they so desire.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed the day and year first above written.

Richard S. Withey (SEAL)
Richard L. Withey

Zoe E. Withey (SEAL)
Zoe E. Withey

AL HAMILTON CONTRACTING COMPANY
By

C. Alan Walker, C.E.O.
C. Alan Walker
C.E.O.

ATTEST
[Signature]
Secretary

(SEAL)

I hereby CERTIFY that this document is recorded in the Recorder's Office of Clearfield County, Pennsylvania.

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 8:21 P.M. 8-3-93
BY [Signature]
FEES [Signature]
Karen L. Starck, Recorder

[Signature]
Karen L. Starck
Recorder of Deeds

Entered of Record 8-3-93 5 1993, 8:30 AM Karen L. Starck, Recorder

SHANNON LAND AND MINING COMPANY

P. O. Box 368
Bigler, PA 16825

PHONE: (814) 857-7681

FAX; (814) 857-5003

September 13, 2000

Mr. & Mrs. Richard L. Withey
R. R. #1, Box 488
Olanta, PA 16863

Exhibit "B"

RE: Agreement dated 11/27/91

Dear Dick and Zoe:

I had our attorney, Mr. William C. Kriner, review the agreement dated November 27, 1991 between you and Al Hamilton Contracting Company regarding the former Fred Long Farm in Pike Township.

The Fred Long Farm is owned by Shannon Land and Mining Company. Shannon Land and Mining Company is not a party in the agreement dated 11/27/91 and is not bound by the terms thereof. Paragraph 5, on Page 3 states that: "Hamilton will arrange for the conveyance of surface of the former Fred Long Farm of approximately 66 acres, together with the dwelling buildings thereon, to Withey's."

In the meantime, Shannon Land and Mining Company may do whatever they desire to the Fred Long property; i.e., cut trees, build roads, put in water lines, power lines, etc. We feel it would not be proper to sell a tract of land to Bill Elensky and then deny him water and electric service or a good road to his property.

We fully intend to transfer the Fred Long Farm to you in the future. Until the property is titled to you, it remains the property of Shannon Land and Mining Company.

Sincerely,



E. David Nelson, Manager
Properties & Reserves
SHANNON LAND AND MINING COMPANY

EDN/smr
cc: C. A. Walker
wd/sep00/withey

Clearfield County Tax Claim Bureau



230 EAST MARKET STREET
SUITE 121
Clearfield, Pennsylvania 16830

TELEPHONE (814) 765-2641
FAX (814) 765-2640

Exhibit "C" *4 pages*

MAY 20, 2004

Map # 126-H11-000-00021-DW-01
Municipality: PIKE TOWNSHIP
Control: # 126.0-93318
Description: H
Owner: AL HAMILTON CONTRACTING CO.

To Whom It May Concern:

This letter is to verify that there are delinquent taxes, on the above referenced assessment. Taxes due are for 2002- 2003. A statement is enclosed.

Sincerely,

Jeffrey C. Graham
Jeffrey C. Graham
Asst. Director

05/20/2004
Searched Jeb

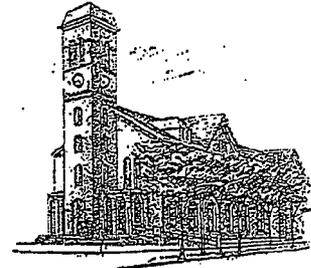
STATEMENT VALID AS TO CURRENT ACCOUNTS.
SUBJECT TO CORRECTIONS AND CHANGES.

Clearfield County Tax Claim Bureau

230 East Market Street - Suite 121

Clearfield, Pennsylvania 16830

Phone: (814) 765-2641 Ext. 5998



-Customer Copy-

Receipt # 175191

Tuesday, May 25, 2004

Received Of:

AL HAMILTON CONTRACTING CO.

Control # 126093318

Claim # 2002-007714

Map # H11-000-00021-DW-01

In The Amount Of:

\$1,311.85

Property Desc H

	County	District	School
TAX	0.00	0.00	1156.72
INTEREST	0.00	0.00	130.13
COST / PENALTY	25.00		
CURRENT YEAR	0.00	0.00	0.00
OVERBID	0.00		
TOTAL	<u>\$1,311.85</u>		

MaryAnne Werdock

Director of Tax Claim Bureau

RECEIPT VALID ONLY UPON PAYMENT OF LEGAL TENDER

ANY CHECK RETURN UNPAID BY YOUR BANK WILL BE SUBJECT TO A TWENTY DOLLAR (\$20.00) RETURNED CHECK FEE

Total Received On All Claims For 12609331 On 5/25/04 \$1,311.85

May 25, 2004

C. Alan Walker, CEO
Al Hamilton Contracting Co.
1988 Dale Road
Woodland, PA 16881

Exhibit "D"

RE: 1993 Agreement

Dear Mr. Walker:

As you know, we have been attempting to get you and your company to comply with the terms of our 1993 Agreement. According to Paragraph 4 of said Agreement we are not to have any tax liability on the premises. However, you have refused to pay the 2002 and 2003 taxes, resulting in a Tax Sale being scheduled. Based upon advice of counsel we have proceeded to pay the 2002 taxes to prevent further escalation of our damages. We hereby demand that you reimburse us the amount paid for the 2002 taxes within 30 days hereof. Furthermore, we further demand that you pay the 2003 taxes within 30 days, otherwise we shall pursue appropriate legal action. You should note that under Paragraph 9 of said Agreement we will hold you and your company responsible for our reasonable attorney's fees incurred therein.

Lastly, and of utmost concern is the homeowner's insurance which you are also required to maintain pursuant to Paragraph 8 of said Agreement. Under these circumstances we sincerely question whether you have protected our interest as required. Therefore, we demand that you produce a certificate of insurance within 5 days hereof. In the event you do not do so we will have no choice other than to obtain insurance, again holding you responsible and pursuing appropriate legal action.

With regards,

Sincerely,

Richard and Zoe Withey

Richard L. Withey
Zoe Withey

Exhibit "E"

RICHARD L. WITHEY 05-81
ZOE E. WITHEY
R.R. 1, BOX 488 PH. 814-236-2632
OLANTA, PA 16863

60-829/313
12212245

2430

DATE May 25, 04

PAY TO THE
ORDER OF

Tax Claims Bureau \$ 1311.85
One Thousand Three Hundred Eleven and 85/100

Chairman's Club



Curwensville Office
407 Walnut Street
Curwensville, PA 16833

Richard L. Withey

MEMO

⑆031306294⑆ 1 2 21224 5⑈ 2430 ⑈0000131185⑈

Ck# 2430

Date 05/27/04

Amt \$1,311.85

OIL AND GAS AGREEMENT

Date: 6/1/99
Landowners (and address): SHANNON LAND & Mining Co
P.O. Box 368
BIGLER, PA 16825

Gas Co.: Kriebel Resources, P.O. Box 785, Clarion, Pennsylvania 16214

1. Leasing Clause: Landowners in consideration of One (\$1.00) Dollar in hand paid by the Gas Co., receipt of which is hereby acknowledged, grant and convey unto the Gas Co., its heirs, executors, administrators, successors, and assigns, and warrant generally title to, all the oil, gas, surface and Drilling Rights in, on and under all that certain piece, parcel, or tract of land situate in _____ County, Pennsylvania, bounded and described as follows:

On the North by lands of PIKE Township, CLEARFIELD County, Pennsylvania, bounded and described as follows:
N1/4 SR 17037 SMALL TRACTS
On the East by lands of N1/4 CLEARFIELD M.C.I. Co.
On the South by lands of N1/4 SHANNON LAND AND MINING
On the West by lands of N1/4 M^{rs} GARRY SHANNON LAND & MINING
Containing 1.66 Acres, more or less, also referred to by Tax Map No. 126-H11-21 and herein collectively referred to as "Property".

2. Drilling Rights: In section, "Property" shall include all oil, gas and surface rights owned or claimed by landowners in and under lands which are adjacent, contiguous to or form a part of the lands above described. Gas Co. is hereby granted the exclusive right of drilling and operating the Property alone or jointly with neighboring lands for producing oil and gas by any means, and all rights necessary, convenient and incident thereto, including but not limited to, the right to conduct geological and geophysical surveys and explorations on the Property; to drill new wells, recondition producing wells and redrill and use abandoned wells pipe and equipment on the Property; to construct and maintain buildings, plants, ditches, tanks, generators, compressor stations, gates, meters, regulators, tools, appliances, materials and other equipment used in exploring for and producing oil and gas, and pipelines, telephone lines, electric power lines, leading from adjoining lands on and across the Property and other lands which rights shall continue at Gas Co.'s option after the termination of this Agreement, which option shall be exercised through continued use of the then existing pipelines, telephone lines and electric power lines which may be repaired or replaced, or by Gas Co. giving written notice of exercise and similar rights for roadways which rights shall continue there after so long as Gas Co., its heirs and assigns desire to maintain the same; the right to use water, oil and gas and other materials from the Property for operating purposes, and Gas Co. is released of all damages, including but not limited to land, surface improvements and waters and has the right of removing either during or at any time after the term hereof, all casing, tubing, machinery, buildings, structures and property of the Gas Co. and its assigns and employees. In the event that Gas Co. constructs a meter site, pipeline or road on Landowners Property for the benefit of an adjacent property, and prior to the drilling of a well on the said Property, Gas Co. shall pay Landowners for the said improvements at the rate of Two Hundred Dollars per meter site and Five Dollars per rod for roads and pipelines. All of the above described rights shall be herein referred to as "Drilling Rights". Landowners release any right of indemnification that they may have against Gas Co.

3. Existing Wells: It is understood and agreed that this Agreement does not convey any right, title or interest to Gas Co. in any existing well on the Property.
4. Term: Gas Co. has the right to enter upon the Property to drill for oil and gas at any time within 36 months from 6/1/99 hereof and as long thereafter as (1) oil or gas or other of them is produced from the Property or any lands pooled or unitized therewith, (2) operations continue for the production of oil or gas, (3) Gas Co. shall continue to pay Landowners \$5.00 FIVE dollars per acre per year as delayed rentals, (4) an application for a drilling permit is pending with the appropriate authorities, and Lessee, after grant of such permit, commences drilling operations within a reasonable time thereafter and continues same with due diligence, provided said permit application was filed prior to the expiration of the primary term, (5) a completed oil or gas well would be capable of producing oil or gas from any portion of the premises or any lands pooled or unitized therewith, but for acts of God, unavailability or interruption of markets or pipelines, or any other causes, which have caused Lessee not to commence production from such well or to suspend production from such well, (6) or until all oil and gas has been removed from the Property, whichever shall last occur.

5. Unitization: Gas Co. is hereby granted the right to pool and unitize all or any part of the Property with any other lease or leases, land or lands, mineral estates, or any of them whether owned by Gas Co. or others, so as to create one or more drilling or production units. The commencement of drilling, completion of or production from a well on any portion of the unit created under the terms of this paragraph shall (except for the reserve gas clause described below) have the same effect upon the terms of this Agreement as if a well were commenced, drilled, completed, or producing on the Property. As to each drilling or production unit designated by Gas Co., Landowners agree to accept and shall receive out of the production or the proceeds from the production from such units, such portion of the royalties specified herein, as the number of acres of the Property which may be included from time to time in any such unit bears to the total number of acres included in such unit. Gas Co. may at any time increase or decrease that portion of the acreage covered by this Agreement which is included in any drilling or production unit, or exclude it altogether.

6. Royalty: Gas Co. agrees to pay landowners a royalty equal to one-eighth part of the oil and gas produced, saved and marketed from a well on the Property, with said one-eighth part to be valued at the price received by Gas Co. at the wellhead at the time of production, for said oil and gas in its natural state after deducting from such proceeds, severance, ad valorem and other applicable taxes, together with the reasonable costs incurred by the Gas Co. in preparing such oil and gas for market including, but not limited to, the cost of any necessary treatment or compression and the cost of transporting such oil and gas to the point of sale. In no event shall royalty be required to be paid to Landowners based upon a price higher than the Gas Co. is permitted by law to receive. Settlement therefore shall be made quarterly for production during the preceding calendar quarter. Unless Landowners deliver written notice to Gas Co. of a dispute with respect to royalty payments or of an alleged breach of any of the terms of this Agreement within sixty (60) days from the date the same is paid or the alleged breach occurs, then said payment shall be binding upon Landowners and the alleged breach shall be deemed to be waived.

7. Payment of Royalties: All payments may be made by check mailed to Landowners at the above address or deposited to their credit, or the credit of their heirs and assigns in any state or national bank, or by check mailed to them at the above address or in such manner as Landowners and Gas Co. shall otherwise agree. Provided, however, that Gas Co. can apply any money it may owe or which may become due to Landowners to satisfy liens or clear encumbrances against the Property, and set off any money it may owe Landowners in the event that Landowners owe Gas Co. money because of an overpayment of royalty or otherwise.

8. Force Majeure: Gas Co. shall be excused from performance, and this agreement shall not be in breach, and the term thereof shall be extended, if it shall be prevented from operating on the Property by law, by operation of force majeure (including, without limitation, fighting, earthquake, fire, storm, flood, washout) or by any cause beyond Gas Co.'s control. Gas Co. shall thereafter exercise reasonable diligence to resume operations. In the event the title to the Property is for any reason clouded by or action is filed in any court of law or equity, involving the title to said Property or any part thereof, the time of such delay or the continuance of said cloud or court action shall not be counted in computing the term of this agreement or the obligations thereunder, and Gas Co. shall not be obligated to perform any of its covenants and conditions. Landowners shall provide Gas Co. with a copy of the certificate and abstract of title for the Property that Landowners or Landowner's attorney may have, if requested by Gas Co.

9. Surrender: It is agreed that upon the payment of One (\$1.00) Dollar, Gas Co., its successors and assigns, may terminate this agreement and thereby be released of all covenants and obligations herein set forth even if unfulfilled by (1) determining that the oil and gas has been exhausted from the Property; or (2) reconveying the oil and gas and remaining privileges given to Landowners.

10. Drilling Permits: Landowners, for themselves, their heirs, executors, administrators, successors and assigns, agree to execute any and all documents that may from time to time be helpful or necessary in order for Gas Co. to obtain the governmental approvals to carry on operations.

11. Entire Contract: No presumption shall be deemed to exist in favor of or against either party hereto as a result of the preparation and/or negotiation of this agreement. No inference or covenant shall be implied as to either party hereto since the full contractual obligations and covenants of each party is herein fully and expressly set forth.

12. Conveyance of Property: No change in ownership of the Property or royalties shall be binding on Gas Co. until a person acquiring any interest has furnished Gas Co. with proof satisfactory to Gas Co. of such change in ownership. Landowners agree not to enter into any oil and gas agreement with any other party with regard to the Property until this agreement is terminated. If Landowners do not have title to all of the Property and rights described above, payments hereunder may be made to Landowners in proportion to the interest held by Landowners.

13. Adverse Claims: If the Property is subject to an instrument granting rights to a party other than Gas Co. or in the event of dispute or litigation as to title or as to royalties or other sums payable hereunder or any part thereof, royalties and other payments may be held in escrow by Gas Co. until such instrument has been released or cancelled as to the Property and until such dispute or litigation is terminated. The sum so paid in escrow by Gas Co. shall be deemed payment of royalties and other sums due hereunder.

14. Counterparts: In the event there is more than one Landowner, then this agreement may be executed by Landowners in one or more counterparts each of which shall constitute an original, but all of which when taken together shall constitute one agreement.

15. Additional Provisions: It is further understood and agreed that SEE Addendum

16. Option to Lease: If Landowners receive an offer to lease the oil and gas concerning any portion of the Property described herein at any time while this agreement remains in full force and effect, or within six (6) months thereafter, Landowners hereby agree to notify Gas Co. in writing immediately of offeror's name and the terms offered. Gas Co. shall have fifteen (15) days to accept or reject the said offer to lease the oil and gas covered by the offer at the price, terms, and conditions specified in the offer. Failure of Landowners to provide such notice to Gas Co. shall terminate any lease entered into between Landowners and such offeror.

17. No Third Party Payments: Landowners hereby warrant that (i) the Property is not encumbered by any enforceable oil or gas lease of record or otherwise and that (ii) they are not currently receiving any bonus, rental, production royalty or shut-in royalty as the result of any prior oil or gas lease covering any or all of the subject Property, and that there have been no wells drilled upon the subject Property or upon any lands with which the Property has been combined in a drilling or production unit.

18. Heirs and Assigns: All provisions of this agreement shall extend to and be binding upon the heirs, executors, administrators, successors, sublessees and assigns of the parties hereto, provided, however, that an assignment or sublease of this agreement in whole or in part shall release and discharge Gas Co. from any and all obligations or liabilities hereunder.

Witness the proper execution of this agreement on the date above written with intent to be legally bound.

WITNESS

WITNESS

WITNESS

WITNESS

WITNESS

E. David Nelson, Agent (SEAL)
LANDOWNER
SS # 25-1200339 (SEAL)

LANDOWNER
SS # (SEAL)

LANDOWNER
SS # (SEAL)

LANDOWNER
SS # (SEAL)
By Gregory R. [Signature] (SEAL)
GAS CO.

Exhibit "F" Proper

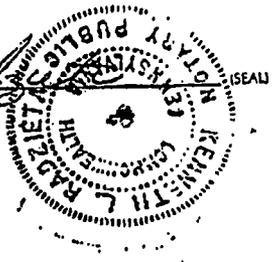
STATE OF PA
COUNTY OF CLEARFIELD

On this 15th day of JUNE, 19 99, before me, KENNETH L RADZIELA
the undersigned officer, personally appeared E DAVID NELSON

_____ whose name _____
satisfactorily proven to me to be the person _____
subscribed to the within instrument, and acknowledged that DIS
executed the same for the purposes therein contained.
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notarial Seal
Kenneth L. Radziela, Notary Public
Clarion Boro, Clarion County
My Commission Expires Dec. 18, 2000
Member Pennsylvania Association of Notaries

Kenneth L Radziela
Notary Public



COMMONWEALTH OF PENNSYLVANIA
COUNTY OF _____

BE IT REMEMBERED, that on the _____ day of _____, 19____, before me, the subscriber, a Notary Public,
personally appeared _____, the subscribing witness to the execution of the above indenture, who
being duly sworn upon his oath according to law, doth depose and say that he did see _____
the Landowner(s) above named, sign and seal, and as _____ act and deed deliver the above indenture for the uses and purposes
therein mentioned, and that the name of this deponent thereunto set and subscribed as a witness is of this deponents own proper handwriting and that the foregoing Agreement
to be their act and deed for the purpose therein mentioned and desire that the same might be recorded as such.

WITNESS, my hand, and official seal the date first above written.

NOTARY PUBLIC _____ (SEAL)

SUBSCRIBING WITNESS	
RECORDING FEES - RECORDER	\$13.00
COUNTY IMPROVEMENT FUND	\$1.00
RECORDER IMPROVEMENT FUND	\$1.00
STATE WRIT TAX	\$0.50
TOTAL	\$15.50
REGISTER AND RECORDER CLEARFIELD COUNTY, PA Pennsylvania	
INSTUMENT NUMBER	199910680
RECORDED ON	JUN 28, 1999
	11:55:08 AM

Oil and Gas Agreement

From _____ To _____

Date, _____ 19____

Term _____

No. Acres _____ Location, _____

On Waters of _____

District or Township _____

County _____

State _____

Received for Record _____

Recorded, _____

In Book _____ page _____

Curry Road

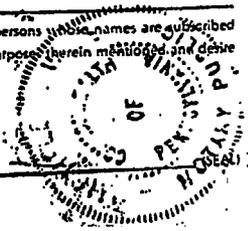
COMPANY ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clarion SS:

On this 16 day of June, 19 99, before me:
_____ the undersigned officer, personally appeared _____
_____ to me known to be the same persons whose names are subscribed
to the foregoing instrument and in due form of law acknowledged the execution of the foregoing Agreement to be their act and deed for the purposes therein mentioned and desire
that the same might be recorded as such.

WITNESS, my hand, and official seal the date first above written,
Michele A. Wice, Notary Public
Clarion Boro, Clarion County
My Commission Expires June 18, 2000
Member Pennsylvania Association of Notaries

Michele A. Wice
NOTARY PUBLIC



STATE OF PA
COUNTY OF CLEARFIELD

is DAVID NELSON day of April, 2002, before me, a Notary Public, the undersigned officer, personally appeared

clearly proven to me to be the person
described to the within instrument, and acknowledged that HIS
is the same for the purposes therein contained.

WITNESS WHEREOF, I hereunto set my hand and official seal.

Kenneth J Radzicko (SEAL)
Notary Public

Notarial Seal
Kenneth L. Radzicko, Notary Public
Clarion Boro, Clarion County
My Commission Expires Feb. 7, 2005
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF

BE IT REMEMBERED, that on the _____ day of _____, 20____, before me, the subscriber, a Notary Public,
personally appeared _____, the subscribing witness to the execution of the above indenture, who
being duly sworn upon his oath according to law, doth depose and say that he did see _____
act and deed deliver the above indenture for the uses and purposes
herein mentioned, and that the name of this deponent thereunto set and subscribed as a witness is of this deponents own proper handwriting and that the foregoing
agreement to be their act and deed for the purpose therein mentioned and desire that the same might be recorded as such.

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200207808
RECORDED ON
May 15, 2002
12:06:44 PM
Total Pages: 2
RECORDING FEES - \$13.00
RECORDER FUND \$1.00
COUNTY IMPROVEMENT FUND \$1.00
RECORDER IMPROVEMENT FUND \$0.50
STATE MORT TAX \$15.50
TOTAL \$31.00
CUSTOMER
GREGO & LANDER

SUBSCRIBING WITNESS
WITNESS, my hand, and official seal the date first above written.

(SEAL)
NOTARY PUBLIC

Oil and Gas Agreement

From _____
To _____
Location, _____
On Waters of _____
District or Township _____
County _____
State _____
Received for Record _____
Recorded, _____ page _____
In Book _____

GLEN RICHEY

COMPANY ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clarion

On this 26 day of April, 2002, before me, a Notary Public the undersigned officer,
personally appeared Gregory R. Kriebel to me known to be the same persons whose names are subscribed to the foregoing instrument and in due form of law
acknowledged the execution of the foregoing Agreement to be their act and deed for the purposes therein mentioned and desire that the same might be recorded as
such.

WITNESS, my hand and official seal the date first above written.

Notary Seal
Michele A. Wice, Notary Public
Clarion County
My Commission Expires June 19, 2004
Member, Pennsylvania Association of Notaries

Gregory R. Kriebel (SEAL)
NOTARY PUBLIC

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

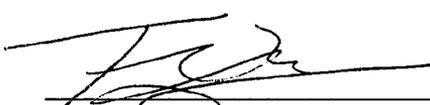
IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of Plaintiff's MOTION FOR LEAVE OF COURT to AMEND AMENDED CIVIL COMPLAINT, to the below indicated person, being counsel of record for the defendants, this 31st day of January, 2007, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,


Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
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C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

FEB 08 2007
en 12:30/CS
William A. Shaw
Prothonotary/Clerk of Courts
no c/c.

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

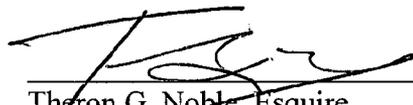
IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of the RULE RETURNABLE issued upon Plaintiff's MOTION TO AMEND AMENDED CIVIL COMPLAINT, to the below indicated person, being counsel of record for the defendants, this 7th day of February, 2006, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

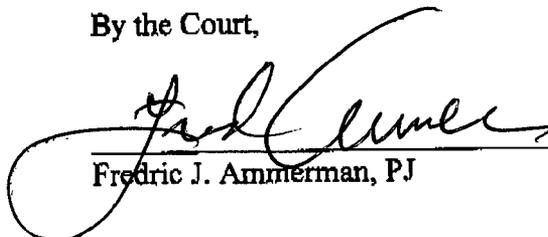
IN EQUITY AND AT LAW

ORDER

AND NOW, this 20th day of February, 2007, being the date and time for argument upon Plaintiff's MOTION TO AMEND AMENDED CIVIL COMPLAINT, the Court having received letter from Defendants' counsel, dated February 14th, it is ORDERED as follows:

1. Plaintiffs' request for leave to amend is GRANTED;
2. Plaintiff shall file its again AMENDED CIVIL COMPLAINT within twenty (20) days hereof, with the scrivener's error of "Count V" Request for Accounting being "Count VII"; and
3. Defendants shall file their responsive pleading within twenty (20) days of Plaintiffs filing the again Amended Complaint, and shall only need to respond as to Counts IV and VII as "By previous Order of Court, Defendants need not respond as said Count has been dismissed and is only pled to preserve Plaintiffs' right of appeal."

By the Court,


Fredric J. Ammerman, PJ

FILED
011:01007
FEB 21 2007

icc
Attys: Noble
Kriner

(610)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

FEB 21 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/21/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

**SECONDED AMENDED
CIVIL COMPLAINT**

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED *NO CC*
m/12:54/61
FEB 26 2007 

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and)
ZOE E. WITHEY,)

PLAINTIFFS,)

v.)

AL HAMILTON CONTRACTING COMPANY, INC.;;)
a Pennsylvania corporation; SHANNON LAND AND)
MINING COMPANY; a Pennsylvania partnership;)
C. ALAN WALKER, an adult individual; and)
SUSAN W. KRINER; a adult individual,)

DEFENDANTS.)

No. 04- 1712 -CD

IN EQUITY AND AT LAW

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM 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 CLAIM IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF(S). YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

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

Court Administrator
c/o Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830
(814)-765-2641

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; SUSAN
W. KRINER; a adult individual; and THE ESTATE
OF ANNE WALKER MACKO,

DEFENDANTS.

No. 04-_____-CD

IN EQUITY AND AT LAW

SECOND AMENDED CIVIL COMPLAINT

NOW COMES, the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their CIVIL COMPLAINT:

The Parties

1. First plaintiff is Richard L. Withey, who does, and at all material times, did reside at 4 McKee Road, Olanta, Clearfield County Pennsylvania, 16863.
2. Second plaintiff is Zoe E. Withey, who does, and at all material times, did reside at 4 McKee Road, Olanta, Clearfield County Pennsylvania, 16863.
3. That at all relevant and material times, Plaintiffs were husband and wife living together at the aforementioned physical address, albeit with a different mailing address given the changes with the 911 system, and jointly referred sometimes hereinafter as "Withey".

4. First defendant is Al Hamilton Contracting Company, Inc., upon information and belief, a duly formed and existing Pennsylvania Corporation, with principal place of business located at 1988 Dale Road, Woodland, Clearfield County, Pennsylvania 16825, hereinafter referred to as "Hamilton".

5. Second defendant is Shannon Land and Mining Company, upon information and belief, a duly formed and existing Pennsylvania partnership, with partners being the hereinafter named third, fourth and fifth defendants, with principal place of business also located 1988 Dale Road, Woodland, Clearfield County, Pennsylvania 16825, hereinafter referred to as "Shannon".

6. That third defendant is C. Alan Walker, upon information and belief, an adult individual, who does and at all material times did reside at 1018 Country Club Road, Clearfield, Clearfield County, Pennsylvania 16830, hereinafter referred to as "Walker".

7. That fourth defendant is Susan Kriner, upon information and belief, an adult individual, who does and at all material times did reside at 2512 Meadow Road, Clearfield, Clearfield County, Pennsylvania 16830, hereinafter referred to as "Kriner".

8. That fifth defendant is the Estate of Anne Walker Macko, a duly formed and probated estate, with fiduciaries being William Kriner, 2512 Meadow Road, Clearfield County, Pennsylvania 16830, and Derick Walker, 179 Walker Road, Bigler, Clearfield County, Pennsylvania, hereinafter referred to as "Macko".

Background

9. That upon information and belief, at all relevant and material times, Walker, Kriner and Macko were and are officers, directors and shareholders of Hamilton.

10. That upon information and belief, at all relevant and material times, Walker, Kriner and Macko owned a controlling interest of the issued and outstanding shares of Hamilton.

11. That Hamilton and Shannon, beside being similarly owned and controlled, upon information and belief, often times engage in business activities which are mutually beneficial, specifically that Shannon owns or otherwise controls the land upon which Hamilton conducts mining operations.

12. That upon information and belief, at least some of the employees of Hamilton and Shannon also perform tasks for the other company of which they are not employed.

13. Alternatively, upon information and belief, there are employees of Hamilton and Shannon which are simultaneously employed by both entities.

14. That Hamilton and Shannon are allied companies, with the individual defendants herein named being the principals of each company.
15. That upon information and belief, at all relevant and material times, being November 27, 1991 to the present, Walker, Kriner and Macko were partners, and the only partners, in Shannon.
16. That Hamilton's business focus is coal mining operations.
17. At the commencement of this action, the Witheys were the owners of record of a certain tract of land, containing approximately 1.14 acres, located in Pike Township, Clearfield County, Pennsylvania, hereinafter referred to as "the Pike Township tract".
18. That in the early 1990s, the defendants desired to mine coal in close proximity to the Pike Township tract.
19. That for reasons of convenience or need, defendants desired the Witheys to authorize such coal mining operation and permit use of the Pike Township tract, which at that time was serving as the Witheys homestead, for defendants' business purposes.
20. That in connection with defendants' above stated desires, plaintiffs and defendants entered into a certain agreement, on November 27, 1991, hereinafter "the 1991 agreement", a true and correct copy of which is attached hereto as Exhibit "A", the terms of which are hereby incorporated as if fully set forth at length, which in essence transferred equitable title of the Pike Township tract from the Witheys to the defendants, in exchange for which the defendants were to convey approximately 66 acres, hereinafter identified as "the Fred Long farm", also located in Pike Township, Clearfield County, Pennsylvania, to the Witheys.
21. That Shannon was aware of the commitment made by Hamilton that the Fred Long farm would be conveyed to the Witheys, prior to and at the time the 1991 agreement was entered into by Hamilton and the Witheys. Attached hereto as Exhibit "B" is a letter from Shannon stating its intent to deliver the Fred Long farm to the Witheys.
22. That Shannon did not object and implicitly agreed to the commitment that its property would be transferred to the Witheys at the completion of the terms contained in the 1991 agreement and would be the entity, upon information and belief, that Hamilton would direct the Witheys to convey the Pike Township tract.
23. That Hamilton and others associated with Shannon acted as Shannon's agent, disclosed or undisclosed, binding Shannon to the 1991 agreement, making Shannon a party eo nomine to the 1991 agreement.

24. That although Shannon was at all relevant and material times the record owner of Fred Long farm, for the home built for the Witheys on the Fred Long farm property, the real estate taxes were issued to Hamilton at the direction of Hamilton and/or Shannon.

25. This cause of action concerns the defendants failures to timely complete said transfers as well as to breach other terms and conditions of the 1991 agreement.

Count I: Breach of Contract
(at Law)
Conveyances post 1991 Agreement

26. That the averments of paragraphs 1 - 26, inclusive, are hereby incorporated as if again fully set forth at length.

27. That upon information and belief, defendants entered into other contracts and conveyances concerning the Fred Long property, after the 1991 agreement.

28. That the result of the contracts and conveyances by the defendants, concerning the Fred Long farm, after the 1991 agreement, deny the Witheys the full benefit of their bargain under the 1991 agreement and for which the Witheys should be compensated in an amount to be determined at time of trial.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against Defendants, jointly and severally, in an amount to be determined, believed to be in excess of \$20,000, together with costs, interest and attorneys fees.

Count II: Breach of Contract
(At Law)
Real Estate Taxes

29. That the averments of paragraphs 1 - 28, inclusive, are hereby incorporated as if again fully set forth at length.

30. That pursuant to paragraph 4 of the 1991 agreement, the Witheys were entitled to live in the home constructed on the Fred Long farm, "tax-free".

31. That the defendants were responsible to pay the real estate taxes on the Fred Long farm per the 1991 agreement.

32. That defendants have not paid the real estate taxes since 2001 on the Witheys' home located on Fred Long farm property. A true and correct copy of the letter and notice concerning the delinquent taxes are attached hereto as Exhibit "C".

33. To protect their interest, the Witheys were forced to pay the 2002 real estate taxes, with penalty, in the amount of \$1,311.85, to prevent the Fred Long farm property from going to tax sale. A true and correct copy of the check issued by the Witheys is attached hereto as Exhibit "E".

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against the defendants, jointly and severally, in the amount of \$1,311.85, together with costs, interest and reasonable attorneys fees.

Count III: Breach of Contract

(At law)

Barn Damage

34. That the averments of paragraphs 1 - 33, inclusive, are hereby incorporated as if again fully set forth at length.

35. That in 1993, the barn located on the Fred Long premises received damage caused by wind.

36. That defendants made a claim relative to the insurance proceeds and received the sum of \$1,505.89 for such wind damage to the barn.

37. That defendants did not perform any repairs nor perform any remedial measures concerning the barn.

38. That defendants pursuant to the 1991 agreement and/or Pennsylvania law were responsible to (a) perform the repairs and/or remedial work to preserve the barn; and/or (b) deliver the premises to the Witheys in the same condition as at the time the 1991 agreement was executed.

39. That as a result of the wind damage of 1993 and the defendants failure to repair or correct the damage, as time progressed, the barn deteriorated and needed to be torn down due to safety reasons.

40. That the Witheys should be compensated, in amounts to be determined at time of trial, for (a) the cost to tear down and remove the barn; and (b) to replace the barn in similar condition as at the time of the 1991 agreement.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an amount in excess of \$20,000, together with costs and reasonable attorneys fees.

Count IV: Request for an Accounting
(In Equity)
Insurance Proceeds

41. That the averments of paragraphs 1 - 40, inclusive, are hereby incorporated as if again fully set forth at length.

42. That per the 1991 agreement, at paragraph 8, defendants agreed to maintain fire and liability insurance on the Fred Long farm as well as the Pike Township tract.

43. That per the 1991 agreement, at paragraph 5, at the end of the transaction, the Witheys were to receive the premises which would have included the barn pursuant to Pennsylvania law.

44. That such damage should have been covered by insurance if the defendants had maintained such insurance.

45. If the defendants did maintain such insurance and received such payment, in the alternative to Count III hereof, said money rightfully belongs to the Witheys as part of their bargained for consideration and they should receive an accounting for such payment.

WHEREFORE, Plaintiff requests that in the event defendants received insurance proceeds for damage to the barn on the Fred Long farm, they be ordered as follows:

- 1. Make an accounting to the Witheys for any insurance proceeds received by the defendants, including interest, for such damage;**
- 2. Pay to the Witheys any such sums received as a result of such damage to the barn;**
- 3. Pay the Witheys reasonable attorney's fees incurred in this matter; and**
- 4. Any other relief this Court determines as fair and just under the circumstances.**

Count V: Breach of Contract
(At law)
Faulty Construction

46. That the averments of paragraphs 1 - 45, inclusive, are hereby incorporated as if again fully set forth at length.

47. That defendants agreed, pursuant to the 1991 agreement, specifically clause 3, to build a new home for the Witheys on the Fred Long premises.

48. That the home to be built for the Witheys would be required to be built in a reasonable and workmanlike manner.

49. That the roof needed to be replaced in 2006 because faulty shingles, which should have lasted 25 years according to reasonable standards, had become cracked and caused leaking, for which the Witheys were required to expend approximately \$7,700.

50. That the molding, in the front porch area of the house, had been improperly fastened, causing the "J channel" to become loose and twisting into the porch area, which needed to be repaired, again in 2006, at a cost of \$1,300.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an approximate amount of \$9,000, together with costs and reasonable attorneys fees.

Count VI: Breach of Contract
(At Law)
Reasonable Attorney's Fees

51. That the averments of paragraphs 1 - 50, inclusive, are hereby incorporated as if again fully set forth at length.

52. That per the 1991 agreement, specifically at paragraph 9, in the event one party breaches the agreement and the other party sues to enforce their rights, the non-breaching party has the right to recover reasonable attorneys fees against the breaching party.

53. That for the reasons set forth herein, defendants have breached the 1991 agreement.

54. That defendant should pay to the Witheys their reasonable attorneys fees incurred in connection with this litigation, in an amount to be determined.

WHEREFORE, Plaintiffs request that judgment be entered in their favor, and against defendants, jointly and severally, in an amount in excess of \$20,000, together with costs and

reasonable attorneys fees.

Count VII: Request for Accounting
(In Equity)
Mineral Rights

55. That the averments of paragraphs 1 - 54, inclusive, are hereby incorporated as if again fully set forth at length.

56. That pursuant to paragraph 5 of the 1991 Agreement, the conveyances from the Witheys to the defendants, and from the defendants to the Witheys, were to be free and clear of all encumbrances.

57. That the Witheys are entitled to the mineral rights as to the Fred Long farm.

58. That since 1991, the defendants have entered into lease agreements, true and correct copies of which are attached hereto as Exhibit "F", for the minerals located on the Fred Long farm property.

59. That the defendants should account to the Witheys for all mineral royalties received by any of them from said leases, commencing at the time it is determined that defendants should have conveyed the Fred Long farm property to the Witheys, being the time the Stage III bonds were, or reasonably should have been released.

60. That as per Count II of Plaintiff's "Amended Civil Complaint", seeking specific performance, the Plaintiffs were also entitled to receive the Fred Long premises without the reservation of mineral rights for defendants, which issue has been preserved for appeal as per this honorable Court's ORDER of October, 2006.

WHEREFORE, Plaintiffs request defendants' they be ordered as follows:

- 1. Make an accounting to the Witheys for any and all royalties received pursuant to the attached leases from the time period the Stage III bond were, or should have been released;**
- 2. Pay the Witheys reasonable attorney's fees incurred in this matter; and**
- 3. Any other relief this Court determines as fair and just under the circumstances.**

Miscellaneous Averments

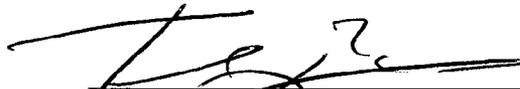
60. That jurisdiction is proper.

61. That venue is proper.

62. That defendants are jointly and severally liable to the Witheys.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against defendants, jointly and severally, in an amount in excess of \$20,000, together with interest, where applicable, costs of suit, and attorney's fees as well as Plaintiffs be granted accountings, and any other relief deemed just and appropriate under the circumstances.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

Exhibit "A" *4 pages*

VOL 1547 PAGE 522

PLEASE

AGREEMENT

THIS AGREEMENT, made and entered into this 27th day of November, 1991, by and between RICHARD L. WITHEY and ZOE E. WITHEY, husband and wife, of Pike Township, Clearfield County, Pennsylvania, parties of the first part, hereinafter referred to as "WITHEY",

AND

AL HAMILTON CONTRACTING COMPANY, a Pennsylvania business corporation, having its principal place of business at R. D. 1, Box 87, Woodland, Clearfield County, Pennsylvania, party of the second part, hereinafter referred to as "HAMILTON".

W I T N E S S E T H :

WHEREAS, HAMILTON is conducting surface mining operations in close proximity to the home of WITHEY; and

WHEREAS, HAMILTON wishes to obtain various authorizations to mine within three hundred (300) feet of the WITHEY home; and

WHEREAS, HAMILTON has agreed to provide alternate housing for WITHEYS during mining operations under authorizations signed by WITHEY.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. That this Agreement shall represent authorization by WITHEY for HAMILTON to conduct surface mining activities on

VOL 1547 PAGE 523

the 1.14 acres of real property owned by WITHEY in Pike Township, Clearfield County, Pennsylvania.

2. That contemporaneous with the execution of this Agreement WITHEYS will sign any and all necessary authorizations for HAMILTON to conduct surface mining activities within three hundred (300) feet of the present WITHEY home in Pike Township, Clearfield County, Pennsylvania, which will include execution of a Supplemental "C" and a building variance authorization. WITHEYS also agree to sign any and all other documents required to conduct mining within three hundred (300) feet of their home.

3. That HAMILTON agrees to construct for WITHEYS alternative housing on property formerly of Fred Long located in Pike Township, Clearfield County, Pennsylvania. HAMILTON agrees to execute a construction agreement with Neff Construction Company, of Curwensville, Pennsylvania, to construct said home when this Agreement is executed. Said home will be constructed in a manner agreed to by the parties and at a location on the former Fred Long property mutually acceptable to WITHEYS and HAMILTON. HAMILTON further agrees to be solely responsible and liable for payment in full of any and all obligations incurred for the construction of said home by Neff Construction. HAMILTON further agrees to indemnify and save the WITHEYS harmless from any and all debts, liabilities, or obligations (including attorneys' fees and legal costs of WITHEY) incurred with respect to the construction of said home by Neff Construction.

VOL 1547 PAGE 524

4. That upon completion of the construction project by Neff Construction Company, WITHEYS will be permitted to immediately occupy the new dwelling. WITHEYS shall live in said dwelling rent-free and tax-free, but will be required to pay any and all utilities used at said dwelling.

5. Upon completion of all mining activities on the Blomington Job of HAMILTON and the release of Stage III bonds from Permot No. 17803166, HAMILTON will arrange for the conveyance of surface of the former Fred Long Farm of approximately 66 acres, together with the dwelling buildings thereon, to WITHEYS and WITHEYS shall convey the present house and 1.14 acres of surface in Pike Township from WITHEY to HAMILTON, SHANNON LAND AND MINING COMPANY, or a nominee. The conveyances shall be made free and clear of all liens and encumbrances and pass marketable title. A description of each property is attached hereto.

6. That the WITHEYS covenant and agree that the providing of alternative new housing during mining within three hundred (300) feet of the WITHEY home and the conveyance to WITHEYS of surface to sixty-six (66) acres, formerly identified as the Fred Long Property, together with the dwelling buildings thereon, with marketable title free and clear of all liens and encumbrances, will represent consideration for said mining, and no royalty or payment of any nature or kind will be owed by HAMILTON to WITHEY for the mining of coal or the conducting of mining activities on the 1.14 acres of WITHEYS.

7. That conveyance of the 66 acres and new dwelling house may occur sooner than the time period identified in

Paragraph 4 above upon written agreement by both parties.

8. That HAMILTON covenants and agrees to maintain liability and fire insurance on both the home being constructed by Neff Construction and the present WITHEY home and 1.14 acres in Pike Township, Clearfield County, Pennsylvania. Said duty and obligation to carry insurance shall cease and terminate upon the delivery of the Deed to the 66 acres of the formerly Fred Long Farm to the WITHEYS.

9. That in the event that either party breaches this Agreement, and as a result of said breach either party has the right to elect to sue for damages or seek any other remedies or relief as may be available to them, and if the party choosing such remedy is successful in enforcing their rights, then the responsible party shall be liable for legal fees and any and all other costs of litigation incurred in enforcing their rights under this Agreement.

10. That this Agreement may not be assigned or transferred by either party without first obtaining the written consent of the other to so transfer.

11. That this agreement constitutes the entire understanding of the parties hereto and any amendment of this agreement shall be in writing executed by both parties.

12. That this agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns as if they were named in each and every provision herein.

13. That the parties agree to execute a Memorandum of Agreement outlining those matters which are required by law for recordability, which Memorandum shall memorialize and represent this Agreement, and which may be recorded by the WITHEYS if they so desire.

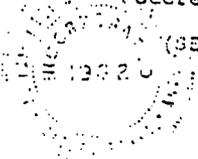
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed the day and year first above written.

Richard L. Withey (SEAL)
Richard L. Withey
Zoe E. Withey (SEAL)
Zoe E. Withey

AL HAMILTON CONTRACTING COMPANY
By
C. Alan Walker, C.E.O.
C. Alan Walker
C.E.O.

ATTEST
[Signature]
Secretary (SEAL)

I hereby CERTIFY that this document is recorded in the Recorder's Office of Clearfield County, Pennsylvania.



CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 8:31 AM 8-3-93
BY [Signature]
FEES 15.00
Karen L. Starck, Recorder



[Signature]
Karen L. Starck
Recorder of Deeds

SHANNON LAND AND MINING COMPANY

P. O. Box 368
Bigler, PA 16825

PHONE: (814) 857-7681

FAX: (814) 857-5003

September 13, 2000

Mr. & Mrs. Richard L. Withey
R. R. #1, Box 488
Olanta, PA 16863

Exhibit "B"

RE: Agreement dated 11/27/91

Dear Dick and Zoe:

I had our attorney, Mr. William C. Kriner, review the agreement dated November 27, 1991 between you and Al Hamilton Contracting Company regarding the former Fred Long Farm in Pike Township.

The Fred Long Farm is owned by Shannon Land and Mining Company. Shannon Land and Mining Company is not a party in the agreement dated 11/27/91 and is not bound by the terms thereof. Paragraph 5, on Page 3 states that: "Hamilton will arrange for the conveyance of surface of the former Fred Long Farm of approximately 66 acres, together with the dwelling buildings thereon, to Withey's."

In the meantime, Shannon Land and Mining Company may do whatever they desire to the Fred Long property; i.e., cut trees, build roads, put in water lines, power lines, etc. We feel it would not be proper to sell a tract of land to Bill Elensky and then deny him water and electric service or a good road to his property.

We fully intend to transfer the Fred Long Farm to you in the future. Until the property is titled to you, it remains the property of Shannon Land and Mining Company.

Sincerely,



E. David Nelson, Manager
Properties & Reserves
SHANNON LAND AND MINING COMPANY

EDN/smr
cc: C. A. Walker
wd/sep00/withey

*Letter from
Shannon to
Plaintiffs*

Clearfield County Tax Claim Bureau



230 EAST MARKET STREET
SUITE 121
Clearfield, Pennsylvania 16830

TELEPHONE (814) 765-2641
FAX (814) 765-2640

MAY 20, 2004

Exhibit "C" ⁴ pages

Map # 126-H11-000-00021-DW-01
Municipality: PIKE TOWNSHIP
Control: # 126.0-93318
Description: H
Owner: AL HAMILTON CONTRACTING CO.

To Whom It May Concern:

This letter is to verify that there are delinquent taxes, on the above referenced assessment. Taxes due are for 2002- 2003. A statement is enclosed.

Sincerely,

Jeffrey C. Graham
Asst. Director

05/20/2004
Searched Jeb

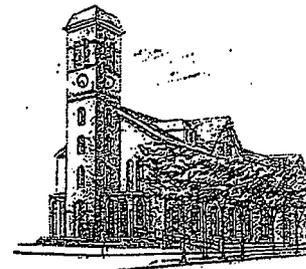
STATEMENT VALID AS TO CURRENT ACCOUNTS.
SUBJECT TO CORRECTIONS AND CHANGES.

Clearfield County Tax Claim Bureau

230 East Market Street - Suite 121

Clearfield, Pennsylvania 16830

Phone: (814) 765-2641 Ext. 5998



-Customer Copy-

Receipt # 175191

Tuesday, May 25, 2004

Received Of:

AL HAMILTON CONTRACTING CO.

Control # 126093318

Claim # 2002-007714

Map # H11-000-00021-DW-01

In The Amount Of:

\$1,311.85

Property Desc H

	County	District	School
TAX	0.00	0.00	1156.72
INTEREST	0.00	0.00	130.13
COST / PENALTY	25.00		
CURRENT YEAR	0.00	0.00	0.00
OVERBID	0.00		
TOTAL	<u>\$1,311.85</u>		

MaryAnne Hesdock

Director of Tax Claim Bureau

RECEIPT VALID ONLY UPON PAYMENT OF LEGAL TENDER

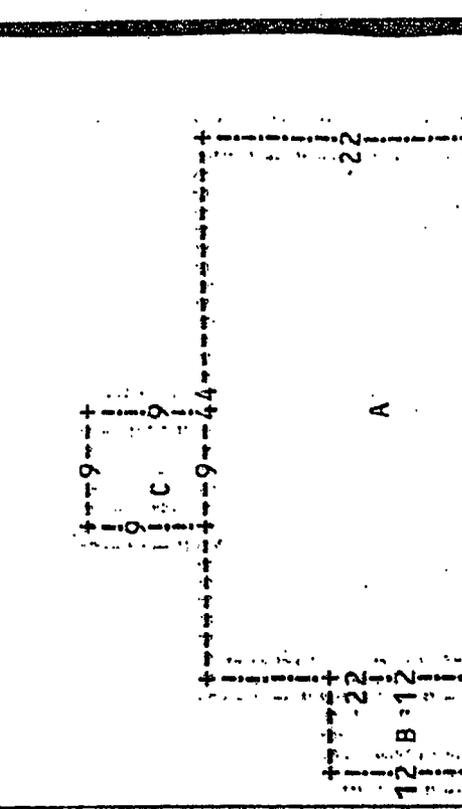
ANY CHECK RETURN UNPAID BY YOUR BANK WILL BE SUBJECT TO A TWENTY DOLLAR (\$20.00) RETURNED CHECK FEE

Total Received On All Claims For 12609331 On 5/25/04 \$1,311.85

0-80X368
GLER, PA.
LEVEL ROLLING MORE LITE
PAVED TRAFFIC
WELL SEPTIELEC

DISTRICT: MAP: SUB-MAP: PARCEL: SUB-PCT: SUB-PCT: LAND USE
1126092563
H/B/2 BLDGS. & 66 A SURF.
1258 0349

16825
PROPERTY ADDRESS
117037
NEIGH/SPOT CONDO LEVEL
RESID GROUP TYPE
LANDISC FRAME NO:



LAND DATA & COMPUTATIONS	FRONTAGE	DEPTH	AREA	INFLUENCE FACTOR	TOT VALUE
HOME SITE	1.000	6000	6000	EM	4800
TILLABLE	25.000	700	700		12500
PASTURE	25.000	500	500		6000
WOODLAND	15.000	400	400		
TOTAL ACRES	66.000				40800

DWELLING DATA & COMPUTATIONS	TOTAL LAND VALUE	TOTAL DWELLING VALUE
STORY HEIGHT/TYPE	1.0 UNFIN	
GROUND FLOOR AREA	968 SF.	
EXTERIOR WALLS	FRAME	
ADJUSTED BASE		40800
BASINENT	FULL BSMT	
HEAT & AIR	BASIC	
PLUMBING	5 FIXTURES	
REC ROOM		
FIL. BSMT LIVING AREA		
WHIP		
BASINENT CHANGE		
URIN. AREA		
HEATING AREA		
SUBTOTAL		43600
GRADE		73500
C & D FACTOR		
RCM		40100
PERCENT GOOD	60	24100
TOTAL DWELLING VALUE		

OTHER BUILDINGS & YARD	AREA	GRD RATE	COND. MODEL	AMOD. CO.	RCN
BANKBARN	100	52X052	2704	10	28920
4SCLMTPU	171	28X030	1840	5	4790
FR/UTSHD	171	16X018	288	5	11710
TOTAL	342				41800

TYPE: QTY. YR. SIZE
MISC OBY
TOTAL OBY: 300
TOTAL OBY: 3380

VALUES	OLD	APPRAISAL	CURRENT ASSMT	VALUE
LAND	10200	40800	10200	10200
BLDG	6875	27500	6875	6875
TOTAL	17075	68300	17075	17075

ADDITIONS	AREA	PTS	APPR	COST VAL	MKT VAL
OFF	96	13		68301	68301
EEP	81	16		68301	68301
TOTAL	177	29		136602	136602

PERMITS: WIFE WOULDN'T LET IN HOUSE
BUILDING PERMIT RECORD NUMBER: DATE: AMOUNT:
RSN=3 06/16/89
CLEARFIELD COUNTY, PA.
SALES DATA

May 25, 2004

C. Alan Walker, CEO
Al Hamilton Contracting Co.
1988 Dale Road
Woodland, PA 16881

Exhibit "D"

RE: 1993 Agreement

Dear Mr. Walker:

As you know, we have been attempting to get you and your company to comply with the terms of our 1993 Agreement. According to Paragraph 4 of said Agreement we are not to have any tax liability on the premises. However, you have refused to pay the 2002 and 2003 taxes, resulting in a Tax Sale being scheduled. Based upon advice of counsel we have proceeded to pay the 2002 taxes to prevent further escalation of our damages. We hereby demand that you reimburse us the amount paid for the 2002 taxes within 30 days hereof. Furthermore, we further demand that you pay the 2003 taxes within 30 days, otherwise we shall pursue appropriate legal action. You should note that under Paragraph 9 of said Agreement we will hold you and your company responsible for our reasonable attorney's fees incurred therein.

Lastly, and of utmost concern is the homeowner's insurance which you are also required to maintain pursuant to Paragraph 8 of said Agreement. Under these circumstances we sincerely question whether you have protected our interest as required. Therefore, we demand that you produce a certificate of insurance within 5 days hereof. In the event you do not do so we will have no choice other than to obtain insurance, again holding you responsible and pursuing appropriate legal action.

With regards,

Sincerely,

Richard and Zoe Withey

Richard L. Withey
Zoe Withey

Exhibit "E"

RICHARD L. WITHEY 05-81
ZOE E. WITHEY
R.R. 1, BOX 488 PH. 814-236-2632
OLANTA, PA 16863

60-529/313
12212245

2430

DATE May 25, 04

PAY TO THE
ORDER OF

Tab Claims Bureau \$ 1311.85
One Thousand Three Hundred Eleven and 85/100 DOLLARS

Chairman's Club



Curwensville Office
407 Walnut Street
Curwensville, PA 16833

Richard L. Withey

MEMO

⑆031306294⑆ 1 2 21224 5⑈ 2430 ⑈0000131185⑈

Ck# 2430

Date 05/27/04

Amt \$1,311.85

OIL AND GAS AGREEMENT

30791

Date: 6/1/99 SHANNON LAND & MINING CO
Landowners (and address): P.O. Box 368 BIGLER, PA 16825

Phone No: 814-857-7681

Gas Co.: Kriebel Resources, P.O. Box 765, Clarion, Pennsylvania 16214

1. Leasing Clause. Landowners in consideration of One (\$1.00) Dollar in hand paid by the Gas Co., receipt of which is hereby acknowledged, grant and convey unto the Gas Co., its heirs, executors, administrators, successors, and assigns, and warrant generally title to, all the oil, gas, surface and Drilling Rights in, on and under all that certain piece, parcel, or tract of land situate in

On the North by lands of N/E SR 17037 Small TRACTS
On the East by lands of N/E CLEARFIELD M.C.I. Co.
On the South by lands of N/E SHANNON LAND AND MINING
On the West by lands of N/E MCGARRY SHANNON LAND & MINING
Containing 160 Acres, more or less, also referred to by Tax Map No. 126-H11-21 and herein collectively referred to as "Property".

2. Drilling Rights. In action, "Property" shall include all oil, gas and surface rights owned or claimed by landowners in and under lands which are adjacent, contiguous to or form a part of the lands above described Gas Co. is hereby granted the exclusive right of drilling and operating the Property alone or jointly with neighboring lands for producing oil and gas by any means, and all rights necessary, convenient and incident thereto, including but not limited to, the right to conduct geological and geophysical surveys and explorations on the Property; to drill new wells, recondition producing wells and redrill and use abandoned wells pipe and equipment on the property; to construct and maintain buildings, plants, ditches, tanks, generators, compressor stations, gates, meters, regulators, tools, appliances, materials and other equipment used in exploring for and producing oil and gas, and pipelines, telephone lines, electric power lines, leading from adjoining lands on and across the Property and other lands which rights shall continue at Gas Co.'s option after the termination of this Agreement, which option shall be exercised through continued use of the then existing pipelines, telephone lines and electric power lines which may be repaired or replaced, or by Gas Co. giving written notice of exercise and similar rights for roadways which rights shall continue there after so long as Gas Co., its heirs and assigns desire to maintain the same; the right to use water, oil and gas and other materials from the Property for operating purposes, and Gas Co. is released of all damages, including but not limited to land, surface improvements and waters and has the right of removing either during or at any time after the term hereof, all casing, tubing, machinery, buildings, structures and property of the Gas Co. and its assigns and employees. In the event that Gas Co. constructs a meter well, pipeline or road on Landowners Property for the benefit of an adjacent property, and prior to the drilling of a well on the said Property, Gas Co. shall pay Landowners for the said improvements at the rate of Two Hundred Dollars per meter site and Five Dollars per rod for roads and pipelines. All of the above described rights shall be herein referred to as "Drilling Rights". Landowners release any right of indemnification that they may have against Gas Co.

3. Existing Wells. It is understood and agreed that this Agreement does not convey any right, title or interest to Gas Co. in any existing well on the Property.

4. Term. Gas Co. has the right to enter upon the Property to drill for oil and gas at any time within 36 months from 6/1/99 hereof and as long thereafter as (1) oil or gas or either of them is produced from the Property or any lands pooled or unitized therewith, (2) operations continue for the production of oil or gas, (3) Gas Co. shall continue to pay Landowners of them is produced from the Property or any lands pooled or unitized therewith, (4) an application for a drilling permit is pending with the appropriate authorities, and Lessee, after grant of such permit, commences drilling operations within a reasonable time thereafter and continues same with due diligence, provided said permit application was filed prior to the expiration of the primary term, (5) a completed oil or gas well would be capable of producing oil or gas from any portion of the premises or any lands pooled or unitized therewith, but for acts of God, unavailability or interruption of markets or pipelines, or any other causes, which have caused Lessee not to commence production from such well or to suspend production from such well, (6) or until all oil and gas has been removed from the Property, whichever shall last occur.

5. Unitization. Gas Co. is hereby granted the right to pool and unitize all or any part of the Property with any other lease or leases, land or lands, mineral estates, or any of them whether owned by Gas Co. or others, so as to create one or more drilling or production units. The commencement of drilling, completion of or production from a well on any portion of the unit created under the terms of this paragraph shall (except for the reserve gas clause described below) have the same effect upon the terms of this Agreement as if a well were commenced, drilled, completed, or producing on the Property. As to each drilling or production unit designated by Gas Co., Landowners agree to accept and shall receive out of the production or the proceeds from the production from such units, such portion of the royalties specified herein, as the number of acres of the Property which may be included from time to time in any such unit bears to the total number of acres included in such unit. Gas Co. may at any time increase or decrease that portion of the acreage covered by this Agreement which is included in any drilling or production unit, or exclude it altogether.

6. Royalty. Gas Co. agrees to pay landowners a royalty equal to one-eighth part of the oil and gas produced, saved and marketed from a well on the Property, with said one-eighth part to be valued at the price received by Gas Co. at the wellhead at the time of production, for said oil and gas in its natural state after deducting from such proceeds, severance, ad valorem and other applicable taxes, together with the reasonable costs incurred by the Gas Co. in preparing such oil and gas for market including, but not limited to, the cost of any necessary treatment or compression and the cost of transporting such oil and gas to the point of sale. In no event shall royalty be required to be paid to Landowners based upon a price higher than the Gas Co. is permitted by law to receive. Settlement therefore shall be made quarterly for production during the preceding calendar quarter. Unless Landowners deliver written notice to Gas Co. of a dispute with respect to royalty payments or of an alleged breach of any of the terms of this Agreement within sixty (60) days from the date the same is paid or the alleged breach occurs, then said payment shall be binding upon Landowners and the alleged breach shall be deemed to be waived.

7. Payment of Royalties. All payments may be made by check mailed to Landowners at the above address or deposited to their credit, or the credit of their heirs and assigns in any state or national bank, or by check mailed to them at the above address or in such manner as Landowners and Gas Co. shall otherwise agree. Provided, however, that Gas Co. can apply any money it may owe or which may become due to Landowners to satisfy liens or other encumbrances against the Property, and set off any money it may owe Landowners in the event that Landowners owe Gas Co. money because of an overpayment of royalty or otherwise.

8. Force Majeure. Gas Co. shall be excused from performance, and this agreement shall not be in breach, and the term thereof shall be extended, if it shall be prevented from operating on the Property by law, by operation of force majeure (including, without limitation, lightning, fire, storm, flood, washout) or by any cause beyond Gas Co.'s control. Gas Co. shall thereafter exercise reasonable diligence to resume operations. In the event the title to the Property is for any reason clouded by or action is filed in any court of law or equity, involving the title to said Property or any part thereof, the time of such delay or the continuance of said cloud or court action shall not be counted in computing the term of this agreement or the obligations thereunder, and Gas Co. shall not be obligated to perform any of its covenants and conditions. Landowners shall provide Gas Co. with a copy of the certificate and abstract of title for the Property that Landowners or Landowner's attorney may have, if requested by Gas Co.

9. Surrender. It is agreed that upon the payment of One (\$1.00) Dollar, Gas Co., its successors and assigns, may terminate this agreement and thereby be released of all covenants and obligations herein set forth even if unfulfilled by (1) determining that the oil and gas has been exhausted from the Property; or (2) reconveying the oil and gas and remaining privileges given to Landowners.

10. Drilling Permits. Landowners, for themselves, their heirs, executors, administrators, successors and assigns, agree to execute any and all documents that may from time to time be helpful or necessary in order for Gas Co. to obtain the governmental approvals to carry on operations.

11. Entire Contract. No presumption shall be deemed to exist in favor of or against either party hereto as a result of the preparation and/or negotiation of this agreement. No inference or covenant shall be implied as to either party hereto since the full contractual obligations and covenants of each party is herein fully and expressly set forth.

12. Continuance of Property. No change in ownership of the Property or royalties shall be binding on Gas Co. until a person acquiring any interest has furnished Gas Co. with proof satisfactory to Gas Co. of such change in ownership. Landowners agree not to enter into any oil and gas agreement with any other party with regard to the Property until this agreement is terminated. If Landowners do not have title to all of the Property and rights described above, payments hereunder may be made to Landowners in proportion to the interest held by Landowners.

13. Adverse Claims. If the Property is subject to an instrument granting rights to a party other than Gas Co. or in the event of dispute or litigation as to title or as to royalties or other sums payable hereunder or any part thereof, royalties and other payments may be held in escrow by Gas Co. until such instrument has been released or canceled as to the Property and until such dispute or litigation is terminated. The sum so paid in escrow by Gas Co. shall be deemed payment of royalties and other sums due hereunder.

14. Counterparts. In the event there is more than one Landowner, then this agreement may be executed by Landowners in one or more counterparts each of which shall constitute an original, but all of which when taken together shall constitute one agreement.

15. Additional Provisions. It is further understood and agreed that SEE Addendum

16. Option to Lease. If Landowners receive an offer to lease the oil and gas concerning any portion of the Property described herein at any time while this agreement remains in full force and effect, or within six (6) months thereafter, Landowners hereby agree to notify Gas Co. in writing immediately of offer's name and the terms offered. Gas Co. shall have fifteen (15) days to accept or reject the said offer to lease the oil and gas covered by the offer at the price, terms, and conditions specified in the offer. Failure of Landowners to provide such notice to Gas Co. shall terminate any lease entered into between Landowners and such offer.

17. No Third Party Payments. Landowners hereby warrant that (i) the Property is not encumbered by any enforceable oil or gas lease of record or otherwise and that (ii) they are not currently receiving any bonus, rental, production royalty or shut-in royalty as the result of any prior oil or gas lease covering any or all of the subject Property, and that there have been no wells drilled upon the subject Property or upon any lands with which the Property has been combined in a drilling or production unit.

18. Heirs and Assigns. All provisions of this agreement shall extend to and be binding upon the heirs, executors, administrators, successors, sublessees and assigns of the parties hereto, provided, however, that an assignment or sublease of this agreement in whole or in part shall release and discharge Gas Co. from any and all obligations or liabilities hereunder.

Witness the proper execution of this agreement on the date above written with intent to be legally bound.

WITNESS lines for multiple witnesses.

E. David Nelson, Agent (SEAL)
LANDOWNER
SS # 25-1200339 (SEAL)
LANDOWNER
SS # (SEAL)
LANDOWNER
SS # (SEAL)
LANDOWNER
SS # (SEAL)
By Gregory R. Fyfe (SEAL)
GAS CO.

Exhibit "F" 4 pages

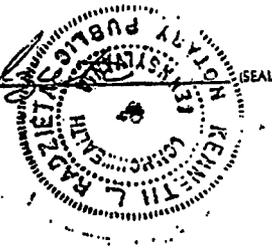
STATE OF PA
 COUNTY OF CLEARFIELD

On this 15th day of JUNE, 19 99, before me, Kenneth L Radzieta
 the undersigned officer, personally appeared E DAVID NELSON

_____ whose name _____
 subscribed to the within instrument, and acknowledged that DIS
 executed the same for the purposes therein contained.
 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notarial Seal
 Kenneth L. Radzieta, Notary Public
 Clarion Boro, Clarion County
 My Commission Expires Dec. 18, 2000
 Member Pennsylvania Association of Notaries

Kenneth L Radzieta
 Notary Public



COMMONWEALTH OF PENNSYLVANIA
 COUNTY OF _____

BE IT REMEMBERED, that on the _____ day of _____, 19____, before me, the subscriber, a Notary Public, personally appeared _____, the subscribing witness to the execution of the above indenture, who being duly sworn upon his oath according to law, doth depose and say that he did see _____ the Landowner(s) above named, sign and seal, and as _____ act and deed deliver the above indenture for the uses and purposes therein mentioned, and that the name of this deponent thereunto set and subscribed as a witness is of this deponents own proper handwriting and that the foregoing Agreement to be their act and deed for the purpose therein mentioned and desire that the same might be recorded as such.

WITNESS, my hand, and official seal the date first above written.

NOTARY PUBLIC _____ (SEAL)

RECORDING FEES - \$12.00
 RECORDED ON JUN 28, 1999 11:55:08 AM
 INSTRUMENT NUMBER 179910680
 REGISTER AND RECORDER CLEARFIELD COUNTY, PA Pennsylvania

Oil and Gas Agreement

From _____ To _____

Date, _____ 19____

Term _____

No. Acres _____ Location, _____

On Waters of _____

District or Township _____

County _____

State _____

Received for Record _____

Recorded, _____

In Book _____ page _____

new stock

Clear Quad

COMPANY ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA
 COUNTY OF Clarion

On this 16 day of June, 19 99, before me: _____
 the undersigned officer, personally appeared _____
 _____ to me known to be the same persons whose names are subscribed
 to the foregoing instrument and in due form of law acknowledged the execution of the foregoing Agreement to be their act and deed for the purpose therein mentioned and desire
 that the same might be recorded as such.

WITNESS, my hand, and official seal the date first above written.
 Michele A. Wice, Notary Public
 Clarion Boro, Clarion County
 My Commission Expires June 18, 2000
 Member Pennsylvania Association of Notaries

Michele A. Wice
 NOTARY PUBLIC



E OF PA

NTY OF CLEARFIELD

DAVID NELSON 5th day of April 2002 before me, a Notary Public, the undersigned officer, personally appeared

whose name...
affirmation text: I hereby certify that the person named in the foregoing instrument is the person who executed the same for the purposes therein contained.

Kenneth J Radzicki (SEAL)
Notary Public

Notarial Seal
Kenneth L. Radzicki, Notary Public
Clarion Boro, Clarion County
My Commission Expires Feb. 7, 2005
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF

IT IS REMEMBERED, that on the... day of... 20... before me, the subscriber, a Notary Public, personally appeared... the subscribing witness to the execution of the above indenture, who being duly sworn upon his oath according to law, doth depose and say that he did see... act and deed deliver the above indenture for the uses and purposes herein mentioned, and that the name of this deponent thereunto set and subscribed as a witness is of this deponents own proper handwriting and that the foregoing agreement to be their act and deed for the purpose therein mentioned and desire that the same might be recorded as such.

KAREN L. STANCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania
INSTRUMENT NUMBER
200207303
RECORDED ON
May 15 2002
12:06:44 PM
Total Pages: 2

RECORDING FEES - \$13.00
RECORDER COUNTY IMPROVEMENT FUND \$1.00
RECORDER IMPROVEMENT FUND \$1.00
STATE WRIT TAX \$0.50
TOTAL \$15.50
CUSTOMER
GREGG & LANDER

SUBSCRIBING WITNESS

WITNESS, my hand, and official seal the date first above written.

NOTARY PUBLIC

(SEAL)

Oil and Gas Agreement

From

To

Date, Term, No. Acres, Location.

On Waters of, District or Township, County, State, Received for Record, Recorded, In Book page

GLEN RICHEY

COMPANY ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF Clarion

On this 26 day of April 2002 before me; a Notary Public the undersigned officer, personally appeared Gregory R. Kriebel to me known to be the same persons whose names are subscribed to the foregoing instrument and in due form of law acknowledged the execution of the foregoing Agreement to be their act and deed for the purposes therein mentioned and desire that the same might be recorded as such.

WITNESS, my hand, and official seal, this... day of... 20... before me, a Notary Public the undersigned officer, personally appeared Gregory R. Kriebel to me known to be the same persons whose names are subscribed to the foregoing instrument and in due form of law acknowledged the execution of the foregoing Agreement to be their act and deed for the purposes therein mentioned and desire that the same might be recorded as such.

Notarial Seal
Michele A. Wice, Notary Public
Clarion Boro, Clarion County
My Commission Expires June 19, 2004
Member, Pennsylvania Association of Notaries

Gregory R. Kriebel (SEAL)
NOTARY PUBLIC

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

VERIFICATION

We, RICHARD L. WITHEY and ZOE E. WITHEY, Plaintiffs, do hereby swear and affirm that we have read the foregoing SECOND AMENDED CIVIL COMPLAINT and that the averments therein contained are true and correct to the best of our knowledge, information and belief. Furthermore, we are over the age of 18 years of age and we give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4901.

So made this 2 day of February, 2007.

By,

Richard L. Withey
Richard L. Withey, Plaintiff

Zoe E. Withey
Zoe E. Withey, Plaintiff

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of the Plaintiff's SECOND AMENDED CIVIL COMPLAINT, to the below indicated person, being counsel of record for the defendants, this 23rd day of February, 2007, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

:
: No. 04-1712-CD
:
: **Answer, New Matter and Counterclaim to**
: **Second Amended Civil Complaint**
:
: Filed on behalf of:
: Defendants
:
: Counsel of record for this
: party:
: William C. Kriner, Esquire
: 219 East Market Street
: P. O. Box 1425
: Clearfield, PA 16830
: (814) 768-7893
: PA I.D. # 15559
:
: Counsel of record for
: Plaintiffs:
:
: Theron G. Noble, Esq.
: 301 East Pine Street
: Clearfield, PA 16830
: (814) 375-2221
: PA I.D. # 55942

FILED *no cc*
0/11/26/07
MAR 13 2007 *(GX)*

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

ANSWER AND NEW MATTER

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied. Shannon is a partnership under the Uniform Partnership Act with
C. Alan Walker and Susan W. Kriner as partners.

6. Admitted.

7. Admitted.

8. Denied. The Estate of Anne Walker Macko has been dismissed as a party as per
Order of Court dated 22 March 2005.

9. Denied. On the contrary, it is alleged that only C. Alan Walker was an officer,
director and shareholder of Hamilton.

10. Denied. On the contrary, it is alleged that only C. Alan Walker owned any
common stock of Hamilton.

11. Denied. On the contrary, it is alleged that Hamilton and Shannon are not similarly owned and controlled entities. In addition, Shannon, as a land and mineral owning entity, has competitors of Hamilton mine and remove coal from its owned interests, to wit, Sky Haven, Inc., King Coal, Inc., AmFire, Inc., Hepburnia Coal Company, and Waroquier Coal Company. Furthermore, Hamilton has mined on many of its own properties and the properties of others beside Shannon.

12. Denied. On the contrary, it is alleged that Shannon has only one employee, E. David Nelson, and he performs tasks as the land representative for Shannon and for other businesses as they relate to Shannon's interests.

13. Denied. On the contrary, there are no employees of Shannon or Hamilton who are simultaneously employed by both entities.

14. Denied. While "allied" companies is not defined, Shannon and Hamilton are independent entities with different ownerships, different control, different decision making, different goals and different activities.

15. Admitted in part; denied in part. While it is admitted that beginning in 1991, Walker, Kriner and Macko were partners in Shannon, by virtue of the death of Anne Walker Macko on February 27, 2004, she ceased being a partner and by Order of Court dated 22 March 2005, the Estate of Anne Walker Macko is no longer a party to this action.

16. Admitted in part; denied in part. While it is admitted that Hamilton has historically been a surface coal mine operator, it has also been engaged in other asset managing activities.

17. Admitted.

18. Admitted.

19. Denied. On the contrary, it is alleged that the Department of Environmental Resources [now Department of Environmental Protection ("DEP")] regulations required a three hundred [300'] foot barrier and a one thousand [1000'] foot blasting barrier from the Withey property, in order to mine the Fred Long Farm. Consequently, for mining to occur, the Witheys had to authorize same for regulatory purposes.

20. Denied. On the contrary, on November 27, 1991, an operations agreement was entered into by Defendant Hamilton and the Plaintiffs. Neither C. Alan Walker, Susan W. Kriner, or anyone acting on behalf of Shannon was a party to said agreement. Furthermore, no title, equitable or legal, passed from Withey under said agreement. The agreement was conditional and did not vest in either party a beneficial ownership in property. Conveyances were to be made under the agreement after the fulfilling of conditions precedent concerning the mining operations of Hamilton. The parties have now consummated the exchange of real property contemplated in said agreement.

21. Admitted in part; denied in part. It is admitted that Shannon was aware of the operational arrangements Hamilton made with the Witheys in 1991. Hamilton conducted surface mining operations on the Fred Long Farm owned by Shannon. Shannon had always owned the coal rights and right to support beneath the Fred Long Farm. It was Plaintiff, Zoe Withey, daughter of Fred Long, who came to Shannon and requested that Shannon buy the surface of the Fred Long Farm because of a domestic dispute between Fred and Mary Long. Shannon made an offer to buy the Long surface in September 1987, through the Master in Divorce for the Long divorce, Peter Smith, Esq., as evidenced by the letter attached hereto and marked Exhibit "D-1". Shannon was only interested in

activities
on Shannon
by Hamilton

having the farm developed for commercial purposes and was not concerned with post-mining arrangements Hamilton had with Witheys. Exhibit "B" attached to the Plaintiffs' Complaint confirms the proposition that conveyance of properties under the 1991 agreement would only occur when post-mining conditions were met. The properties now have been conveyed.

22. Admitted.

23. Denied. On the contrary, no one on behalf of Hamilton acted in any way to bind or make Shannon a party to the 1991 agreement. Allegations of agency are legal conclusions to which no response is required. However, if a response is required, said allegation is denied.

24. Denied. While the real estate known as the Fred Long Farm was owned, possessed and controlled by Shannon, the house built on the Fred Long Farm property was built for the Plaintiffs and owned by Hamilton, therefore, the taxes on said house are issued to Hamilton as owner.

25. This allegation states a legal conclusion to which no response is required.

Count I

26. The answers to paragraphs 1 through 25 are incorporated herein by reference as if fully set forth herein.

27. Denied. On the contrary, it is alleged that no contracts and conveyances were entered into affecting the Fred Long Farm except the laying of a water line on a boundary of the Fred Long Farm.

28. Denied. On the contrary, it is alleged that the laying of the water line does not deny to Witheys their benefit of the bargain under the 1991 operations agreement. It is

further alleged that the laying of the water line enhanced the value of the surface rights to be conveyed to Witheys upon the meeting of the conditions under the 1991 operations agreement. Furthermore, the property has been conveyed.

Count II

29. The answers to paragraphs 1 through 28 are incorporated herein by reference as if fully set forth herein.

30. Admitted.

31. Admitted in part; denied in part. Defendant Hamilton was responsible for paying real estate taxes as the new Withey home was assessed to Al Hamilton Contracting Company.

32. Denied. On the contrary, all real estate taxes, county, state and school, have been paid on the Withey home as assessed to Hamilton and were paid in full as of the time of the exchange of properties under the 1991 agreement.

33. Admitted in part; denied in part. It is admitted that the Witheys paid the 2002 taxes. However, it is denied that they were damaged in any way since they were repaid in full by Hamilton for all taxes they paid. It is also denied that the Fred Long Farm was in danger of tax sale since the new Withey house and the Fred Long Farm are separately assessed, the former to Al Hamilton and the latter to Shannon.

Count III

34. The answers to paragraphs 1 through 33 are incorporated herein by reference as if fully set forth herein.

35. Admitted.

36. Admitted in part; denied in part. It is admitted that Shannon, owner of the barn in 1993, was paid a sum of \$1,505.89 from an insurance carrier as a result of wind damage to the barn. It is denied, however, that Shannon had some sort of responsibility to insure or maintain the barn for any party but themselves.

37. Admitted in part; denied in part. Shannon had leased the barn to Fred Long as part of a lease agreement dated July 1, 1989. Under said agreement, Fred Long was responsible for remedial measures and repairs to the barn on the Fred Long farm property. It was not the responsibility of Shannon for upkeep, repair and maintenance of the barn. Defendant Hamilton had no responsibility for repair, maintenance and upkeep of the barn because it had no ownership, possession, or control of the barn and under the 1991 operations agreement Hamilton had no responsibility for the repair, upkeep or maintenance of the barn.

38. Denied. On the contrary, under paragraph 8 of the 1991 operations agreement, Defendant Hamilton was only required to carry fire and casualty insurance on the "old" Withey house on 1.14 acres and the "new" Withey house constructed by Neff Contracting for the Witheys under the 1991 agreement. Furthermore, the barn on the Fred Long farm was leased to Fred Long ("Long Lease") by Shannon on August 1, 1989. Under the Long Lease, Fred Long was responsible for keeping the barn in "good order and repair as when originally leased, excepting wear and tear." Therefore, any repair or remedial work to the barn was the responsibility of Fred Long and not that of any Defendant. A copy of the Long Lease is attached hereto, marked Exhibit "D-2" and incorporated herein by reference. There was no contractual duty on the Defendants to repair/maintain barn.

39. Denied. On the contrary any deterioration of the barn was the failure of Fred Long to maintain and repair said barn under the Long Lease. There was no obligation for any Defendant to maintain and repair the barn. As to allegations as to cause of deterioration of the barn over time and its needing to be torn down, the real property and barn has been conveyed to Plaintiffs and what Plaintiffs have done with the barn since accepted the conveyance of the property is not known to Defendants.

40. The allegation in paragraph 40 is a conclusion of law for which no answer is required. However, if an answer is required, it is denied because (1) any barn damages is the responsibility of Fred Long under the Long Lease; (2) neither Defendant was required to repair or maintain the barn; (3) Defendants delivered a deed that included the barn and was accepted by the Plaintiffs; and (4) there was no obligation as to maintaining or replacing the barn in the 1991 operations agreement.

Count IV

This Count was Count V in the original Complaint and Amended Complaint and by previous Order of Court, Defendants need not respond as said count has been dismissed and is only pled to preserve Plaintiffs' right of appeal.

Count V

46. That the answers to paragraphs 1 through 40 are incorporated herein by reference as if fully set forth herein.

47. Admitted in part; denied in part. While Hamilton was to have the "new" Withey home constructed, Plaintiffs chose the contractor, design, and materials to be used in the construction.

48. Admitted.

49. After reasonable investigation Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment in paragraph 49. Strict proof thereof is required at trial.

50. After reasonable investigation Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment in paragraph 50. Strict proof thereof is required at trial.

Count VI

51. The answers to paragraphs 1 through 40 and 46 through 50 are incorporated herein by reference as if set forth fully herein.

52. Admitted.

53. Denied. On the contrary, it is alleged that any breach has been remedied and therefore there is no reason for the payment of reasonable attorneys' fees on behalf of the Plaintiffs.

54. Denied. On the contrary, it is alleged that the Witheys should pay reasonable legal fees to counsel for Hamilton who has had to defend Hamilton against allegations with no basis in fact or law and for successfully obtaining dismissal, to date, numerous counts of the Plaintiffs' Complaint, and for successfully sustaining Preliminary Objections against the Plaintiffs.

Count VII

That by previous Order of Court, Defendants need not respond as said count has been dismissed and is only pled to preserve Plaintiffs' right of appeal.

60. The allegation in paragraph 60 is a conclusion of law for which no answer is required, however, if an answer is required, it is denied.

61. The allegation in paragraph 61 is a conclusion of law for which no answer is required, however, if an answer is required, it is denied.

62. The allegation in paragraph 62 is a conclusion of law for which no answer is required, however, if an answer is required, it is denied.

NEW MATTER

By way of further answer, the Defendants set forth the following New Matter:

63. That all real estate taxes due and owing under the 1991 agreement between Hamilton and Witheys have been paid in full by Hamilton.

64. That the 1991 agreement between Withey and Hamilton was an operations agreement whereby Withey exchanged mining right prohibitions in and around their 1.14 acres in consideration for Hamilton erecting for them, without cost, a new dwelling in which they could live rent free.

65. That the consideration and bargain contemplated in the 1991 agreement has been performed as the Witheys have lived in their new home from April, 1992, to date, rent free.

66. That Plaintiffs have no claim to the Fred Long Farm dwelling buildings under the 1991 agreement.

67. That on July 1, 1989, the house and barn on the Fred Long Farm was leased to Fred Long ("Long Lease").

68. That Fred Long has continually leased the house and barn on the Fred Long property since 1989 until his death in 2006.

69. That under the Long Lease, Fred Long had the responsibility for the upkeep and maintenance of the barn.

70. That Hamilton owes to Withey no duty or responsibility under the 1991 agreement for the upkeep of the barn and/or dwelling buildings on the Fred Long Farm.

AFFIRMATIVE DEFENSE OF ESTOPPEL

71. That the Plaintiffs were aware of the agreement of 1989 leasing the Fred Long house and barn to Fred Long.

72. That the Plaintiffs knew that under said 1989 lease, Fred Long was responsible for the upkeep and maintenance of the house and barn on the Fred Long Farm.

73. That the Plaintiffs are thereby estopped from making a claim against the Defendants for damage to the barn or house on the Fred Long Farm.

AFFIRMATIVE DEFENSE OF CONSENT

74. That the allegations in paragraphs 71 and 72 are incorporated herein by reference as if set forth fully herein.

75. That the lease of 1989 granted to Fred Long exclusive rights and responsibilities of possession and control in the house and barn on the Fred Long Farm.

76. That upon the execution of the 1991 agreement, Plaintiffs were aware of the rights of Fred Long in the Fred Long Farm, house and barn.

77. That the Plaintiffs consented to the rights and responsibilities of Fred Long in and to the dwelling house and barn on the Fred Long Farm as well as Fred Long's use and possession of the house and barn.

78. That as a result of the Plaintiffs consent to the 1989 agreement and Fred Long's rights and responsibilities in the house and barn on the Fred Long Farm, the

Plaintiffs have no claims against the Defendants with respect to the dwelling buildings on the Fred Long Farm.

AFFIRMATIVE DEFENSE OF ACCORD AND SATISFACTION

79. That the exchange of properties by conveyance contemplated by the 1991 operations agreement has been accomplished.

80. That the exchange of deeds between the parties completes the obligations of the parties to each other under the 1991 operations agreement.

81. That the acceptance of the conveyances by the parties satisfied any and all claims the parties have against each other and is a bar to further action by the Plaintiffs against the Defendants in this matter.

82. That the Plaintiffs choose the contractor who constructed the "new" Withey home.

83. That the Plaintiffs choose the design of the "new" Withey home.

84. That the Plaintiffs choose the materials that were used to construct the "new" Withey home.

85. That the "new" Withey home was completed and occupied by the Plaintiffs in 1992.

86. That any failure of roofing or molding material was by virtue of normal wear and tear or the Plaintiffs choosing sub-standard material for use in construction of the house.

AFFIRMATIVE DEFENSE OF STATUTE OF LIMITATIONS

87. That it has been 15 years since the Plaintiffs took possession and occupied the "new" Withey home.

88. That the time limit has expired for bringing an action based on contract for faulty construction of the "new" Withey home.

89. That any breach of contract action based on faulty construction of the "new" Withey home is barred by statutes of limitations for contract cases.

90. That any action for faulty construction must be brought against the contractor, Neff Construction.

91. That Hamilton fulfilled its responsibility under the 1991 operations agreement by having the house of the Plaintiffs choice, constructed by the contractor of the Plaintiffs' choice with the materials chosen by the Plaintiffs at no cost to the Plaintiffs.

92. That the Plaintiffs have occupied the "new" Withey home for 15 years without complaint of quality of construction or workmanship.

WHEREFORE, Defendants request the Court to enter judgment on their behalf and against the Plaintiffs and award to Defendants costs of litigation.

COUNTERCLAIM

93. That under Paragraph 9 of the agreement dated 27 November 1991, between Defendant Hamilton and Plaintiffs, a party successful in enforcing its right in litigation is entitled to reasonable legal fees and costs of litigation.

94. That as of 22 March 2005, Defendant Hamilton was successful in having three (3) counts of the Plaintiffs' Complaint dismissed.

95. That on 11 January 2007, the Defendants were successful in having the Court sustain preliminary objections of the Defendants to the Plaintiffs' attempt to amend their complaint in procedurally improper fashion, to strike an improperly pleaded matter and to

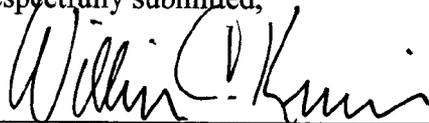
order the Plaintiffs to file a sufficient pleading as required by the Rules of Civil Procedure.

96. That after years of objecting to the conveyance of properties to be exchanged under the 1991 operations agreement, Plaintiffs finally abandoned their objections and exchanged deeds as had been proposed by the Defendants since September 2001.

97. That the Defendants are entitled to reasonable legal fees and costs of litigation incurred by it in defending itself against the actions of the Plaintiffs.

WHEREFORE, Defendant Hamilton requests judgment be entered in its favor and against the Plaintiffs in an amount in excess of Twenty Thousand (\$20,000) Dollars for legal fees and costs of litigation incurred by Defendant Hamilton, and in the event Plaintiffs obtain a monetary judgment against Defendant Hamilton, the Plaintiffs' judgment be set off to the extent the Plaintiffs' judgment exceeds Defendant Hamilton's judgment on this Counterclaim.

Respectfully submitted,



William C. Kriner
Attorney for Defendants
P.O. Box 1425
Clearfield, PA 16830
814-768-7893
I. D. # 15559

KRINER, KOERBER AND KIRK
ATTORNEYS-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-9611

WILLIAM C. KRINER
DWIGHT L. KOERBER, JR.
ALAN F. KIRK

September 18, 1987

COUNSEL TO THE FIRM
WILLIAM T. DAVIS

Peter Smith, Esquire
30 South Second Street
Clearfield, PA 16830

Re: Long Divorce

Dear Peter:

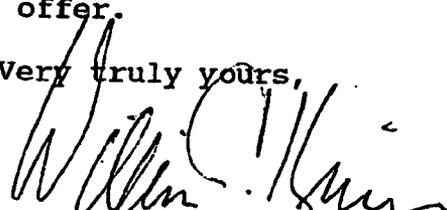
As you are aware, we represent Shannon Land and Mining Company of Bigler, Pennsylvania. I have been authorized to make an offer to purchase the farm property of Mr. and Mrs. Long, who are currently in a divorce proceeding in which you are sitting as Master.

Shannon Land and Mining Company hereby offers to buy all right, title and interest owned, possessed and controlled by Fred and Mary Long in and to sixty-six (66) acres located in Pike Township, Clearfield County, Pennsylvania, for the sum of One Hundred Forty-Five Thousand and no/100 (\$145,000.00) Dollars. The only condition to the offer is that if accepted, Mr. and Mrs. Long would pay Deed preparation costs and one-half the Pennsylvania Realty Transfer Tax due on the transaction upon closing.

This offer shall remain open until the close of business on December 31, 1987. If the offer is not accepted by that time, it will expire automatically without further action of any nature or kind thereby revoking any power of acceptance.

A copy of this letter is being sent to Andrew Gates and John Sobel, respective counsel for Mr. and Mrs. Long, so that they are fully apprised of the offer.

Very truly yours,


William C. Kriner

WCK:jj

cc: Mr. C. Alan Walker
Andrew Gates, Esq.
John Sobel, Esq.
Mr. David Nelson

EXHIBIT
D-1

LEASE AGREEMENT

THIS AGREEMENT, made this 1st day of August, 1989, by and between Shannon Land and Mining Company, acting by and through their duly authorized agent, hereinafter called the "LESSOR",

A

N

D

Fred Long of Pike Township, Clearfield County, Pennsylvania, hereinafter called the "LESSEE".

W I T N E S S E T H:

That the LESSOR, for and in consideration of the monies to be paid by the LESSEE to the LESSOR, and in further consideration of the covenants hereinafter set forth which are to be done, kept and performed by the LESSEE, do hereby demise, lease and let unto the LESSEE the premises known and described as the former Fred Long House and Barn located near the Village of Bloomington in Pike Township, Clearfield County, Pennsylvania, upon the following terms and conditions:

1. That the term of this Lease Agreement shall commence on the date of execution of this Lease, and extend for a period of twelve (12) months from said date of commencement. Said Lease shall renew itself every twelve (12) months unless either party shall notify the other in writing at least thirty (30) days prior to the end of any twelve (12) month term of their

intention to cancel said Lease. However, LESSEE may terminate this Lease by giving LESSOR thirty (30) days written notice of intention to terminate at the end of any calendar month. LESSOR specifically reserves the right to change the terms and conditions of this Lease, including an increase in the monies to be paid by giving the LESSEE thirty (30) days written notice prior to the expiration of any twelve (12) month term of their intention to do so, and the LESSEE holding over is thereby bound by the new terms for the renewal period. Notice under this Lease Agreement shall be deemed to be given by regular mail directed to the LESSOR at P. O. Box 368, Bigler, Pennsylvania, 16825 and to the LESSEE at the demised premises.

2. That the LESSEE shall pay to the LESSOR, without setoff or deduction, the sum equal to the yearly real estate taxes for the portion of the year that the LESSEE shall reside in the demised premises. The LESSOR shall pay the real estate taxes and then bill the LESSEE for LESSEE'S share. A copy of the real estate tax bill shall accompany the bill. In the event the LESSEE shall vacate the premises during the year, then the LESSOR shall reimburse the LESSEE for the unused portion of the monies paid. Payments shall be made to the LESSOR at P. O. Box 368, Bigler, Pennsylvania, 16825 or at the office of W. Keith Garman located in the Bradford Coal Co., Inc., office building.

3. That the LESSEE shall be responsible for the payment of all utilities, including but not limited to: electric, water, phone, cable TV, coal or wood for the furnace and the upkeep of the premises.

4. That the LESSEE hereby agrees to occupy the subject premises only as an apartment and not to assign, sublet or underlet the leased premises or any part thereof, without the written consent and approval of the LESSOR.

5. That the LESSEE shall keep the leased premises clean and in good order and repair and at the expiration of the term of this Agreement peaceably deliver up the premises in the same good order and repair as when originally leased, excepting only ordinary wear and tear.

6. That the LESSEE shall make no improvements or alterations on the leased premises without first obtaining written approval from the LESSOR, except for ordinary maintenance of the said premises.

7. That the LESSEE shall be responsible for damages by fire or other casualty to his personalty on the leased premises. In the event of total destruction to the premises by virtue of fire or other casualty, this Lease Agreement shall automatically terminate, and in the event of partial destruction, LESSOR may repair at their option if insurance proceeds are available. If the LESSOR chooses not to repair within thirty (30) days of the casualty, then this Lease shall automatically terminate.

8. That in the event of a taking by condemnation, in whole or in part, of the demised premises, this Lease shall terminate as of the date the right to possession accrues to the condemning authority. LESSEE hereby waives the right to participate in any condemnation award except for improvements

made by the LESSEE under this Lease.

9. That the LESSEE shall carry his own liability insurance for the leased premises and shall indemnify and save the LESSOR harmless from any and all losses, costs or damages on account of injury to persons or property occurring on the leased premises. In addition, the LESSEE hereby agrees to release the LESSOR from any and all liability for damages sustained by the LESSEE or any invitee of the LESSEE to person or property on the demised premises.

10. That in the event the LESSEE does not pay in full when due any and all installments of rent or any other charge, expense or cost agreed to be paid by LESSEE under the terms of this Lease, or if the LESSEE shall fail to keep or comply with any of the covenants, terms and conditions of this Lease, the LESSOR has the following remedies, all of which are cumulative and concurrent:

(a) That the LESSOR may terminate and declare void the Lease without any right on the part of the LESSEE or those claiming under LESSEE to reinstate the same by payment or other performances of the condition or conditions violated, and enter an amicable action of ejectment against the LESSEE in the Court of Common Pleas of Clearfield County, Pennsylvania, to recover possession of the demised premises, and the LESSEE does hereby authorize and empower any attorney of the said Court to enter an appearance for the LESSEE in said action of ejectment and to confess judgment, or judgments, therein as often as the LESSOR shall deem it necessary and in favor of the LESSOR for the

demised premises, together with costs of suit, and the LESSEE agrees that a writ of possession in such action with clause of execution for costs may appear for it in the said action to waive and release all errors and irregularities in the said action of ejectment and the proceedings relating thereto, and the LESSEE further agrees that any such action of ejectment, if resorted to, shall not in any manner impair any other rights of the LESSOR or any lawful remedy or remedies herein stipulated for or provided for, or which may be or may become by law provided, and in every such action of ejectment the LESSEE does hereby waive the benefit of all exemption laws and of all laws giving stays of execution and inquisition now in force, or which may hereafter be enacted.

(b) That the LESSOR may take possession and re-enter the subject premises without terminating this Lease and demise, let and lease the subject premises to a third party with the LESSEE remaining liable for any loss of rentals under this Lease and liable for costs of reletting, brokerage expenses and costs of preparing the premises for the new tenant. In addition, the LESSOR is released from any and all liability for re-entering the subject premises.

(c) That the LESSOR may accelerate the rental for the balance of the term, thus requiring it to be due and payable immediately without setoff or deduction.

(d) That the LESSOR may forthwith seize and levy upon all property, goods and chattels, without notice or demand, which may be found in or upon the leased premises that the LESSOR may proceed therewith and sell all goods and chattels as is permitted

by law in a case of distress for rent. That in addition, the LESSOR is authorized by the LESSEE to follow any property, goods or chattels removed from the leased premises by the LESSEE for a period of ninety (90) days after such removal for a purpose of proceeding in an action of distress for rent.

(e) That the LESSEE does hereby authorize and empower any attorney of any court of record of Pennsylvania, or elsewhere, without notice to the LESSEE, to appear for the LESSEE and as often as the LESSOR shall deem it necessary to confess judgment or judgments against the LESSEE and in favor of the LESSOR for any and for all such sum or sums of money with costs of suit and with an attorney's commission of ten (10%) percent of the amount due for collection thereof and with release of all errors and without stay of execution and inquisition and extension upon any levy on any real estate as hereby waived. These provisions, however, shall not be a bar to any other remedies that may become due from the LESSEE to the LESSOR under the terms of this Lease.

That the LESSEE hereby waives all rights of redemption and of exemption under the Landlord and Tenant Act of 1951, April 6, 1951, P. L. 60, or any other appropriate act now in existence or to be in existence in the future, all appeals, stays of execution, errors all notices required by statute, and release the LESSOR from wrongful entry of judgments, distraint or errors.

11. That the LESSEE shall have the right of first refusal to purchase the subject premises if in the future the LESSOR decides to sell the subject premises. This right of first

refusal to purchase shall cease if this Lease is cancelled by either party. The selling price of the subject premises shall be the price set at the sole discretion of the LESSOR.

12. This Lease is made with the specific condition that the LESSEE hereby agrees that any damage done to the LESSEE'S personalty by the mining operation on the subject premises or adjoining premises of the LESSOR, or premises controlled by the LESSOR, or those claiming under the LESSOR, shall be the sole responsibility of the LESSEE. And, LESSEE agrees to sign any forms or waivers necessary for the LESSOR or its agents or successors or assigns to acquire a mining permit on the subject premises.

13. The LESSEE shall have the right to farm the premises and graze livestock on the premises. However, the farming and grazing activities shall in no manner interfere with the mining activities on the subject premises. Any damage to crops, including but not limited to: hay, oats, etc., and any damage to livestock, shall be the sole responsibility of the LESSEE. The LESSEE shall have no rights whatsoever to collect for damages from the LESSOR or those claiming under the LESSOR.

14. That this Lease shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns as if they were named in each and every paragraph herein.

Verification

I verify that the facts set forth in the foregoing Answer, New Matter and Counter-Claim to Plaintiffs' Second Amended Civil Complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 PA. C.S.A. Section 4904 relating to unsworn falsification to authorities and is given pursuant to the provisions for verification of pleadings as defined and provided for in Rule 1024 of the Pennsylvania Rules of Civil Procedure.

Al Hamilton Contracting Company
By

C. Alan Walker, President
C. Alan Walker, President

March 13, 2007

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

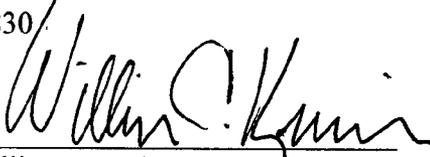
Defendants

No. 04-1712-CD

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer, New Matter and Counterclaim to Plaintiffs' Second Amended Civil Complaint was served on the following by regular First Class United States mail on March 13, 2007:

Theron G. Noble, Esq.
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830


William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

: **REPLY TO NEW MATTER,**
: **ANSWER TO COUNTER-CLAIM**
: **AND ADDITIONAL NEW MATTER**
: **as to SECONDED AMENDED**
: **CIVIL COMPLAINT**

: Filed By:

: Plaintiffs

JURY TRIAL DEMANDED

: Counsel of Record:

: Theron G. Noble, Esquire
: Ferraraccio & Noble
: 301 East Pine Street
: Clearfield, PA 16830
: (814)-375-2221
: PA I.D.#: 55942

FILED *NOCC*
12:41/04
APR 09 2007 

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

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AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

**PLAINTIFF'S REPLY TO NEW MATTER, ANSWER TO
COUNTER-CLAIM AND ADDITIONAL NEW MATTER
as to SECOND AMENDED CIVIL COMPLAINT**

AND NOW, comes the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their REPLY TO NEW MATTER, ANSWER TO COUNTER-CLAIM and ADDITIONAL NEW MATTER as to SECOND AMENDED CIVIL COMPLAINT:

Reply to New Matter

63. By way of further answer, the real estate taxes through 2004 were only paid when Plaintiffs, after repeated attempts with the defendant were rebuffed to have the taxes paid pursuant to the contract, filed and sought a court order for such payment.

64. 87. Denied. First, Plaintiffs' do not know what Defendants reference as "an operations agreement", nor the import of such phrase. As such, that is specifically denied and strict proof is

demanded at time of trial. Second, said land and buildings were to become the Witheys' at the completion of the 1991 agreement such that an equitable interest and title passed to the Witheys' in the 1991 agreement and Plaintiffs are not merely "tenants living rent free". Strict proof of the same is demanded at time of trial.

65. Denied. For the reasons herein complained of, it is specifically DENIED that Defendants have completed their obligations to Plaintiffs pursuant to such agreement. Strict proof of the same is demanded at time of trial.

66. Denied. That as part of the "1991 Agreement", all buildings located on the premises, pursuant to principles of Pennsylvania real estate law, were to be included in the conveyance to Plaintiffs. Strict proof of the same is demanded at time of trial.

67. After reasonable investigation, the same can not be admitted nor denied and strict proof is demanded at time of trial.

68. Admitted.

69. Denied. First, as to Plaintiffs, Fred Long owed no duty as to maintenance and upkeep, if there was such an obligation owed by Fred Long it was owed to Defendants not to Plaintiff. Second, even accepting as true such lease obligation, "reasonable wear and tear" was accepted. Strict proof of the same is demanded at time of trial.

70. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response might be deemed necessary, for the reasons herein stated, the same is DENIED and strict proof is demanded at time of trial. Specifically, it is DENIED that Defendants did not

have a duty to keep the premises in proper order and repair, including reasonable wear and tear which was accepted in the alleged Fred Long Lease, and that Defendant failed to do as such as previously pled in Plaintiffs Second Amended Civil Complaint.

Estoppel

71. Admitted in part, Denied in part. It is ADMITTED that at some time during the course of the 1991 contract that Plaintiffs became aware that Defendants and Fred Long had a lease arrangement. Given Defendants fail to plead exactly when, to the extent Defendants assert Plaintiffs had knowledge of such circumstances will need to be specifically proven at time of trial. Likewise, although Plaintiffs might have been aware of such circumstances, it is DENIED that Plaintiffs knew each and every detail of such lease arrangement and given Defendants' failure to specifically plead the knowledge claimed to have been known by Plaintiffs, such exact knowledge will need to be proven at time of trial.

72. Denied. It is specifically DENIED that Fred Long had such obligation pursuant to such lease in that reasonable wear and tear was accepted and that Plaintiffs knew such term and condition. Strict proof of the same is demanded at time of trial.

73. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response might be deemed necessary, for the reasons herein stated, the same is DENIED and strict proof is demanded at time of trial.

Consent

74. Plaintiffs hereby incorporate their responses to averments 71 and 72 if the same were again fully set forth at length.

75. After reasonable investigation the same can not be Admitted nor Denied, in that Plaintiffs were not a party to such agreement, therefore, strict proof is demanded at time of trial.

76. Admitted in part, Denied in part. It is Admitted that Plaintiffs, at the time of the 1991 Agreement were aware that Fred Long held some leasehold interest in the premises, but it is Denied that Plaintiffs were aware exactly as to what obligations Mr. Long owed to Defendants or what Defendants may have thought those obligations were. Strict proof is therefore demanded at time of trial.

77. Admitted in part, Denied in part. It is Admitted that Plaintiffs, at the time of the 1991 Agreement were aware that Fred Long held some leasehold interest in the premises, but it is Denied that Plaintiffs were aware exactly as to what "rights" Mr. Long had or what "responsibilities Mr. Long owed to Defendants or what Defendants may have thought those "responsibilities" were. It is specifically DENIED that Mr. Long had an duty under such lease to repair and/or maintain the premises for reasonable wear and tear or for "acts of God". Strict proof is therefore demanded at time of trial.

78. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response might be deemed necessary, for the reasons herein stated, the same is DENIED and strict proof is demanded at time of trial.

Accord and Satisfaction

79. Admitted in part, Denied in part. It is Admitted that the parties, pursuant to Court Order, exchanged properties. However, it is specifically DENIED that the same was done in accordance with the 1991 Agreement in that many terms and conditions, as pled in Plaintiff's CIVIL

COMPLAINT, and amended thereof, were not followed by Defendants. Strict proof of the same is demanded at time of trial.

80. For the reasons herein set forth, the same is DENIED and strict proof is demanded at time of trial.

81. DENIED. In that the exchange occurred as part of a Court Order, which specifically reserved Plaintiffs rights to pursue other issues, Defendants can not claim “accord and satisfaction” based on what amounted to partial resolution of the case. Strict proof of the same is demanded at time of trial.

82. Admitted.

83. Admitted in part, Denied in part. It is ADMITTED that Plaintiffs had some input, as did Defendants, in the design of their new home. However, it is specifically DENIED that Plaintiffs choose all aspects of such design as herein inferred. Strict proof is demanded at time of trial.

84. Denied. Although Plaintiffs had some input into color selections and matters like that, it is DENIED that Plaintiffs choose the materials of their new home. Strict proof is demanded at time of trial.

85. Admitted.

86. Denied. It is specifically DENIED that the failure of the roof and molding materials was either the result of normal wear and tear or by an cause attributable to Plaintiffs, but was rather that result of inferior materials and/or workmanship. Strict proof is demanded at time of trial.

Statute of Limitations

87. Admitted.

88. The same is a legal conclusion for which no response is required. To the extent such a response is deemed to be required, the same is DENIED. Specifically, the inferior workmanship and/or materials was a defect not readily observable until the same failed, which was within the applicable period of limitations, being the last four years. Strict proof is demanded at time of trial.

89. The same is a legal conclusion for which no response is required. To the extent such a response is deemed to be required, the same is DENIED. Specifically, the inferior workmanship and/or materials was a defect not readily observable until the same failed, which was within the applicable period of limitations, being the last four years. Strict proof is demanded at time of trial.

90. Denied. Plaintiffs did not have a contractual relationship with Neff Construction. Strict proof of the same is demanded at time of trial.

91. Denied. For the reasons herein stated, as well as those asserted in Plaintiffs Second Amended Civil Complaint, the same is DENIED and strict proof demanded at time of trial.

92. Denied. For the reasons herein stated, as well as those asserted in Plaintiffs Second Amended Civil Complaint, the same is DENIED and strict proof demanded at time of trial.

WHEREFORE, Plaintiffs request JUDGMENT in their favor as prayed for in their Second Amended Civil Complaint.

ANSWER TO COUNTER-CLAIM

Answer to Counter-Claim

93. Denied. The contract, which speaks for itself, in essence states that if a party needs to resort to the courts for a breach of contract, such as the Witheys have done per the real estate taxes and insurance issues, and they are successful in enforcing such rights, as the Witheys were, then that party is entitled to reasonable attorney's fees. As such, the same is DENIED and strict proof demanded at time of trial.

94. The same is immaterial and irrelevant given that Defendants have not asserted any breach of the 1991 agreement by the Witheys which is required in order for them to recover such fees. By way of further response, it is also noted that defendants were not successful in many other of their preliminary objections.

95. The same is immaterial and irrelevant. By way of further response, Defendants have also failed in many of their objections as well, serving only to delay these proceedings. Furthermore, Plaintiffs have not breached the 1991 Agreement, nor have Defendants asserted as such, which is a condition precedent under the 1991 Agreement to recover attorney's fees.

96. Admitted in part, denied in part. First, the same is wholly irrelevant and immaterial. Second, it is ADMITTED that the Witheys rejected the defendants unilateral, unfair and unjust offers of amendments until the same met with their satisfaction. To the extent such averments implies that the Witheys were required to accept such amendments and have not been justified in such refusals, the same is DENIED and strict proof demanded at time of trial.

97. Denied. The Witheys have at all times honored the 1991 agreement and continue to do so

and as such can not be obligated to pay attorney's fees to the Defendants. Strict proof of the same is demanded at time of trial.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor as to Defendants' COUNTER-CLAIM.

Additional New Matter

NOTICE

To: Defendants

YOU ARE REQUIRED TO PLED WITHIN TWENTY (20) DAYS
HEREOF OR JUDGMENT MAY BE ENTERED AGAINST YOU



Theron G. Noble, Esquire
Counsel for Plaintiffs

98. That the Witheys have not nor are they in breach of the 1991 agreement.

99. That the 1991 agreement only provides reasonable attorney's fees for the non-breaching party who successfully pursues and obtains a judicial remedy.

100. That the 1989 lease agreement between Mr. Fred Long and Defendant Shannon Land and Mining only provides that Mr. Long was responsible to keep the premises in "good order and repair" from which "ordinary wear and tear" is excepted.

101. That as landlord and record owner of the premises that defendants were responsible to keep the buildings, leased to Mr. Fred Long, on the premises reasonably maintained.

102. Per the 1991 agreement, the defendants are to convey the "Fred Long Property" with its

buildings in reasonable condition.

103. That when the Witheys entered into the 1991 agreement, they had not reviewed the 1989 lease between Shannon Land and Mining and Mr. Fred Long nor were they aware of its material terms and conditions.

104. That the Witheys, as part of the 1991 agreement, were to receive with the conveyance of the Fred Long Farm, all buildings attached thereupon.

105. That the Stage III bonds, subject of the 1991 agreement, have not been released.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor as to their CIVIL COMPLAINT, as well as Defendants' counter-claim, together with the relief previously requested.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

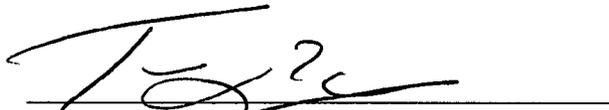
IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of the Plaintiff's REPLY TO NEW MATTER, ANSWER TO COUNTER-CLAIM and ADDITIONAL NEW MATTER as to SECOND AMENDED CIVIL COMPLAINT, to the below indicated person, being counsel of record for the defendants, this 5th day of April, 2007, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY and
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Plaintiffs

vs.

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a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

:
: No. 04-1712-CD
:
: **Defendants' Reply to Plaintiffs'**
: **Additional New Matter**
:
: Filed on behalf of:
: Defendants
:
: Counsel of record for this
: party:
: William C. Kriner, Esquire
: 219 East Market Street
: P. O. Box 1425
: Clearfield, PA 16830
: (814) 768-7893
: PA I.D. # 15559
:
: Counsel of record for
: Plaintiffs:
:
: Theron G. Noble, Esq.
: 301 East Pine Street
: Clearfield, PA 16830
: (814) 375-2221
: PA I.D. # 55942

FILED NOCC
013:01/2007
APR 24 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

No. 04-1712-CD

DEFENDANTS' REPLY TO PLAINTIFFS' ADDITIONAL NEW MATTER

98. Paragraph 98 of the Plaintiffs' Additional New Matter is a legal conclusion to which no response is required, however, if a response is required, it is denied. By way of further reply, for many years, the Plaintiffs refused to accept the conveyance of properties contemplated in the 1991 agreement. Subsequent acceptance of the property exchange by the Plaintiffs proposed by Defendants since 2001 proves breach of the agreement by Plaintiffs.

99. Paragraph 99 of the Plaintiffs' Additional New Matter is a legal conclusion to which no response is required, however, if a response is required, it is denied. By way of further reply, the agreement of 1991 permits either party "to elect to sue for damages...". There is no condition that a party suing be "the non-breaching party" as identified in Plaintiffs' Additional New Matter. The reply to Paragraph 98 is incorporated herein as if fully set forth herein as an allegation of breach by Plaintiffs.

100. Denied. On the contrary, the 1989 lease agreement between Defendant Shannon as Lessor and Fred Long as Lessee contains numerous obligations for the

Lessee to discharge, including, payment of rent [Para. 2]; payment of utilities [Para. 3]; upkeep of the premises [Para. 3]; terms of occupation [Para. 4]; limitation on assignment and subletting [Para. 4]; keeping the premises in good order and repair [Para. 5]; peaceably deliver the premises at the conclusion of the tenancy as originally leased, excepting only ordinary wear and tear [Para. 5]; making no improvements without approval [Para 6]; ordinary maintenance of the property [Para. 6]; responsibility for fire and casualty insurance and for his personality on the leased premises [Para. 7]; waiver of rights in condemnation awards [Para. 8]; responsibility for liability insurance [Para. 9]; indemnification for personal injuries [Para. 9] waiver of rights for damages from mining operations [Para. 12]; and waiver of rights for any crop damages.

101. Denied. On the contrary, the Lessee, Fred Long, under the lease of 1998 had the sole responsibility for upkeep, maintenance and keeping the premises in good order and repair. The reply to Paragraph 100 is incorporated herein as if fully set forth herein.

102. Denied. On the contrary, there exists no provision in the 1991 agreement between the parties concerning the condition of buildings located on the "Fred Long Property" to be conveyed to Plaintiffs as is recognized by the Plaintiffs in Paragraph 59 of the original pleading filed by the Plaintiffs in this matter. Further, the only statement about buildings in conveying the 66 acres of surface is "with the dwelling buildings thereon" [Paras. 5 & 5] without identifying what buildings or their condition at the time of conveyance. As further, response, if no buildings existed at the time of conveyance, there would be no breach of the 1991 agreement.

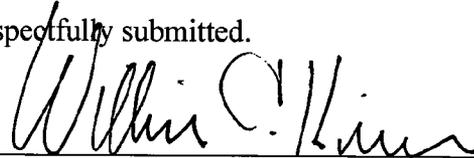
103. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 103 of the Plaintiffs' Additional New Matter that the Plaintiffs had not reviewed the 1989 lease with Mr. Long or were aware of the material terms and conditions. Strict proof of their lack of knowledge is demanded at trial. By way of further answer, Plaintiff Zoe Withey is the daughter of Fred Long, the 1989 lease granted Mr. Long a right of first refusal to buy the 66 acres that existed prior to the 1991 agreement and the Plaintiffs were aware of all the facts and circumstances leading to the purchase of the Fred Long Farm by Defendant Shannon, the lease entered into in 1989 and the agreement of 1991.

104. Admitted in part; denied in part. It is admitted that "dwelling buildings" existing at the time of conveyance were to be included, however, it is denied that the 1991 agreement in any way or manner includes an obligation as the specific buildings or the condition of any buildings as they existed in 1991. As further answer, the Defendants have accepted a conveyance of the 66 acres with buildings as they existed at the date of the conveyance.

105. Denied. On the contrary, the Stage III bonds were not the "subject of the 1991 agreement." The release of the Stage III bonds was a condition precedent to the obligation to convey real property under the 1991 agreement. Since the parties have agreed to convey the properties the release or non-release of the Stage III bonds is not an issue in this case. By way of further answer, the parties have completed conveyance of the properties under the 1991 agreement thereby amending the 1991 agreement which eliminates the condition precedent concerning Stage III bond release.

WHEREFORE, Defendants request judgment be entered in their favor and against the Plaintiffs on the Plaintiffs' Second Amended Complaint and the Defendants' Counterclaim as previously prayed for in the Defendants' Answer, New Matter and Counterclaim filed in this matter.

Respectfully submitted.

A handwritten signature in black ink, appearing to read "William C. Kriner", written over a horizontal line.

William C. Kriner
Attorney for Defendants
P.O. Box 1425
Clearfield, PA 16830
814-768-7893
I. D. # 15559

Verification

I verify that the foregoing Defendants' Reply to Plaintiffs' Additional New Matter is true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 PA. C.S.A. Section 4904 relating to unsworn falsification to authorities and is given pursuant to the provisions for verification of pleadings as defined and provided for in Rule 1024 of the Pennsylvania Rules of Civil Procedure.

Al Hamilton Contracting Company

By

C. Alan Walker, President

C. Alan Walker, President

April 24, 2007

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

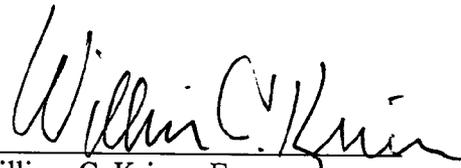
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Reply to Plaintiffs' Additional New Matter was served on the following by regular First Class United States mail on April 24, 2007:

Theron G. Noble, Esq.
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.,
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

No. 04-1712-CD

**Notice of Deposition and
Certificate of Service**

Filed on behalf of:
Defendants

Counsel of record for this
party:

William C. Kriner, Esquire
219 East Market Street
P. O. Box 1425
Clearfield, PA 16830
(814) 592-0637
PA I.D. # 15559

Counsel of record for
Plaintiffs:

Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830
(814) 375-2221
PA I.D. # 55942

FILED

03:16 p.m. GK
JUN 07 2007

No CC

(GK)

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

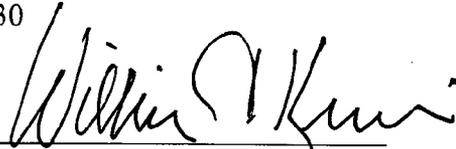
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Deposition was served on the following by regular First Class United States mail on June 7, 2007:

Theron G. Noble, Esq.
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

JUN 11 2007
m/11:30/w
William A. Shaw
Prothonotary/Clerk of Courts

no c/c

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
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C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

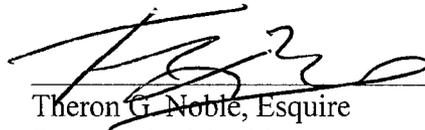
IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of the Plaintiff's NOTICE OF DEPOSITION (directed to Defendant C. Alan Walker), to the below indicated person, being counsel of record for the defendants, this 8th day of June, 2007, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED ^{NO CC}
M 10:01/61
AUG 28 2007 SM

William A. Shaw
Prothonotary/Clerk of Courts

UA

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

No. 04-1712-CD

**Defendants' Motion for
Summary Judgment**

Filed on behalf of:
Defendants

Counsel of record for this
party:

William C. Kriner, Esquire
219 East Market Street
P. O. Box 1425
Clearfield, PA 16830
(814) 768-7893
PA I.D. # 15559

Counsel of record for
Plaintiffs:

Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830
(814) 375-2221
PA I.D. # 55942

FILED No cc.
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WMS

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

No. 04-1712-CD

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants AL HAMILTON CONTRACTING COMPANY ("Hamilton") and C. ALAN WALKER and SUSAN W. KRINER, trading and doing business as SHANNON LAND AND MINING COMPANY ("Shannon") by an through their undersigned legal counsel, pursuant to Pa. R. C. P. No, 1035, *et sec.*, moves the Honorable Court for Summary Judgment in favor of Hamilton and Shannon and against the Plaintiffs, of which the following is a statement:

1. That the pleadings in this matter consisting of a Second Amended Complaint; Answer, New Matter and Counterclaim; Reply to New Matter, Answer to Counterclaim and Additional New Matter and Response to Additional New Matter, are closed.

2. That the parties hereto have conducted discovery, the Plaintiffs filing three sets of interrogatories and conducting depositions and the Defendants conducting a deposition of Plaintiff, Zoe Withey.

3. That as to each count of the Plaintiffs' Complaint there exists no genuine issue of material fact; that the Plaintiffs are unable to satisfy the elements of each cause of action plead in each count and the Defendants are entitled to summary judgment as a matter of law for the following reasons:

COUNT I

4. That the Plaintiffs allege "defendants entered into other contracts and conveyances concerning the Fred Long property, after the 1991 agreement" that render Defendants liable to the Plaintiffs under the 1991 agreement. [Plaintiffs' 2nd Amended Complaint, Para. 27.]

5. That discovery reveals that the only contracts entered into after 1991 involving the Fred Long property was a Right of Way agreement with GPU Energy dated 14 September 2000 and a Right of Way Agreement with the Pike Township Municipal Authority dated 12 September 2000 [See documents attached by Defendants to Answers to Plaintiffs' First Set of Interrogatories and Request for Production of Documents].

6. That the granting of rights of way is not a violation of the 1991 agreement which provides that the Fred Long Farm is to be conveyed "free and clear of all liens and encumbrances and pass marketable title." [Para. 5 of 1991 agreement as attached as Exhibit "A" to Plaintiffs' 2nd Amended Complaint of the Plaintiffs and recorded in Clearfield County Deed and Records Book 1547 at page 524.]

7. That Defendant Hamilton was not a party to the rights of way enumerated in paragraph 5 herein and therefore was not in breach of the 1991 contract when rights of way were granted.

8. That the rights of way enumerated in paragraph 5 herein were granted by Defendant Shannon who owned, possessed and controlled the Fred Long Farm in fee and had full authority to grant said easements. [Deposition of Zoe Withey ("ZW"), dated July 10, 2007, Page 44, Lines 20-24 where Plaintiff Zoe Withey does not dispute Shannon's authority to grant the rights of way.]

9. That Defendant Shannon was not a party to the 1991 agreement and therefore could not have breached the 1991 agreement.

10. That the exchange of properties under the parties' Motion for Partial Settlement and Order of Court dated October 13, 2006, resulted in an Accord and Satisfaction as to any and all conditions as to the properties exchanged and fulfilled all obligations of Defendant Hamilton under the 1991 agreement.

11. That there exists no genuine issue of material fact as to the breaching of the 1991 contract under Count I of the Plaintiffs' 2nd Amended Complaint.

WHEREFORE, Defendants respectfully request the Honorable Court to issue Summary Judgment in favor of the Defendants and against the Plaintiff as to Count I of the Plaintiffs' 2nd Amended Complaint.

COUNT II

12. That Count II of the Plaintiffs' 2nd Amended Complaint alleged that Defendants breached the 1991 agreement because "the Witheys were forced to pay 2002 real estate taxes, with penalty in the amount of \$1,311.85, to prevent the Fred Long Farm property from going to [tax] sale." [Para. 33 of Plaintiffs 2nd Amended Complaint.]

13. The real estate taxes in question were those assessed to Defendant Hamilton for the "new" Withey home for the years 2002 and 2003. [See ZW, Page 47, Lines 18-20, 23.]

14. That the real property taxes were reimbursed to the Witheys and paid through 2004 prior to the hearing on preliminary injunction on 14 December 2004 as evidenced by the Court Order of even date.

15. That the "new" Withey home was conveyed to Plaintiffs in a partial settlement of this case by virtue of a Joint Motion of the parties and Order of Court dated 13 October 2006.

16. That the exchange of properties under the parties' Motion for Partial Settlement and Order of Court resulted in an Accord and Satisfaction as to any and all conditions as to the properties exchanged and fulfilled all obligations of Defendant Hamilton under the 1991 agreement.

17. That Defendant Shannon had no responsibility under the 1991 agreement to pay real estate taxes assessed to Defendant Hamilton on the "new" Withey home.

18. That there exists no genuine issue of material fact as to the breaching of the 1991 contract by Hamilton under Count II of the Plaintiffs' 2nd Amended Complaint.

WHEREFORE, Defendants respectfully request the Honorable Court to issue Summary Judgment in favor of Defendants and against the Plaintiff as to Count II of the Plaintiffs' 2nd Amended Complaint.

COUNT III

19. That Count III of the Plaintiffs' 2nd Amended Complaint alleges that the Plaintiffs should be "compensated, in amounts to be determined at time of trial, for (a)

the cost to tear down and remove the barn [on the Fred Long property]; and (b) to replace the barn in a similar condition as at the time of the 1991 agreement” because the Defendants breached the 1991 agreement. [Para. 40 of Plaintiffs' 2nd Amended Complaint.]

20. That the 1991 agreement has no obligations or responsibilities as to the barn on the Fred Long property as recognized by the Plaintiffs in paragraph 59 of the Plaintiffs' original Complaint filed October 24, 2004.

21. The 1991 agreement only requires insurance coverage on the former Withey home and the new Withey home. [Para. 8 of the 1991 agreement attached as Exhibit “A” to the Plaintiffs' 2nd Amended Complaint and as recorded in Clearfield County Records Book 1547 at page 525.]

22. That the Fred Long House and Barn were specifically demised, leased and let to Fred Long under a lease dated 1 August 1989, between Shannon and Fred Long, which pre-dated the 1991 agreement. [See page one of lease dated 1 August 1989, attached as Exhibit “D-2” on Defendant’s Answer, New Matter and Counter Claim.]

23. That the upkeep and responsibility for repairs to the barn on the Fred Long Farm was that of Fred Long in the agreement between Shannon and Fred Long dated 1 August 1989. [Para. 3 and 5 of 1989 agreement attached as Exhibit “D-2” to the Defendants’ Answer, New Matter and Counter Claim.]

24. That under the 1989 lease Fred Long was to deliver up to Shannon the Fred Long house and barn in the condition it existed in 1989, reasonable wear and tear excepted [Para. 5 of 1989 agreement attached as Exhibit “D-2” to the Defendants’ Answer, New Matter and Counter Claim.]

25. That Plaintiff Zoe Withey witnessed Fred Long's signature on the 1989 agreement between Fred Long and Defendant Shannon leasing the house and barn to Fred Long. [ZW, Page 16, Lines 7-12; Page 17, Line 27; See signature page of 1989 agreement attached as Exhibit "D-2" on Defendant's Answer, New Matter and Counter Claim.]

26. That Plaintiff Zoe Withey knew of the existence of the 1989 agreement prior to the execution of the 1991 agreement between Defendant Hamilton and Plaintiffs. [ZW, Page 23, Lines 1-3.]

27. That the barn the Plaintiffs allege the Defendants must replace is the same barn leased to Fred Long under the 1989 agreement [ZW, Page 30, Lines 9-16.]

28. That by virtue of the pre-existing lease agreement known to the Plaintiffs under which upkeep and maintenance of the barn is the responsibility of Fred Long, the father of Plaintiff Zoe Withey, Plaintiffs are barred from asserting upkeep and maintenance liability and responsibility for the barn against the Defendants.

29. That by virtue of the pre-existing lease agreement known to the Plaintiffs under which upkeep and maintenance of the barn is the responsibility of Fred Long, the father of Plaintiff Zoe Withey, Plaintiffs are estopped from asserting upkeep and maintenance liability and responsibility for the barn against the Defendants.

30. That Defendant Hamilton did not own, possess or control any portion of the Fred Long Farm and had no responsibility as to that real property or any buildings thereon.

31. That Defendant Shannon had no contractual responsibility under the 1991 agreement, or under any other agreement, to Plaintiffs for upkeep and maintenance of the barn on the Fred Long farm.

32. That there exists no genuine issue of material fact as to the breaching of the 1991 contract by Hamilton or responsibility of Shannon with respect to the barn under Count III of the Plaintiffs' 2nd Amended Complaint.

WHEREFORE, Defendants respectfully request the Honorable Court to issue Summary Judgment in favor of Defendants and against the Plaintiffs as to Count III of the Plaintiffs' 2nd Amended Complaint.

COUNT V

33. That Count V of the Plaintiffs' 2nd Amended Complaint alleges damage from the Defendants for faulty workmanship in building the new Withey home in 1992.

34. That no allegations of faulty workmanship in construction of the "new" Withey home were made in any previous pleadings of the Plaintiffs until the filing of the 2nd Amended Complaint in 2006.

35. That the Plaintiffs chose the builder, the plans and the materials to be used in the construction of the home [ZW, Page 53, Lines 7, 11; Page 54 Lines 4-6.]

36. That the Plaintiffs moved into the newly constructed home in March of 1992. [ZW, Page 62, Lines 6-7.]

37. That the Plaintiffs replaced the roof on the home they moved into in 1992 in 2006 without first contacting Defendant Hamilton or the manufacturer of the shingles of a roofing problem. [ZW, Page 69, Lines 5-8; Page 70, Lines 9-13; Page 71, Lines 4-7.]

38. That the claim for faulty construction is barred by the appropriate statute of limitations for contract cases.

39. That the exchange of properties under the parties' Motion for Partial Settlement and Order of Court resulted in an Accord and Satisfaction as to the condition of the Withey home constructed in 1992 and discharged any and all obligations of Defendant Hamilton under the 1991 agreement.

40. That Defendant Shannon was not a signatory to the 1991 agreement nor did Defendant Shannon engage in any activity that lead to the construction of the Withey home in 1992.

41. That Plaintiff Zoe Withey acknowledged that Count V is a complaint against Defendant Hamilton for faulty construction [ZW, Page 92, Lines 19-24.]

42. That there exists no genuine issue of material fact as to the breaching of the 1991 contract by Hamilton as to construction of the Withey home in 1992 or any responsibility of Shannon as to that construction.

WHEREFORE, Defendants respectfully request the Honorable Court to issue Summary Judgment in favor of Defendants and against the Plaintiff as to Count V of the Plaintiffs' 2nd Amended Complaint.

COUNT VI

43. That in Count VI of the Plaintiffs' 2nd Amended Complaint, they allege the right to recover reasonable counsel fees against the Defendants for breach of the 1991 agreement. [Para. 9 of the 1991 agreement attached to the Plaintiffs' 2nd Amended Complaint and as recorded in Clearfield County as Deed and Records Book 1457 at Page 525.]

44. That Defendant Shannon, not being a party to the 1991 agreement, cannot be liable for attorneys' fees under the 1991 agreement.

45. That Plaintiff Zoe Withey acknowledges that Count VI of the 2nd Amended Complaint is against Defendant Hamilton for breach of the 1991 agreement. [ZW, Page 96, Lines 1-6.]

46. That Defendant Hamilton cannot be liable to Plaintiffs for breach of the 1991 agreement under Count I of the Plaintiffs' 2nd Amended Complaint because Defendant Hamilton did not engage in the conduct alleged to breach the 1991 agreement, to wit, the granting of rights of way by Defendant Shannon.

47. That Defendant Hamilton cannot be liable to Plaintiffs for breach of the 1991 agreement under Count III of the Plaintiffs' 2nd Amended Complaint because Defendant Hamilton had no duty or responsibility to Plaintiffs for maintenance, upkeep or insuring the barn and Defendant Hamilton did not own, possess or control said barn.

48. That breach of the 1991 agreement for non-payment of the 1991 real estate taxes on the "new" Withey home by Defendant Hamilton was remedied by Defendant Hamilton prior to the December 14, 2004, hearing on the matter on non-payment.

49. That the remedy of non-payment of taxes prior to the December 14, 2004, hearing bars any claim for attorneys' fees for non-payment of taxes after December 14, 2004.

50. That when the "new" Withey home was conveyed to the Witheys, all real estate taxes were paid prior to the date of closing. [ZW, Page 49, Line 5.]

51. That there are no unreimbursed real estate taxes owed by Defendant Hamilton to Plaintiffs. [ZW, Page 49, Line 14.]

52. That Defendant Shannon bears no responsibility to pay real estate taxes under the 1991 agreement nor any responsibility to reimburse unpaid taxes on the "new" Withey home.

53. That Defendant Shannon bears no responsibility or liability for construction of the "new" Withey home under the 1991 agreement.

54. There exists no genuine issue of any material fact that could establish that Defendant Shannon, not a party to the 1991 agreement, is responsible to Plaintiffs for attorneys' fees for breaching the 1991 agreement.

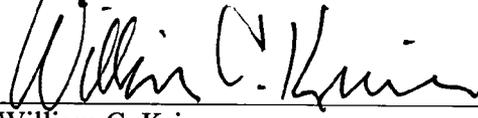
55. That any responsibility or liability for breach of the 1991 agreement by Defendant Hamilton is limited to non-payment of real estate taxes for the time period before December 14, 2004, and to faulty construction claims prior to March, 1992.

WHEREFORE, Defendant Shannon respectfully requests the Honorable Court to issue Summary Judgment in favor of it and against the Plaintiff as to Count VI of the Plaintiffs' 2nd Amended Complaint;

AND

Defendant Hamilton respectfully requests the Honorable Court to issue partial Summary Judgment in its favor and against the Plaintiffs by limiting the recovery of reasonable attorneys' fees only to breach of the 1991 agreement under Count II prior to December 14, 2004, and under Count V for faulty construction prior to March of 1992.

Respectfully submitted.

A handwritten signature in black ink, appearing to read "William C. Kriner", written over a horizontal line.

William C. Kriner
Attorney for Defendants
P.O. Box 1425
Clearfield, PA 16830
814-768-7893
I. D. # 15559

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Motion for Summary Judgment was served on the following by regular First Class United States mail on October 24 2007:

Theron G. Noble, Esq.
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

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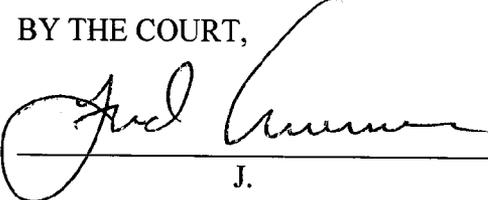
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

ORDER

AND NOW, this 25 day of October, 2007, upon consideration of the
Defendants' Motion for Summary Judgment, it is hereby ORDERED that argument on
said Motion shall be had on November 27, 2007, in Courtroom No. 1 of
the Clearfield County Courthouse. @ 9:30 A.M.

Notice of the entry of this order shall be provided to all parties by the moving
party.

BY THE COURT,

J.

FILED acc
012:19611
OCT 26 2007
Amy Kriner
GK
William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.,
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LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

No. 04-1712-CD

Certificate of Service

Filed on behalf of:
Defendants

Counsel of record for this
party:

William C. Kriner, Esquire
219 East Market Street
P. O. Box 1425
Clearfield, PA 16830
(814) 592-0637
PA I.D. # 15559

Counsel of record for
Plaintiffs:

Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830
(814) 375-2221
PA I.D. # 55942

FILED ^{NO} ^{CC}
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William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

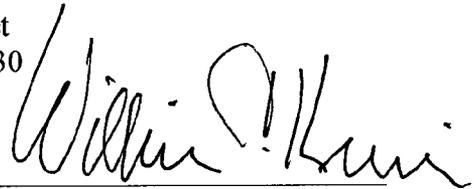
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LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that the Order dated October 25, 2007, scheduling argument on Motion for Summary Judgment was served on the following by regular First Class United States mail on October 29, 2007:

Theron G. Noble, Esq.
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY and
ZOE E. WITHEY

-vs-

No. 04-1712-CD

AL HAMILTON CONTRACTING
COMPANY, INC., a
Pennsylvania Corporation;
SHANNON LAND AND MINING
COMPANY; C. ALAN WALKER,
an adult individual; and
SUSAN W. KRINER, an adult
individual

ORDER

AND NOW, this 27th day of November, 2007,
following argument on the Motion for Summary Judgment filed
on behalf of the Defendants, it is the ORDER of this Court
that counsel for the Plaintiff file an appropriate Answer
to the Motion for Summary Judgment within no more than
twenty (20) days from this date. Within no more than forty
(40) days from this date, counsel for Defendants shall
submit appropriate letter brief to the Court. Within no
more than sixty (60) days from this date, counsel for
Plaintiff shall submit appropriate letter brief to the
Court.

BY THE COURT,

Frederick J. Kriner
President Judge

FILED
14:00
NOV 28 2007

Atty. Noble
Kriner

William A. Shaw
Prothonotary/Clerk of Courts

GR

FILED

NOV 28 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/28/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

**REPLY TO MOTION FOR
SUMMARY JUDGMENT**

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED *NO CC*
m/11:07/07
DEC 19 2007 *(GA)*

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
and C. ALAN WALKER, an adult individual;

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

PLAINTIFFS' REPLY TO MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the Plaintiffs, Richard L. and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows as their REPLY TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT:

1. Admitted.
2. Admitted.
3. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED and strict proof is demanded.
4. Plaintiff's 2nd Amended Complaint speaks for itself, as such no response is deemed necessary.
5. Denied. It is DENIED that Defendants only entered into the two mentioned contracts as was discussed at argument Defendant did in fact enter into other arrangements concerning the

premises.

6. The same is a legal conclusion, based upon an interpretation of the Agreement that neither the Defendant nor this Honorable Court is able to make as it is a question of fact for jury determination. To the extent such a response might be deemed necessary, it is specifically DENIED that the two referenced "rights of way", in addition to the other encumbrances discussed at oral argument were proper under the 1991 Agreement.

7. That the Defendants, Al Hamilton Contracting, Shannon Land and Mining and C. Alan Walker acted interchangeably through out the dealings with Plaintiffs such that they often act as agents for the other, as pled by Plaintiffs in their CIVIL COMPLAINT and at issue in this case, such that one can not escape liability for acts of the other.

8. Plaintiff hereby incorporates its response to Averment 7 as if again fully set forth at length. Furthermore, it is specifically DENIED that any party acting on behalf of the Defendants had any authority to grant any encumbrance of the premises without Plaintiffs' express permission once the 1991 Agreement was executed.

9. Plaintiff hereby incorporates its response to Averment 7 as if again fully set forth at length. Furthermore, it is specifically noted that Defendant C. Alan Walker, a partner of Defendant Shannon Land and Mining, who also substantially controlled its affairs, signed the 1991 Agreement while E. David Nelson, an employee who worked on behalf of Defendant Al Hamilton Contracting and Shannon Land and Mining, also participated and signed such that it is a presumption of a fact which is genuinely at issue whether Shannon Land and Mining participated in the 1991 Agreement and is therefore a party to the 1991 Agreement.

10. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED and strict proof is demanded.

Furthermore, it is noted under said ORDER that all parties preserve all other rights not resolved.

11. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED and strict proof is demanded.

WHEREFORE, Plaintiffs respectfully request that the Defendants MOTION FOR SUMMARY JUDGMENT be DENIED.

12. Plaintiff's 2nd Amended Complaint speaks for itself, as such no response is deemed necessary.

13. Admitted.

14. Denied. After reasonable investigation it can not be ADMITTED nor DENIED whether the same were paid prior to, at or shortly after the hearing. Strict proof of the same is demanded at time of hearing. Further, the same is immaterial as Defendants out right refused to pay the same prior to litigation being commenced, as testified to by Defendant C. Alan Walker at his deposition, as he admitted because the Defendants were trying to force the Plaintiffs to do the property exchanges at a time they were not obligated to do them because the Defendants; interests were best served by the conveyances.

15. Admitted.

16. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED and strict proof is demanded.

Furthermore, it is noted under said ORDER that all parties preserve all other rights not resolved.

17. Plaintiff hereby incorporates its response to Averment 7 as if again fully set forth at length. Furthermore, as the owner of record for the property upon which the "new Withey home" rested, it is unknown how Defendant Shannon Land and Mining would ultimately escape the tax liability and as such, the same is DENIED, to prevent an absurdity from resulting that the home would be sold at a tax sale but not the land.

18. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED and strict proof is demanded.

WHEREFORE, Plaintiffs respectfully request that the Defendants MOTION FOR SUMMARY JUDGMENT be DENIED.

19. Plaintiff's 2nd Amended Complaint speaks for itself, as such no response is deemed necessary.

20. Denied. The issue as to what were the Defendants' obligations under the 1991 Agreement, especially as it relates to the barn and other structures of the premises, is a genuine question of fact to be determined by a jury, especially considering the ambiguities which exist and that the Defendants drafted the agreement.

21. Denied. The issue as to what were the Defendants' obligations under the 1991 Agreement, also as it relates to insurance coverage, is a genuine question of fact to be determined by a jury, especially considering the ambiguities which exist and that the Defendants drafted the agreement.

22. Admitted.

23. Denied. The same is a legal conclusion of a factual issue to which no response is deemed necessary. To the extent such a response might be deemed to be required, the same is DENIED

as under said lease, Mr. Long only had to do routine maintenance and was not responsible for things considered to be “acts of God” such as wind damage to the barn.

24. Admitted.

25. Admitted.

26. Denied. Although Plaintiff Zoe E. Withey witnessed her Father’s signature to such lease, Defendant presumes she (i) knew that it was a lease; and (ii) knew all the contents of the documents, presumptions which the Defendants are simply not entitled. Strict proof for the same is demanded.

27. Admitted in part, Denied in part. It is ADMITTED that the barn was on the premises leased to Fred Long but it is DENIED in that it is the same barn which Plaintiffs were to receive upon the exchange of properties.

28. Denied. For the reasons herein stated, that (i) Mr. Long had no responsibility for “acts of God”; (ii) the repairs to the barn were not “routine maintenance”; and (iii) given the 1991 Agreement the Witheys had a vested interest in the barn as of the 1991 Agreement, the same is DENIED and strict proof is demanded.

29. The same is identical to averment 28, as such Plaintiffs hereby incorporate their response to Averment 28 as if again fully set forth at length.

30. For the reasons set forth in response to averment 7, which is hereby incorporated, the same is DENIED and strict proof is demanded, noting that the same is a genuine issue for the trier of fact.

31. For the reasons set forth in response to averment 7, which is hereby incorporated, the same is DENIED and strict proof is demanded, noting that the same is a genuine issue for the trier of fact.

32. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED and strict proof is demanded.

WHEREFORE, Plaintiffs respectfully request that the Defendants MOTION FOR SUMMARY JUDGMENT be DENIED.

33. Plaintiff's 2nd Amended Complaint speaks for itself, as such no response is deemed necessary.

34. Admitted. By way of further note, known were known to exist until such time as were pled in this matter.

35. Admitted.

36. Admitted.

37. Denied. Plaintiffs counsel had communications with Defendants counsel concerning issues with the construction which were either (i) ignored; or (ii) in some instances told it was the Plaintiffs responsibility not any of the Defendants. Strict proof is demanded at time of trial.

38. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED and strict proof is demanded.

39. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED and strict proof is demanded.

Furthermore, it is noted under said ORDER that all parties preserve all other rights not resolved.

40. Plaintiff hereby incorporates their response to Averment 7 as if again fully set forth at length.

41. Denied. Plaintiff would have also stated it is a complaint against the other Defendants if so

asked. This is another inference which the Defendants seek that to which they are not entitled. Strict proof is demanded.

42. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED and strict proof is demanded.

WHEREFORE, Plaintiffs respectfully request that the Defendants MOTION FOR SUMMARY JUDGMENT be DENIED.

43. Plaintiff's 2nd Amended Complaint speaks for itself, as such no response is deemed necessary.

44. Plaintiff hereby incorporates their response to Averment 7 as if again fully set forth at length.

45. Denied. Plaintiff would have also stated it is a complaint against the other Defendants if so asked. This is another inference which the Defendants seek that to which they are not entitled. Strict proof is demanded.

46. First, Plaintiffs hereby incorporate their response to Averment 7 as if again fully set forth at length. The state that the same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED for the reasons previously herein

47. First, Plaintiffs hereby incorporate their response to Averment 7 as if again fully set forth at length. The state that the same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED for the reasons previously herein stated and strict proof is demanded.

48. For the reasons previously herein stated, the same is DENIED and strict proof is demanded.

49. Denied. The same is a legal conclusion based upon a presumption of the Defendants' interpretation of the contract, a presumption to which they are not entitled. Specifically, if the Plaintiffs were entitled to legal fees for the non-payment of taxes, as adjudicated by this Court at the hearing for Preliminary Injunction, Defendants can not escape liability for the same by merely asserting that they paid the taxes and have never tendered payment for the attorney's fees. Strict proof is demanded.

50. Admitted.

51. Admitted.

52. For the reasons stated in response to averment 7 and elsewhere, all of which is hereby incorporated, the same is DENIED and strict proof is demanded.

53. For the reasons stated in response to averment 7 and elsewhere, which is hereby incorporated, the same is DENIED and strict proof is demanded.

54. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED and strict proof is demanded.

55. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response is deemed necessary the same is DENIED and strict proof is demanded.

WHEREFORE, Plaintiffs respectfully request that the Defendants MOTION FOR SUMMARY JUDGMENT be DENIED.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
and C. ALAN WALKER, an adult individual;

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of the Plaintiff's REPLY TO MOTION FOR SUMMARY JUDGMENT, to the below indicated person, being counsel of record for the defendants, this 14th day of December, 2007, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,


Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

01

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

RICHARD L. WITHEY and :
ZOE E. WITHEY :

Plaintiffs, :

v. :

No. 04-1712-CD

AL HAMILTON CONTRACTING :
COMPANY, INC., a Pennsylvania :
Corporation; SHANNON LAND AND :
MINING COMPANY; a Pennsylvania :
partnership; C. ALAN WALKER, an :
adult individual; and SUSAN W. KRINER :
an adult individual :

Defendants :

FILED

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William A. Shaw
Prothonotary/Clerk of Courts

SENT TO NOBLE
↓
KRINER

OPINION

Richard and Zoe Withey (hereafter Plaintiffs) owned a tract of land containing approximately 1.14 acres, located in Pike Township, Clearfield County, Pennsylvania (hereafter Pike Township Tract). Al Hamilton Contracting Company, Inc. (hereafter Hamilton) and Shannon Land Mining Company (hereafter Shannon; collectively Defendants), both being companies in the business of mining coal, desired to mine coal from the Pike Township Tract in the early 1990s. In order to mine the coal more expeditiously the Defendants desired the Plaintiffs to authorize such coal mining operations and permit use of the Pike Township Tract, which at the time served as the Plaintiff's homestead, for the Defendants' business purposes. To this end, the Plaintiffs and Hamilton entered into an agreement dated November 27, 1991 (hereafter 1991 Agreement). In the 1991 Agreement the Plaintiffs agreed to transfer the Pike Township Tract to the Defendants in exchange for a tract of land containing approximately 66 acres (hereafter Fred Long Farm) also located in Pike Township, Clearfield County, Pennsylvania. At the time of the 1991 Agreement, Shannon was the record owner of the Fred Long Farm and remained the record owner until the Fred Long Farm was transferred to the

Plaintiffs. The 1991 Agreement provided, among other things, that the Defendants would contract to have a house built for the Plaintiffs on the Fred Long Farm, would pay the taxes on the property, and would transfer the Fred Long Farm and new dwelling upon completion of all mining activities and release of the Stage III bonds. Plaintiffs allege that the Defendants breached the 1991 Agreement, which forms the basis of the action presently before this Court.

Preliminarily, the Defendants raise procedural issues relating to the Plaintiff's response to Defendants' Motion for Summary Judgment. The Defendants erroneously cite Pennsylvania Rule of Civil Procedure 1035(a), which has been rescinded, to support their contention that the Plaintiff's response is not a sufficient response under the rules and, therefore, should be treated as though it was not extant. Defendants meant to cite Pa.R.C.P. 1035.3(a), which states in pertinent part:

(a) Except as provided in subdivision (e), the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion identifying

- (1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or
- (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.

Pa. R.C.P. 1035.3(a)(1)-(2).

Defendants point to Plaintiffs' Reply to Motion for Summary Judgment focusing on language contained therein that references the Plaintiffs' Second Amended Complaint. Defendants allege that this reference to the Plaintiffs' Second Amended Complaint is an example of the Plaintiffs "resting upon the mere allegations or denials of the pleadings." Defendants also make much of the fact that the Plaintiffs do not have "on the record" evidence to oppose the Motion for Summary Judgment. Plaintiffs timely filed their Reply to Motion for Summary Judgment, and then pursuant to Court Order dated November 27, 2007, submitted a brief in a timely fashion.

Plaintiffs did not make the brief part of the record because that is not the practice in this Court, as the Defendants are well aware. The Superior Court in *Smitley v. Holiday Rambler Corp.* stated “Rule 1035.3 provides a mechanism through which the trial court may enter judgment against a party that fails to timely file briefs. It is not meant to abrogate the general rule that “when ruling on a motion, it is within the discretion of the trial court to decide whether briefs and/or oral argument are required or whether the matter can be best disposed of from a review of the record alone.” *Smitley v. Holiday Rambler Corp.*, 707 A.2d 520, 526 (Pa.Super. 1998) citations omitted. Here, this Court decided that briefs were required and ordered the parties to submit them. This Court will not now disregard those briefs because they are not “evidence of record.”

The Superior Court has held “[s]ummary judgment may be granted only in those cases where the right is clear and free from doubt.” *Bigansky v. Thomas Jefferson University Hospital*, 658 A.2d 423, 425 (Pa.Super. 1995) citations omitted. Further, “[t]he moving party has the burden of proving that there is no genuine issue of material fact.” *Id.* citations omitted. Finally, “the record and any inferences therefrom must be viewed in the light most favorable to the nonmoving party, and any doubt as to the existence of a genuine issue of material fact must be resolved against the moving party.” *Id.* citations omitted. Here, the Court finds that, viewed in a light most favorable to the nonmoving party, the facts alleged do raise issues of material fact that are sufficient to withstand the Motion for Summary Judgment for Counts I, II, III, and VI. However, this Court finds that Plaintiffs have not alleged facts sufficient to withstand summary judgment for Count V.

In Count V, the Plaintiffs allege faulty workmanship in the dwelling built on the Fred Long Farm pursuant to the 1991 Agreement. The relevant portion of the 1991 Agreement states:

Hamilton “agrees to construct for [Plaintiffs] alternative housing on property formerly of Fred Long....Hamilton agrees to execute a construction agreement

with Neff Construction Company...to construct said home when this Agreement is executed. Said home will be constructed in a manner agreed to by the parties and at a location on the former Fred Long property mutually acceptable to [Plaintiffs] and Hamilton. Hamilton further agrees to be solely responsible and liable for payment in full of any and all obligations incurred for the construction of said home by Neff Construction. Hamilton further agrees to indemnify and save the [Plaintiffs] harmless from any and all debts, liabilities, or obligations (including attorneys' fees and legal costs of [Plaintiffs] incurred with respect to the construction of said home by Neff Construction. Plaintiff's Exhibit A, pp. 2, ¶ 3.

The Plaintiffs replaced the roof on the dwelling on the Fred Long Farm in 2006, 15 years after the 1991 Agreement was signed. The Plaintiffs also allege that the molding in the front porch area of the house was improperly fashioned causing the "J channel" to become loose and twist into the porch area. The Pennsylvania Supreme Court in *Percy A. Brown & Co. v. Raub* stated

contracts must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language. Where the language of a contract is contradictory, obscure, or ambiguous, or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred. If one construction would make it unreasonable, while another would do justice to both parties, the latter will be adopted.

Percy A. Brown & Co. v. Raub, 54 A.2d 35, 43 (1947) citations omitted.

Here the 1991 Agreement is free from ambiguity, it states that Hamilton will execute a construction contract with Neff Construction Company. It also agrees to indemnify and save the Plaintiffs harmless from any and all debts, liabilities, or obligations (including attorneys' fees and legal costs of Plaintiffs incurred with respect to the construction of said home by Neff Construction. The Court finds that to construe the language "incurred with respect to the construction of said home" to mean that any problem that the Plaintiffs had with the house's construction at any point in time no matter how remote, was the responsibility of Hamilton would make the construction unreasonable. The 1991 Agreement was plainly intended to cover

the act of constructing the house and not to cover any fault that the Plaintiffs might find with the workmanship of Neff Construction Company some fifteen years after the house was constructed. Therefore, Count V must be dismissed as Plaintiffs have failed to establish that there is any liability on the part of the Defendants to keep the house in repair.

ORDER

NOW, this 8th day of May, 2008, following argument on November 27, 2007 and after review of the parties' briefs, Defendant's Motion for Summary Judgment is **HEREBY DENIED** as to Counts I, II, III, and VI and **GRANTED** as to Count V.

The Court finds that with regard to Counts I, II, III, and VI, viewed in a light most favorable to the nonmoving party, the facts alleged do raise issues of material fact that are sufficient to withstand the Motion for Summary Judgment. Count V is **HEREBY DISMISSED WITH PREJUDICE**.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Fred Ammerman", is written over a horizontal line.

FREDRIC J. AMMERMAN
President Judge

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

RICHARD L. WITHEY, and
ZOE E. WITHEY

vs.

No. 04-1712-CD

AL HAMILTON CONTRACTING
COMPANY, INC., a Pennsylvania
Corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania
partnership; C. ALAN WALKER, an
adult individual; and SUSAN W.
KRINER, an adult individual

ORDER

AND NOW, this 10th day of June, 2008, it is the Order of the
Court that pre-trial conference in the above-captioned matter shall be and is hereby
scheduled for Wednesday, July 9, 2008 at 10:30 A.M. in Judges Chambers,
Clearfield County Courthouse, Clearfield, PA.

Additionally, Jury Selection in this matter will be held on July 24, 2008
at 9:00 A.M.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

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JUN 11 2008

2cc Atty's:

Kriner
Noble

William A. Shaw
Prothonotary/Clerk of Courts

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FILED

JUN 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/11/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

OK

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

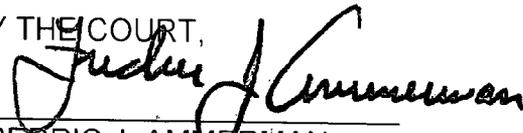
RICHARD L. WITHEY and ZOE WITHEY, *
Plaintiffs *
vs. * NO. 04-1712-CD
AL HAMILTON CONTRACTING, *
Defendant *

ORDER

NOW, this 9th day of July, 2008, following pre-trial conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on July 24, 2008 commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for August 13, 14 and 15, 2008 commencing at 9:00 a.m. each morning in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
3. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than fifteen (15) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

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JUL 11 2008

(Handwritten initials)
icc Atty's:
Kriner
Noble

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 11 2008

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

DATE: 7/11/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

:
: No. 04-1712-CD
:
: **Motion for Dismissal or Continuance**
:
: Filed on behalf of:
: Defendants
:
: Counsel of record for this
: party:
: William C. Kriner, Esquire
: 219 East Market Street
: P. O. Box 1425
: Clearfield, PA 16830
: (814) 768-7893
: PA I.D. # 15559
:
: Counsel of record for
: Plaintiffs:
:
: Theron G. Noble, Esq.
: 301 East Pine Street
: Clearfield, PA 16830
: (814) 375-2221
: PA I.D. # 55942

FILED No CC.

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JUL 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

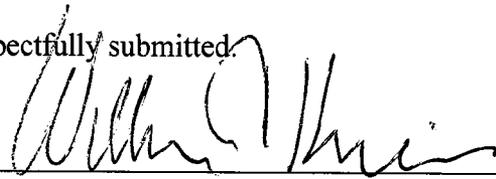
No. 04-1712-CD

MOTION FOR DISMISSAL OR CONTINUANCE

NOW COMES, AL HAMILTON CONTRACTING COMPANY, by and through its counsel, filing a Motion for Dismissal or Continuance of the above captioned matter as a result of Al Hamilton Contracting Company having filed a bankruptcy case in the Western District of Pennsylvania, Notice of which is attached hereto.

WHEREFORE, Defendant AL HAMILTON CONTRACTING COMPANY hereby requests your Honorable Court in consideration of the foregoing Motion to either dismiss the case or grant a continuance.

Respectfully submitted.



William C. Kriner
Attorney for Defendants
P.O. Box 1425
Clearfield, PA 16830
814-768-7893
ID # 15559

July 24, 2008

United States Bankruptcy Court
WESTERN DISTRICT OF PENNSYLVANIA

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 7 of the United States Bankruptcy Code, entered on 07/23/2008 at 11:40 AM and filed on 07/23/2008.

Al Hamilton Contracting Company
1988 Dale Road
Woodland, PA 16881
Tax id: 25-1119230



The case was filed by the debtor's attorney:

Ronald B. Roteman
Campbell & Levine, LLC
1700 Grant Building
Pittsburgh, PA 15219
412-261-0310

The case was assigned case number 08-70800.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our Internet home page <https://ecf.pawb.uscourts.gov> or at the Clerk's Office, U.S. Bankruptcy Court, 5414 U.S. Steel Tower, 600 Grant Street, Pittsburgh, PA 15219.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

John J. Horner
Clerk, U.S. Bankruptcy Court

PACER Service Center

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

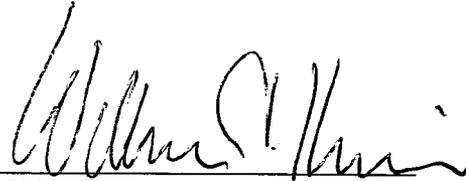
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Motion for Dismissal or Continuance was served on the following by hand delivery on July 24, 2008:

Theron G. Noble, Esq.
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830



William C. Kriner, Esq.
Attorney for Defendants

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

RICHARD L. WITHEY and :
ZOE WITHEY :
VS. : NO. 04-1712-CD
AL HAMILTON CONTRACTING, ET AL :

O R D E R

AND NOW, this 24th day of July, 2008, this being the date set for jury selection, with the Court noting the Motion for Dismissal or Continuance filed on behalf of all Defendants relative the filing for bankruptcy of Al Hamilton Contracting Company, which was purported to have been done on July 23, 2008. In consideration of said Motion, it is the ORDER of this Court that jury selection be and is hereby continued until January 6, 2009, at 9:00 a.m., Courtroom No. 1, Clearfield County Courthouse.

In addition, the Plaintiffs shall have no more than twenty (20) days from this date to file a motion with the Court in order to frame the Plaintiffs' position that Plaintiffs can proceed with jury trial against the remaining Defendants in order that the Court may make further determination of the issue.

BY THE COURT
Justice J. Ammerman

President Judge

FILED
03:45 PM
JUL 25 2008

icc
Atty: Noble
Kriner

FILED

JUL 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/25/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

W

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

FILED No CC.
m/ll: 25lm
AUG 08 2008

William A. Shaw
LM Prothonotary/Clerk of Courts

Type of Pleading:

**MOTION TO LIST FOR
TRIAL AS TO ALL DEFENDANTS
EXCEPT AL HAMILTON**

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;

a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;

C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

**MOTION TO LIST FOR TRIAL AS TO ALL DEFENDANT'S
EXCLUDING AL HAMILTON CONTRACTING COMPANY, INC**

AND NOW, comes the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire of Ferraraccio & Noble, who avers as follows in support of their **MOTION TO LIST FOR TRIAL AS TO ALL DEFENDANT'S EXCLUDING AL HAMILTON CONTRACTING COMPANY, INC:**

Background

1. That a CIVIL COMPLAINT was filed in this matter on October 29, 2004.
2. That the crux of the case involves a contract case in which the parties were to convey to each

other some real estate after coal removal operations were completed on one of the parcels.

3. That the defendants filed a MOTION FOR SUMMARY JUDGMENT which was denied by this Honorable Court.

4. That following the denial of their MOTION FOR SUMMARY JUDGMENT, Plaintiffs praeciped to list this matter for trial, and jury selection was scheduled for July 24th.

5. That the morning of scheduled jury selection, counsel for the defendants, William Kriner, Esquire, presented a MOTION TO CONTINUE, which was orally stated to be presented on behalf of all defendants, concerning a purported bankruptcy case (and resulting automatic stay) initiated by Defendant Al Hamilton Contracting Company, Inc., the previous day.

6. Following oral argument of the same, this Honorable Court granted the continuance, rescheduled jury selection for the next term of Court (being January '09) and directed Plaintiffs to file some type of motion so that this situation can be sorted out as to the remaining defendants.

7. That no defendant has joined, or in any other manner sought indemnification or any type of relief from any other defendant.

8. That upon information and belief, Defendant Al Hamilton Contracting Company, Inc., has previously sought bankruptcy protection. Attached hereto as Exhibit "A" and "B" are reports supporting as such being ("A") page 5 of Pennsylvania Department of Environmental Protection's Grimes Run Watershed TMDL report, dated March 9, 2005; while "B" is page 4 of the United States Environmental Protection Agency, Region III's report, dated April 4, 2007.

WHEREFORE, Plaintiffs request that this matter proceed to trial as to the remaining Defendants (being all but Al Hamilton Contracting Company, Inc.) while the United States Bankruptcy Court sorts out said Defendants' bankruptcy filing.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

GRIMES RUN WATERSHED TMDL

Clearfield County

Prepared for:

Pennsylvania Department of Environmental Protection

Exhibit "A"



March 9, 2005

meet standards, however, untreated discharges and seeps continue to impact Grimes Run. The major source of pollution in State Water Plan Subbasin 08C is acidic water from abandoned mines (WRAS, 2001).

Sky Haven Coal, Inc. is the permittee for both of the active permits in the watershed. Permit number 17990104 is a surface coal mine that is permitted to mine in the Upper and Middle Kittanning coal seams. This facility discharges into an UNT Grimes Run. Permit number 17960113 is permitted to mine in the Upper and Middle Kittanning, and Lower Freeport seams. It is a strip and auger mine operation. While portions of this mining operation are in the Grimes Run Watershed, all discharges are into Curleys Run. R S Carlin Inc. is in the process of releasing its bonds in the area. They are not actively mining any part of the Grimes Run Watershed.

Al Hamilton Contracting Corp. (Al Hamilton) was permitted to re-mine in the headwaters region of the watershed in the late 1970s (MDP # 4577SM8). It is not known who originally mined the area or when it was started. The permitted area is in the Middle and Upper Kittanning coal seams. The mined areas had been reclaimed to meet standards, but treatment of discharges was discontinued in the late 1980s. PADEP issued a treatment order (Treatment Order 88-H-008); however, Al Hamilton appealed the order to the Environmental Hearing Board and won the appeal. PADEP continued to appeal the decision up to the PA Supreme Court, but the decision was upheld. At the end of 1994, the Office of Surface Mining (OSM) issued a Federal Order to Al Hamilton to treat the discharges (Smith, 2003). Treatment of the discharges can now only be enforced OSM. Recently, Al Hamilton Contracting Corp. filed for bankruptcy and forfeited all permits. The company no longer exists, however, the discharges on Grimes Run are being treated (Kuzemchock, 2004).

AMD METHODOLOGY

A two-step approach is used for the TMDL analysis of AMD impaired stream segments. The first step uses a statistical method for determining the allowable instream concentration at the point of interest necessary to meet water quality standards. This is done at each point of interest (sample point) in the watershed. The second step is a mass balance of the loads as they pass through the watershed. Loads at these points will be computed based on average annual flow.

The statistical analysis described below can be applied to situations where all of the pollutant loading is from nonpoint sources, as well as those where there are both point and nonpoint sources. The following defines what are considered point sources and nonpoint sources for the purposes of our evaluation; point sources are defined as permitted discharges or a discharge that has a responsible party, nonpoint sources are then any pollution sources that are not point sources. For situations where all of the impact is due to nonpoint sources, the equations shown below are applied using data for a point in the stream. The load allocation made at that point will be for all of the watershed area that is above that point. For situations where there are point source impacts alone, or in combination with nonpoint sources, the evaluation will use the point source data and perform a mass balance with the receiving water to determine the impact of the point source.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

**Decision Rationale
Total Maximum Daily Loads
Sandy Creek Watershed
Clearfield County, Pennsylvania
For Acid Mine Drainage Affected Segments**

Signed

**Jon M. Capacasa, Director
Water Protection Division**

Date:4/4/2007

Exhibit "B"



Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474

III. Background

The Sandy Creek Watershed area is approximately 17.3 square miles with the town of Frenchville, PA located in the central, western side of the watershed. Sandy Creek flows about ten miles south from its headwaters in Girard Township, Clearfield County to its confluence with the West Branch Susquehanna River in Covington Township, Clearfield County. The headwaters of Sandy Creek are located in a forested area upstream of coal areas.

Sandy Creek Watershed is dominated primarily by forested land, constituting 75.2 percent of the area. The northern half of the watershed is almost totally forested with the headwaters of Sandy Creek beginning in Moshannon State Forest. Agriculture comprises 14.1 percent of the land use and is located along the western edge and middle section of the watershed. Disturbed land (abandoned coal mines, quarries, etc.) comprises over ten percent of the watershed. The majority of the mining that was done in the watershed is located below State Route 879 towards the eastern side of the Sandy Creek Watershed.

The Sandy Creek Watershed is affected by pollution from AMD. This pollution has caused high levels of metals and low pH in the mainstem of Sandy Creek and several of its tributaries. About four miles of the mainstem of Sandy Creek are impaired, beginning at river mile 4.06 and continuing downstream to its confluence with the West Branch Susquehanna River. There are eight unnamed tributaries to Sandy Creek that are impaired by AMD.

Historical data shows that mining began in this area in the early nineteenth century and continued until the 1980s. The majority of mining done in the area was strip mining. Currently, there is no mining activity in the watershed. The last two mining companies in the watershed were Al Hamilton Contracting Co. and K & J Coal Co. Al Hamilton Contracting Co. (SMP# 17793169) released its final bond on October 6, 1997. The area has been reclaimed to meet standards. Another bond for Al Hamilton Contracting Co. (SMP# 4577SM8) was forfeited on September 30, 2003. Al Hamilton Contracting Co. has declared bankruptcy and no longer exists. Discharges from this permit have alternated between being treated and not treated. Currently, the discharges to Sandy Creek are being treated under a federal order.

K & J Coal Co., SMP# 4571BSM15, began mining in the watershed in the 1970s. It was recommended the bond be forfeited when the discharge was not meeting standards. The mined area had been reclaimed to meet standards. The bond was forfeited on February 2, 2003. Treatment on the discharge after the bond forfeiture was discontinued because of low flow, with larger discharges being located in the surrounding area (Mital, 2004). When SMP# 4571BSM15 was issued, very little bond was posted, leaving minimal bond to treat the discharge.

In 1931, the Pennsylvania Fish and Boat Commission (PFBC) (Sorenson, 1931) approved Sandy Creek to be stocked with brook trout in the lower five miles. At that time brook and brown trout, along with minnows were present in the creek (Sorenson, 1931). In 1975, the PFBC reassessed Sandy Creek and removed 1.5 miles from the approved stocking length. The creek was no longer stocked below Frenchville because of acidic water conditions from natural

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

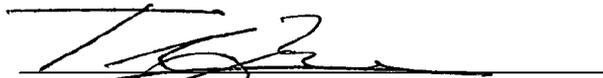
IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of the Plaintiff's MOTION TO LIST FOR TRIAL AS TO ALL DEFENDANT'S EXCLUDING AL HAMILTON CONTRACTING COMPANY, INC., , to the below indicated person, being counsel of record for the defendants, this 6th day of August, 2008, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

UA

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

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MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

RULE TO SHOW CAUSE

Now, this 13 day of August, 2008, upon consideration of the attached MOTION TO LIST FOR TRIAL AS TO ALL DEFENDANTS EXCEPT AL HAMILTON CONTRACTING COMPANY, INC., a RULE is hereby issued upon all such Defendants to SHOW CAUSE why the MOTION should not be granted. RULE RETURNABLE, for filing written response, is set for the 12th day of September, 2008, and hearing will be held on the 6th day of October, 2008, commencing at 10 : 00, A.M., Courtroom No.1, Clearfield County Courthouse.

NOTICE

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

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

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641

By The Court,


Judge...

FILED ^{icc}
014:0034 Atty Noble
AUG 13 2008
(62)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 13 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/13/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

M 10:38am GK
AUG 19 2008 *AD CC*

William A. Shaw
Prothonotary/Clerk of Courts

WAS

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

RICHARD L. WITHEY and
ZOE E. WITHEY

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY, INC.,
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

Defendants

No. 04-1712-CD

**Defendants' Answer to Plaintiffs' Motion
to List for Trial as to all Defendants except
Al Hamilton Contracting Company**

Filed on behalf of:
Defendants

Counsel of record for this
party:

William C. Kriner, Esquire
219 East Market Street
P. O. Box 1425
Clearfield, PA 16830
(814) 768-7893
PA I.D. # 15559

Counsel of record for
Plaintiffs:

Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830
(814) 375-2221
PA I.D. # 55942

FILED ^{NO CC}
013:00761
SEP 11 2008 (610)

William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

**Defendants' Answer To Plaintiff's Motion to List for Trial as to All Defendants
Except Al Hamilton Contracting Company**

1. That Defendant Al Hamilton Contracting Company [AHCC] filed a Petition under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Western District of Pennsylvania on July 23, 2008.
2. That by virtue of the bankruptcy filing the trial scheduled in this matter was continued by Order of this Honorable Court dated July 24, 2008.
3. That the Order continuing this case dated July 24, 2008, required the Plaintiffs to file a motion with the Honorable Court within twenty (20) days of July 24, 2008, "in order to frame the Plaintiffs' position that the Plaintiffs can proceed with jury trial against the remaining Defendants in order that the Court may make further determination of the issue."

4. That in response to the Court's Order, the Plaintiffs filed a motion styled "Motion to List for Trial All Defendant's [sic] Excluding Al Hamilton Contracting Company, Inc." that included a Rule to Show Cause.

5. That the Honorable Court issued a Rule on the Defendants dated 13 August 2008, requiring a written response from the Defendants on or before 12 September 2008, as to why the Plaintiffs' Motion should not be granted.

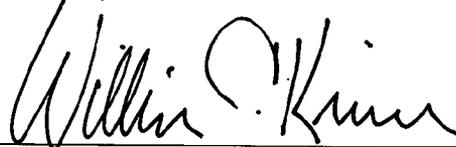
6. That for the following reasons, the motion filed by the Plaintiffs should be dismissed:

- A. The bankruptcy case filed by AHCC is a liquidation case whereby AHCC will no longer be a viable business entity.
- B. That a Trustee has been appointed by the Bankruptcy Court.
- C. That a meeting of the creditors was held on September 5, 2008.
- D. That the Plaintiffs attended the September 5, 2008 meeting.
- E. That the Trustee has determined that this is a "no asset case".
- F. That the Trustee shall liquidate AHCC so that AHCC no longer exists as an entity.
- G. That AHCC is the only party to the Agreement upon which the Plaintiffs have sued.
- H. That the agreement between AHCC and the Plaintiffs is the only basis for the 2nd Amended Complaint and there is no other document concerning the responsibilities of the parties to each other [Deposition of Zoe Withey (ZW) dated July 10, 2007, page 12, lines 7 & 21].
- I. That with AHCC to be liquidated, there is no agreement in the first instance for which litigation can be grounded.
- J. The Plaintiffs' 2nd Amended Complaint pleads an oblique agency relationship between AHCC and the other Defendants based on shared employees and allied companies, but the foundational basis of the litigation is the agreement with AHCC and the responsibilities under that agreement will be eliminated in the bankruptcy.

- K. The Plaintiffs set forth in their motion two reasons for being permitted to proceed as they request, to wit, [1] the Defendants have not filed cross indemnification claims; and [2] an unverified claim that AHCC has previously filed for bankruptcy.
- L. That neither reason set forth by the Plaintiffs to permit re-listing the case for trial is a basis for the Plaintiffs to be able to proceed while AHCC is under the jurisdiction of the Bankruptcy Court.
- M. That neither reason set forth by the Plaintiffs to permit re-listing the case for trial is a basis for the Plaintiffs to be able to proceed under an agreement which will no longer exist.

WHEREFORE, Defendants in the above caption matter request the Honorable Court to deny the Plaintiffs' request to list the case for trial against all Defendants except AHCC.

Respectfully submitted,



William C. Kriner
Attorney for Defendants
P.O. Box 1425
Clearfield, PA 16830
814-768-7893
I. D. # 15559

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

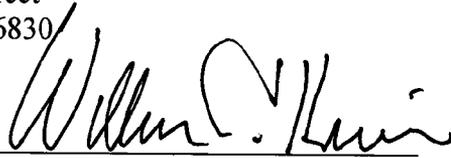
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Answer To Plaintiffs' Motion to List for Trial as to All Defendants Except Al Hamilton Contracting Company was served on the following by regular First Class United States mail on September 11, 2008:

Theron G. Noble, Esq.
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830


William C. Kriner, Esq.
Attorney for Defendants

LA

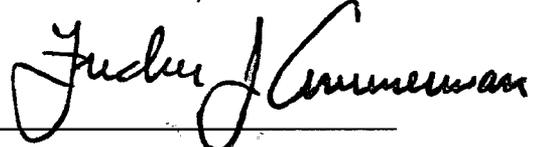
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD L. WITHEY and :
ZOE WITHEY :
VS. : NO. 04-1712-CD
AL HAMILTON CONTRACTING, ET AL :

O R D E R

AND NOW, this 6th day of October, 2008, following argument on the Plaintiffs' Motion to List for Trial as to All Defendants Excluding Al Hamilton Contracting Company, Inc., it is the ORDER of this Court that counsel for the parties supply the Court with appropriate letter brief within no more than fifteen (15) days from this date. Within no more than twenty-five (25) days from this date, either party may supply the Court with an additional brief in reply to that of the other party.

BY THE COURT,



President Judge

5 FILED recAmys:
013:5754 Noble
OCT 08 2008 Krines


William A. Shaw
Prothonotary/Clerk of Courts

FILED

OCT 08 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/8/08

____ You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

____ Defendant(s) Defendant(s) Attorney

____ Special Instructions:

CA

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

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AL HAMILTON CONTRACTING COMPANY, INC.;
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MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

MOTION TO COMPEL

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED No. 04.
m/11:50cm
OCT 17 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

FILED

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

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C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

OCT 21 2008

6/12:15/10
William A. Shaw
Prothonotary/Clerk of Courts
Sent to Att

No. 04- 1712 -CD

IN EQUITY AND AT LAW

RULE TO SHOW CAUSE

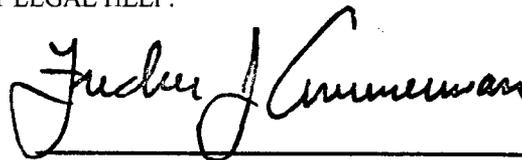
Now, this 21st day of October, 2008, upon consideration of the attached MOTION TO COMPEL a RULE is hereby issued upon the Defendants to SHOW CAUSE why the MOTION should not be granted. RULE RETURNABLE, for filing written response, is set for the 10th day of November, 2008, and hearing will be held on the 19th day of November, 2008, commencing at 3:00, P.M., Courtroom No.1, Clearfield County Courthouse.

NOTICE

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

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Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641



JUDGE

FILED

OCT 21 2018

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10-21-18

- You are responsible for serving all appropriate parties.
- The Prothonotary's office has provided service to the following parties:
 - Plaintiff(s) Plaintiff(s) Attorney Other
 - Defendant(s) Defendant(s) Attorney
- Special Instructions:

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
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MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

**PLAINTIFF'S MOTION TO COMPEL ADDITIONAL DEPOSITION OF
DEFENDANT C. ALAN WALKER**

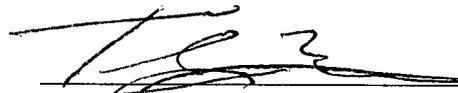
AND NOW, comes the Plaintiffs, Richard L. Withey and Zoe E. Withey, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their MOTION TO COMPEL:

1. This matter was scheduled for trial with jury selection scheduled for July, 2008.
2. At jury selection, then Defendant Al Hamilton Contracting Co., Inc., presented documentation that it sought protection from the United States Bankruptcy Court.
3. Presently pending before this Court is a Motion to determine whether Plaintiffs can proceed as to they remaining defendants and have this matter selected for jury trial this coming January.
4. During argument on said motion, when Plaintiffs discussed this matter, the Court determined it best to file a Motion to Compel as it would only be necessary to hear this matter if it determined Plaintiffs were able to proceed with their case.

5. That although Plaintiffs have deposed Defendant C. Alan Walker, they desire to take his deposition again, in order to inquire about a bevy of information that has come forward given former Defendant Al Hamilton Contracting Co., Inc.,'s bankruptcy filing.
6. That the issue Plaintiffs intend to proceed on as to the remaining defendants is that the remaining Defendants were parties eo nomine (often referred to by the defense as "quasi agency").
7. That the information that has surfaced because of Al Hamilton Contracting Co's filing, is relative and probative of such relationship between it and the other defendants.
8. That Plaintiffs have found no case law or statute which limits a defendant, or any other witness, to only one deposition.
9. That counsel for defendants has indicated that it would be necessary for a Motion to Compel in order to retake Defendant C. Alan Walker's deposition.

WHEREFORE, Plaintiffs request that their MOTION TO COMPEL be GRANTED and the Court ORDER the appearance of C. Alan Walker for another deposition.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of the MOTION TO COMPEL, to the below indicated person, being counsel of record for the remaining defendants, this 16th day of October, 2008, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,


Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

FILED No CC.
m/1:55 am
OCT 27 2008
William A. Shaw
Prothonotary/Clerk of Courts

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of the RULE RETURNABLE issued upon their MOTION TO COMPEL, to the below indicated person, being counsel of record for the remaining defendants, this 24th day of October, 2008, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

FILED

NOV 10 2008

0/2:10
William A. Shaw
Prothonotary/Clerk of Courts

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

**Defendants' Answer to Plaintiffs' Motion
to Compel Additional Deposition of
Defendant C. Alan Walker**

Plaintiffs

Filed on behalf of:
Defendants

vs.

Counsel of record for this
party:

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual

William C. Kriner, Esquire
219 East Market Street
P. O. Box 1425
Clearfield, PA 16830
(814) 768-7893
PA I.D. # 15559

Defendants

Counsel of record for
Plaintiffs:

Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830
(814) 375-2221
PA I.D. # 55942

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

**DEFENDANTS' ANSWER TO PLAINTIFFS' MOTION TO COMPEL
ADDITIONAL DEPOSITION OF DEFENDANT C. ALAN WALKER**

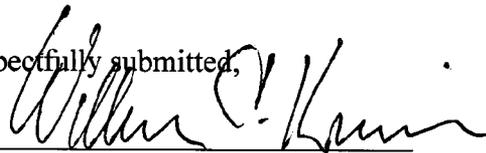
NOW COME, the Defendants in the above captioned matter by and through their legal counsel, William C. Kriner, Esquire, filing the following Answer to Plaintiffs' Motion to Compel Additional Deposition of Defendant C. Alan Walker.

1. That the Defendant, C. Alan Walker, was deposed on July 9, 2007, in this matter.
2. That the Plaintiff's original complaint in this matter was filed in November of 2004.
3. That the case was placed on the trial list by the Plaintiffs.
4. That placing a case on the trial list requires certificate that discovery is complete and the case is ready for trial [46 JDRCP 212.2(a)(1)].
5. That the parties had a pre-trial conference with the Court.
6. That one of the defendants in this matter, Al Hamilton Contracting Company [AHCC], filed a Chapter 7 bankruptcy petition on 23 July 2008.
7. That the Plaintiffs allege that the bankruptcy petition of AHCC requires Defendant C. Alan Walker to be deposed again "in order to inquire about a bevy of information that has come forward given Defendant Al Hamilton Contracting Co., Inc.'s bankruptcy filing".

8. The Plaintiffs further allege that "the information that has surfaced because of Al Hamilton Contracting Co.'s filing is relative [sic] and probative of such relationship between it and other defendants" based on the legal theory that the remaining defendants were parties *eo nomine* to AHCC.
9. That for the following reasons, Defendant C. Alan Walker should not be compelled to be deposed again:
 - a. There is no indication of the capacity in which Mr. Walker is to be deposed, as an individual defendant, as a partner in Shannon Land and Mining Company or as an officer of AHCC.
 - b. The Motion indicates that the need for a deposition is because of information in the bankruptcy petition of AHCC which requires a "description with reasonable particularity the matters to be inquired into..." [PaRCP 4007.1(e)].
 - c. That the bankruptcy petition of AHCC filed on 23 July 2008 bears no relevance or probative value to the *eo nomine* legal position concerning any agency agreement between AHCC and other defendants in regard to an agreement executed 17 years ago.
 - d. To require C. Alan Walker to be deposed without knowing the capacity he is to be deposed and if as an officer of AHCC, not knowing the particular matters to be inquired into, would cause unreasonable annoyance, oppression, burden or expense to the deponent [PaRCP 4011(b)].
 - e. That where the case has been ongoing for 4 years, where the key events in negotiating the contract which is the sole basis of the litigation took place 17 years ago, where the case was once listed for trial, and where a bankruptcy petition filed by AHCC only speaks to financial matters of the petitioner within one year of the filing, any and all discovery in this case should be prohibited.

WHEREFORE, Defendants request the Honorable Court to dismiss the Motion to Compel testimony through deposition of C. Alan Walker.

Respectfully submitted,



William C. Kriner
Attorney for Defendants
P. O. Box 1425
Clearfield, PA 16830
PA I.D. # 15559

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

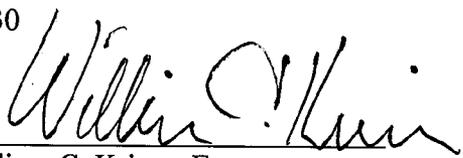
AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; SUSAN W. KRINER, an
adult individual;

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Answer to Plaintiffs' Motion to Compel Additional Deposition of Defendant C. Alan Walker was served on the following by regular First Class United States mail on November 10 2008:

Theron G. Noble, Esq.
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830


William C. Kriner, Esq.
Attorney for Defendants

UA

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

RICHARD L. WITHEY and
ZOE E. WITHEY,

Plaintiffs

vs.

AL HAMILTON CONTRACTING
COMPANY, INC., a Pennsylvania corporation;
SHANNON LAND AND MINING COMPANY,
a Pennsylvania partnership; C. ALAN WALKER,
an adult individual; and SUSAN KRINER,
an adult individual.

Defendants

FILED

011:2130
NOV 25 2008

acc Atty: Noble
Kriner

cc: Law Library
D. M. Kesell
(without memo)

William A. Shaw
Prothonotary/Clerk of Courts

NO. 04-1712-CD

OPINION

On October 29, 2004 Richard L. Withey and Zoe E. Withey (collectively hereinafter "Plaintiffs") initiated a cause of action alleging breach of contract against Al Hamilton Contracting Company, Inc.(hereinafter "AHCC"), Shannon Land and Mining Company (hereinafter "Shannon"), C. Alan Walker (hereinafter "Walker") and Susan Kriner (hereinafter "Kriner"); (Collectively hereinafter "Defendants"). The Plaintiffs' cause of action arises from a November 11, 1991 agreement for the conveyance of surface right interest of the Fred Long Farm, a track of land containing approximately 66 acres, located in Pike Township, Clearfield County, (hereinafter "Fred Long Farm"). *Plaintiff's Second Amended Complaint, Exhibit A.* The Defendants' businesses are engaged in coal mining operations. Immediately prior to jury selection in the above captioned case, AHCC filed for bankruptcy under Chapter 7 of the Bankruptcy Code in United States Bankruptcy Court, Western District of Pennsylvania.

Pursuant to 11 USC §362(a)(1), AHCC's bankruptcy filing establishes an automatic stay of certain collections and other actions against AHCC as a debtor. As a result, the jury selection was cancelled. Now the Plaintiffs file a Motion to List for Trial as to All Defendants Except Hamilton. The Defendants object to the Plaintiffs' motion and request a dismissal of the case against remaining Defendants: Shannon, Walker and Kriner.

The Plaintiffs are owners of a 1.14 acre tract of land located in Pike Township, Clearfield County (hereinafter "Pike Township Tract"). Plaintiffs and Defendants entered into an agreement to mine the Pike Township Tract. The Defendants sought to mine the entire stretch of the Pike Township Tract for coal, however, the Plaintiffs' primary residence was located on the Pike Township Tract. Consequently, the Plaintiffs and the Defendants agreed to have a new residence built on the Fred Long Farm for the Plaintiffs in exchange for the right to mine for coal on the entire Pike Township Tract, including the location of the Plaintiffs' primary dwelling. Additionally, the parties agreed that Defendants would contract to build the new dwelling, pay the property tax and transfer ownership of the Fred Long Farm and the new dwelling upon the completion of all mining activities on the Pike Township Tract.

As previously mentioned, Defendant AHCC filed for bankruptcy on July 23, 2008, a day before the set date for jury selection. Subsequently, the Plaintiffs motioned this Court to re-list for trial the remaining Defendants, excluding AHCC. The Defendants object to the Plaintiffs' motion to re-list for trial all Defendants excluding AHCC because AHCC was the only named party to the 1991 written agreement with the Plaintiffs. The Defendants argues that the Plaintiffs cannot pursue a trial for breach of contract against the remaining Defendants because AHCC was the sole signee to the 1991 agreement regarding Fred Long Farm and as such, AHCC is the primary Defendant. Further, the Defendants contend that the listing of the

remaining Defendants, excluding AHCC, amounts to an inappropriate discontinuance and, in addition, the automatic stay from the US Bankruptcy Court precludes a trial, even against the remaining the Defendants.

This Court disagrees with the Defendants' arguments. Although AHCC has filed for bankruptcy and has attained an automatic stay against litigation as a debtor in this case, such status does not extend to this Court's jurisdiction over remaining Defendants Walker, Kriner and Shannon. The remaining Defendants have not filed for bankruptcy and are therefore not privy to the 11 USC §362(a)(1) automatic stay. Moreover, the nature of the Plaintiffs' claim against the Defendants is that of several liability. No Defendant was joined by another Defendant pursuant to Pennsylvania Rules of Civil Procedure rules of joinder. No Defendant is seeking claims of contribution and/or indemnification from the other Defendants. There exists no primary or secondary liability amongst the Defendants. Each Defendant's liability is independent of the other, as it would be if the Plaintiffs had been sued each separately.

The Plaintiffs contend that the Defendants entered into a *de facto* joint venture with regards to the mining of the Plaintiffs property, Pike Township Tract. "A joint venture is an association of persons or corporations who by contract, express, or implied, agree to engage in a common enterprise for their mutual profit. The essential elements of a joint venture are: (a) a joint proprietary interest in, and a right to mutual control over, the enterprise; (b) a contribution by each of the parties of capital, materials, services or knowledge; and (c) a right to participate in the expected profits." *Richardson v. Walsh Const. Co.*, 334 F.2d 334, 336 (3rd Cir. 1964). Walker is the only officer, director and shareholder of AHCC but is also partner with Kriner with respect to Shannon.¹ Hence, AHCC and Shannon are similarly owned and controlled entities. All Defendants are involved with the mining of Pike Township

¹ Walker and Kriner are brother and sister.

Tract. Shannon mines the Fred Long Farm and presently owns all interest in the land, including the new dwelling where the Plaintiffs reside. The nature of the Defendants' relationship with each other affords the Plaintiffs the opportunity to establish liability against the Defendants collectively and individually.

Finally, the Defendants purport that the Plaintiffs motion to re-list all the Defendants except AHCC for trial is in essence a discontinuance and violates the rules of voluntary discontinuance pursuant to Pa.R.C.P. § 229:

- (a) A discontinuance shall be the exclusive method of voluntary termination of an action, in whole or in part, by the plaintiff before commencement of the trial.
- (b) (1) Except as otherwise provided in subdivision (b)(2), a discontinuance may not be entered as to less than all defendants except upon the written consent of all parties or leave of court after notice to all parties.

A voluntary discontinuance is the willing cessation of a case prior to trial for reasons unrelated to the merit of the cause of action by the plaintiff. *Id.* Here, the Plaintiffs have not willingly sought to withdraw their case against AHCC. Federal law pursuant to 11 USC §3621 superceded Plaintiffs' claim against AHCC. Presently, the Plaintiffs are precluded from seeking liability against AHCC as a debtor because of the automatic stay issued by US Bankruptcy Court. The remaining Defendants Walker, Kriner, and Shannon have shared and separate liabilities that are not subject to the AHCC automatic stay. AHCC's bankruptcy process may require a lengthy period before being resolved. Discontinuing the Plaintiffs' case, until AHCC bankruptcy is completed, may create further harm and create statute of limitation issues. A denial of the Plaintiffs' motion to re-list would create a miscarriage of justice as the remaining Defendants have arguably incurred liability independent of AHCC. The Plaintiffs'

Motion to re-list all Defendants except AHCC does not constitute a voluntary discontinuance pursuant to Pa.R.C.P. § 229.

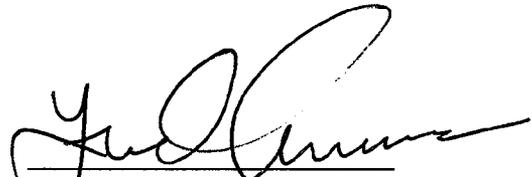
ORDER

AND NOW this 24th day of November 2008, upon consideration of the record, the parties oral arguments and supporting briefs it is the Order of this Court that the Plaintiffs' Motion to List for Trial as to All Defendants Except Hamilton be and is hereby GRANTED.

This case is hereby listed for Jury Selection on January 6, 2009 at 9:00 a.m. Courtroom No. 1, Clearfield City Courthouse.

It is the further ORDER of this Court that the Plaintiffs' Motion to Compel filed October 17, 2008 be GRANTED. The Plaintiffs shall be permitted to a second deposition of C. Alan Walker.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

NOV 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/25/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

5
FILED No cc
DEC 04 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of the NOTICE OF DEPOSITION, to the below indicated person, being counsel of record for the remaining defendants, this 4th day of December, 2008, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

UP

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

RICHARD L. WITHEY and ZOE E. WITHEY,
Plaintiffs

No. 04-1712-CD

vs.

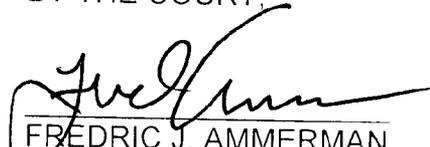
AL HAMILTON CONTRACTING COMPANY, INC.,
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY, a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and SUSAN
KRINER, an adult individual,
Defendants

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ORDER

AND NOW, this 15th day of December, 2008, in accord with this Court's Order of
November 24, 2008, jury selection in the above-captioned matter is scheduled for
January 6, 2009 at 9:00 a.m. Jury trial is scheduled for March 30, 31 and April 1, 2009
commencing at 9:00 a.m. each day in Courtroom No. 1 of the Clearfield County
Courthouse.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
DEC 16 2008

2cc Atty's:
Noble
Kriner

5 William A. Shaw
Prothonotary/Clerk of Courts

610

FILED

DEC 16 2008

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

DATE: 12/16/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

ELIZABETH CARMELLA and
ANGELO L. CARMELLA,
Plaintiffs

vs.

KRISTI L. CLARK,
Defendant

No. 2008-00204 C.D. S

FILED
DEC 30 2008
0/11:55/W
William A. Shaw
Prothonotary/Clerk of Courts
3 CAPT TO ATT

Type of Pleading: Motion to Continue
Jury Selection and Trial

Filed on behalf of: Elizabeth Carmella
and Angelo L. Carmella, Plaintiffs

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

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

ELIZABETH CARMELLA and
ANGELO L. CARMELLA,
Plaintiffs

vs.

KRISTI L. CLARK,
Defendant

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:
:

No. 2008-00204 C.D.

MOTION TO CONTINUE JURY SELECTION AND TRIAL

NOW COMES Plaintiffs, Elizabeth Carmella and Angelo L. Carmella, by and through their attorneys, Hopkins Heltzel, LLP and files the within motion to continue jury selection and trial:

1. Plaintiffs Elizabeth Carmella and Angelo L. Carmella are husband and wife who reside at 1051 South Main Street, DuBois, Pennsylvania.
2. Defendant is Kristi L. Clark who resides at 1047 River Road, Olanta, Pennsylvania.
3. This case arises from an automobile accident that occurred in 2006.
4. The case is scheduled for jury selection on January 6, 2009 with trial to commence on January 8, 2009 and January 9, 2009.
5. Plaintiffs are senior citizens. Elizabeth Carmella is 82 years of age. They spend their winters in Florida.
6. When the matter was placed on the trial list and jury selection scheduled, counsel for Plaintiffs did not realize Plaintiffs would be out of the state.

7. Plaintiffs are unable to make travel arrangements back to Pennsylvania for jury selection and trial. Their house is closed for the winter.

8. Counsel for Plaintiffs has consulted with the attorney for the defendant who consents to a continuance of jury selection and the trial to the next trial term.

WHEREFORE, Plaintiffs respectfully requests this Honorable Court continue jury selection and trial to the next trial term.

A handwritten signature in black ink, appearing to read 'D. J. Hopkins', is written over a horizontal line.

David J. Hopkins
Attorney for Plaintiffs

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

ELIZABETH CARMELLA and
ANGELO L. CARMELLA,
Plaintiffs

vs.

No. 2008-00204 C.D.

KRISTI L. CLARK,
Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Motion to Continue Jury Selection and Trial filed on behalf of the Plaintiffs, was forwarded on the 30th day of December, 2008, by facsimile [849-4656] to:

John C. Dennison, II, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, PA 15825



David J. Hopkins, Esquire
Attorney for Plaintiffs

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

ELIZABETH CARMELLA and
ANGELO L. CARMELLA,
Plaintiffs

vs.

KRISTI L. CLARK,
Defendant

No. 2008-00204 C.D.

FILED

DEC 30 2008

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William A. Shaw
Prothonotary/Clerk of Courts
3 CONT TO APTL

ORDER

AND NOW this 30th day of December, 2008, upon consent of counsel for Plaintiffs and counsel for Defendant, it is ORDERED and ADJUDGED that Plaintiffs' Motion to Continue Jury Selection and Trial is hereby granted and jury selection and trial of this matter are continued to the next trial term.

BY THE COURT,


JUDGE

CA

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

FILED NO CC
01/31/09
JAN 07 2009

William A. Shaw
Prothonotary/Clerk of Courts

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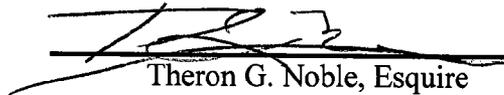
JOINT MOTION FOR SETTLEMENT

NOW COMES, the Plaintiffs and Defendants by and through their respective legal counsel Motioning the Court to issue an Order settling the case in the above captioned matter, as follows:

1. That the Defendants shall pay to the Plaintiffs the sum of \$100,000.00, in the following manner:
 - a. The sum of \$25,000.00 within ten [10] days of the signing and entering of the Order attached to this Joint Motion; and
 - b. The sum of \$25,000.00 each on the ninetieth [90th] day; on the one hundred eightieth [180th] day and on the two hundred seventieth [270th] day after the date of the first payment hereunder, for a total payment under [a] and [b] herein of \$100,000.00.
2. That the Defendants shall withdraw any and all objections filed to the Estate of Fred Long, deceased, within ten [10] days of the signing and entering of the Order attached to this Joint Motion.
3. That Defendant Shannon Land and Mining Company shall convey to the Plaintiffs an 85% interest in and to the oil and gas lying in, under and upon the 66 acres known as the Fred Long Farm, which shall be generally warranted by the Defendants and which shall be free and clear of all leases, assignments, pledges, liens and encumbrances, within ten [10] days of the signing and entering of the Order attached to this Joint Motion.
4. That the signing and entering of the Order attached to this Joint Motion shall settle, end and discontinue the above captioned case with prejudice.

5. In the event a Defendant or Defendants violate the Order, whether or not such violation is intentional or not, and a Defendant fails to deliver to Plaintiffs any portion of the consideration of this Settlement in the matter set forth herein, then Defendants, jointly and severally, shall be liable to Plaintiffs for their costs and expenses, including reasonable attorney's fees, to enforce the terms of the Order and to obtain any other relief as damages upon a Motion to Enforce Settlement, or otherwise, irregardless of Paragraph 4 hereof.

Respectfully submitted,



Theron G. Noble, Esquire
Attorney for the Plaintiffs



William C. Kriner, Esquire
Attorney for the Defendants

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

RICHARD L. WITHEY and
ZOE E. WITHEY

No. 04-1712-CD

Plaintiffs

vs.

AL HAMILTON CONTRACTING COMPANY,
INC., a Pennsylvania corporation; SHANNON
LAND AND MINING COMPANY, a Pennsyl-
vania partnership; C. ALAN WALKER, an
adult individual; and SUSAN W. KRINER, an
adult individual;

Defendants

FILED
014:0030
JAN 08 2009

2cc Arlys:
Kriner
Noble

William A. Shaw
Prothonotary/Clerk of Courts

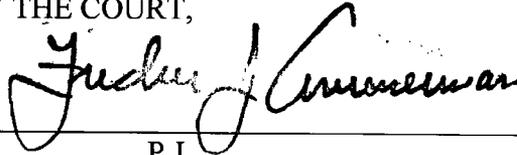
COURT ORDER

NOW, this 9th day of January, 2009 after consideration of the Joint Motion for Settlement presented by the parties hereto, it is hereby ORDERED and DECREED as follows:

1. That the Defendants shall pay to the Plaintiffs the sum of \$100,000.00, in the following manner:
 - a. The sum of \$25,000.00 within ten [10] days of the entering of this Order; and
 - b. The sum of \$25,000.00 each on the ninetieth [90th] day; on the one hundred eightieth [180th] day and on the two hundred seventieth [270th] day after the date of the first payment hereunder, for a total payment under [a] and [b] herein of \$100,000.00.
2. That the Defendants shall withdraw any and all objections filed to the Estate of Fred Long, deceased, within ten [10] days of the entering of this Order.
3. That Defendant Shannon Land and Mining Company shall convey to the Plaintiffs an 85% interest in and to the oil and gas lying in, under and upon the 66 acres known as the Fred Long Farm, which shall be generally warranted by the Defendants and which shall be free and clear of all leases, assignments, pledges, liens and encumbrances, within ten [10] days of the entering of this Order.
4. That the entering of this Order shall settle, end and discontinue the above captioned matter with prejudice.
5. In the event a Defendant or Defendants violate this Order, whether or not such violation is intentional or not, and a Defendant fails to deliver to Plaintiffs any portion of the consideration of this Settlement in the matter set forth herein, then Defendants, jointly

and severally, shall be liable to Plaintiffs for their costs and expenses, including reasonable attorney's fees, to enforce the terms of this Order and to obtain any other relief as damages upon a Motion to Enforce Settlement, or otherwise, irregardless of Paragraph 4 hereof.

BY THE COURT,

A handwritten signature in cursive script, appearing to read "Judge J. Amosman", written over a horizontal line.

P.J.

FILED

JAN 08 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/8/09

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

CA

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual

DEFENDANTS.

No. 04- 1712 -CD

IN EQUITY AND AT LAW

Type of Pleading:

**PRAECIPE TO LIST
FOR JURY TRIAL**

Filed By:

Plaintiffs

JURY TRIAL DEMANDED

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED NOCC
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William A. Shaw
Prothonotary/Clerk of Courts

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

RICHARD L. WITHEY, and)
ZOE E. WITHEY,)
)
PLAINTIFFS,)

v.)

AL HAMILTON CONTRACTING COMPANY, INC.;)
a Pennsylvania corporation; SHANNON LAND AND)
MINING COMPANY; a Pennsylvania partnership;)
C. ALAN WALKER, an adult individual; and)
SUSAN W. KRINER; a adult individual,)
)
DEFENDANTS.)

No. 04- 1712 -CD

IN EQUITY AND AT LAW

PRAECIPE TO LIST FOR TRIAL

To: William A. Shaw, Prothonotary

Date: May 12, 2008

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that in the above captioned matter, (i) pleadings are closed; (ii) there is no outstanding discovery requests; and (iii) attempts to amicably resolve this matter have failed or would be non-productive. Therefore, request is hereby made that the same be placed on the jury trial list and listed for a two (2) trial days.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

RICHARD L. WITHEY, and
ZOE E. WITHEY,

PLAINTIFFS,

v.

AL HAMILTON CONTRACTING COMPANY, INC.;
a Pennsylvania corporation; SHANNON LAND AND
MINING COMPANY; a Pennsylvania partnership;
C. ALAN WALKER, an adult individual; and
SUSAN W. KRINER; a adult individual,

DEFENDANTS.

No. 04- 1712 -CD

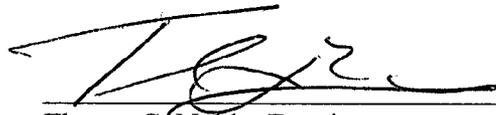
IN EQUITY AND AT LAW

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Plaintiffs, does hereby certify that I served a true and correct copy of the Plaintiff's PRAECIPE TO LIST FOR JURY TRIAL, to the below indicated person, being counsel of record for the defendants, this 12th day of May, 2008, via United States Mail, first class, postage pre-paid as follows:

William C. Kriner, Esquire
P.O. Box 1425
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraccio & Noble
Attorney for Plaintiffs
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

FERRARACCIO & NOBLE

301 East Pine Street
Clearfield, PA 16830
(814) 765-4990
(814) 375-2221
FAX: (814) 765-9377

COPY

FAXED

Hon. Fredric, J. Ammerman, PJ
Court of Common Pleas
Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830

October 16, 2008

Re: Withey v. Al Hamilton Contracting Co., Inc.;
04-1712-CD
Letter Brief

Dear Judge Ammerman:

Please accept this as Plaintiff's letter brief in support of their pending motion to proceed to list this matter for trial. As the Court will recall, Defendant Al Hamilton Contracting Co., Inc., announced at jury selection in July that it had sought bankruptcy protection. The Court requested that Plaintiffs file some motion to sort out the status of the remaining case, which Plaintiffs timely did.

Oral argument was heard on October 6th, following which the Court asked counsel to submit briefs.

In that the Court is very well aware of the underlying facts, since the parties have been before the Court numerous times, including summary judgment, we shall only state as follows:

Summary Judgment was denied on most issues prior to the matter being listed for the July term of Court. The defendants which included, besides Al Hamilton Contracting Co., Inc., Shannon Land and Mining and its remaining partners. Plaintiffs have asserted liability against all the parties in that they are parties eo nomine to the 1991 contract.

The remaining defendants, i.e. all defendants except Al Hamilton, argue two grounds as to why Plaintiffs can not proceed. Defendants first insist that the motion to list for trial is in essence an effective discontinuance since Plaintiffs have elected to proceed without Al Hamilton. Defendants also contend that they are subject to the automatic stay which Al Hamilton received upon its bankruptcy filing.

Defendant have failed to supply any legal support for either argument to date.

Page 2

Re: Withey v. Al Hamilton, et.al.

October , 2008

Plaintiffs are simply flabbergasted that anything they did amounts to a discontinuance in that they have at all times attempted to move this case forward. The Bankruptcy laws imposed an inability to proceed as to Defendant Al Hamilton. In fact, if Al Hamilton's bankruptcy action is dismissed, Plaintiff's impediment to proceed would be lifted. So in fact, Plaintiffs have not discontinued even as to Al Hamilton let alone the remaining defendants who have asserted such discontinuance.

Remaining defendants also insist they are subject to Al Hamilton's automatic stay. As noted at argument, the defendants did not join each as other as defendants, have not sought contribution or indemnity from each other. As such, Plaintiff are also at a loss to understand how Hamilton's automatic stay encompasses the other defendants. The automatic stay afforded to a debtor through bankruptcy proceedings, only applies to debtors. 11 U.S.C. §362. If in fact the other defendants feel entitled to such stay, it should be them who petition the bankruptcy court for such relief.

However, Plaintiff can show that at least pursuant to Pennsylvania law that when one defendant seeks bankruptcy protection, a case may proceed as to the remaining defendants. Gross v. JOHNS-MANVILLE CORP, et.al.; 600 A.2d 558 (1991).

In short, the defendants have provided absolutely no legal support for their proposition that Plaintiffs can not proceed as to them.

With regards, I am

Sincerely,



Theron G. Noble, Esquire

tn/TGN w.encl.

cc: William C. Kriner, Esquire
Mr. and Mrs. Richard L. Withey

William C. Kriner

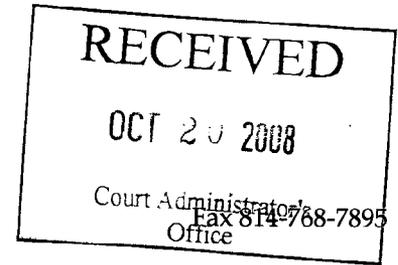
Law Office

E-Mail: krinerlawoffice@verizon.net

219 East Market Street

P. O. Box 1425

Clearfield, PA 16830



Telephone 814-768-7893

October 20, 2008

The Honorable Fredric J. Ammerman
President Judge
Clearfield County Court House
1 North Second Street
Clearfield, PA 16830

Re: Richard L. Withey and Zoe E. Withey v. Al Hamilton Contracting Company, Inc.; Shannon Land and Mining Company; C. Alan Walker and Susan W. Kriner – No. 04-1712-CD

Dear Judge Ammerman:

On July 23, 2008, Defendant Al Hamilton Contracting Company [AHCC] filed a Petition for Bankruptcy under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Western District of Pennsylvania. On July 24, 2008, the Honorable Court continued the case and issued an Order requiring the Plaintiffs to file a motion within twenty [20] days "in order to frame the Plaintiffs' position that the Plaintiffs can proceed with jury trial against the remaining defendants in order that the Court may make further determination of the issue".

In response to the Court's Order, the Plaintiffs timely filed a motion styled "Motion to List for Trial All Defendant's [sic] Excluding Al Hamilton Contracting Company, Inc." The Defendants filed a timely answer and a hearing was held on the motion on October 6, 2008. At the conclusion of the hearing, the Court ordered letter briefs to be filed. This brief is to comply with that Order.

The Plaintiffs' motion asserted two reasons why they should be able to proceed by listing the case again for trial against all defendants except AHCC. The first was that no defendant had joined, or in any manner sought indemnification or any other relief from, any other defendant [Paragraph 7 of the Plaintiffs' Motion]. The second was that AHCC had previously sought bankruptcy protection [Paragraph 8 of the Plaintiffs' Motion]. There was not offered any substantive legal or procedural basis for the re-listing of the case for trial while AHCC is in bankruptcy, is a party to the litigation and the only signatory to the contract on which the litigation is based.

The Defendants argue that the Honorable Court cannot grant the motion filed and re-list the case for jury trial for two reasons, one legal and the other procedural. Legally, the Plaintiffs cannot proceed because of the automatic stay provisions of the federal bankruptcy act. Under the act, the filing of a bankruptcy petition operates as a stay of:

(a) (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 USC Section 362 (a) (1)

In addition, subsection (a) (6) stays...*any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.* 11 USC Section 362 (a) (6).

The bankruptcy code halts and prohibits litigation in this case. That is why the Court acted properly in continuing the case on July 24. And, that is why the case cannot now go forward in the Court of Common Pleas of Clearfield County. Simply, it is proscribed legally. The agreement that is the only basis of the Plaintiffs' claim is with AHCC. None of the other defendants are signatories to the agreement. As per the depositional testimony of one of the Plaintiffs, there is no other document concerning the responsibilities of the parties to each other [Deposition of Zoe Withey dated July 10, 2007, page 12, lines 7 & 21].

The continuation of the judicial proceeding in the Court of Common Pleas after the filing of a bankruptcy petition by AHCC, where the basis of the litigation is a contract signed solely by AHCC, is a violation of the legal stay [11 USC Section 362(a)(1)]. And, continuing the litigation would be an act to collect, assess or recover a claim under the agreement of AHCC that arose before the bankruptcy petition in contravention of the stay [11 USC Section 362(a)(6)].

At argument on the motion, Plaintiffs argued that proceeding only against the other defendants would not violate the stay. After all, it is reasoned, the other parties are not covered by the stay. Commencing in 2004 with the first complaint filed in this matter, and in the subsequent two complaints, the Plaintiffs have consistently pled an agency relationship between AHCC and the other defendants. The argument is that AHCC somehow acted as the agent of other defendants in the case.

While a discussion of agency is beyond the scope of this brief, and the responsibility of the Plaintiffs to prove, it is clear that if AHCC was an agent for a principal it was through the negotiation and execution of the 1991 agreement under which AHCC was the only party. And, even if AHCC was determined to be an agent they still could be liable under the agreement either as the sole party in interest or from an agency standpoint. This is recognized by the pleadings of the Plaintiffs that seek joint and several liability against all defendants. It is this potential liability of AHCC that is

eliminated by the bankruptcy proceeding and why continued litigation is barred in this matter.¹

A second reason for not granting the motion of the Plaintiffs is a procedural one. The Plaintiffs desire to list this case for trial against all defendants except AHCC. There is no valid procedural basis for doing such. AHCC is a defendant in this matter. The only way they will not continue to be a defendant is to have a discontinuance filed as to AHCC. As stated in Rule 229 (a):

A discontinuance shall be the exclusive method of voluntary termination of an action, in whole or in part, by the plaintiff before the commencement of the trial.

And, while a discontinuance may be filed as to less than all defendants in some circumstances, as the Note to Rule 229 explains:

A plaintiff who asserts a cause of action ex contractu and joins as a defendant persons liable to the plaintiff in different capacities may not discontinue as to a defendant primarily liable without discontinuing as to all defendants secondarily liable. Rule 2231(e).

In this case, filing the motion as the Plaintiffs did is an attempt to proceed against less than all defendants, which is attempt to terminate the action against AHCC without obtaining a discontinuance which is not permitted under the Rules. And, because this is a contract case where Plaintiffs have joined as defendants all those alleged to be liable to the Plaintiffs by virtue of an alleged breach of the 1991 contract [See Rule 2229 (d)], the case must be discontinued against all defendants. This is the clear and unequivocal meaning of Rule 2231 (e) referred to above and here stated in full:

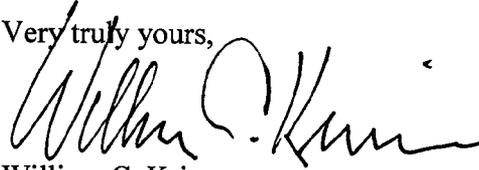
If two or more defendants are joined under Rule 2229 (d), the plaintiff shall not be permitted to discontinue or enter a nolle prosequi or a voluntary nonsuit as to any defendant primarily liable to the plaintiff unless the plaintiff also does so as to all defendants secondarily liable to the plaintiff for the default of such defendant.

The motion filed by the Plaintiffs is for the purpose of proceeding against all defendants except AHCC. The Plaintiffs cannot merely “abandon” the case against AHCC. The only method for terminating the case against AHCC is by discontinuance. And, because this is a contract case where the Plaintiffs have joined several defendants alleging liability to them by virtue of breach of the 1991 agreement executed by AHCC alone, the case can only be discontinued against all defendants under the Rules of Civil Procedure.

¹ It is pled in the motion that one reason why the Plaintiffs can proceed in this matter is because no defendants made cross claims against other defendants. Not only is that not a reason for granting the motion, it is also irrelevant to liability in an agent/principal situation. If AHCC was an agent for another defendant there are many agency principles where they could be liable jointly, severally or alone. This is why litigation cannot proceed as the Plaintiffs have proposed.

For all the reasons set forth herein, the motion of Plaintiffs in this matter should be denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "William C. Kriner". The signature is fluid and cursive, with a large initial "W" and "K".

William C. Kriner

cc: Theron G. Noble, Esq.
(w/enclosure)

William C. Kriner*Law Office*

E-Mail: krinerlawoffice@verizon.net

219 East Market Street

P. O. Box 1425

Clearfield, PA 16830

Telephone 814-768-7893



Fax 814-768-7895

October 20, 2008

COPY

The Honorable Fredric J. Ammerman
President Judge
Clearfield County Court House
1 North Second Street
Clearfield, PA 16830

Re: Richard L. Withey and Zoe E. Withey v. Al Hamilton Contracting Company, Inc.; Shannon Land and Mining Company; C. Alan Walker and Susan W. Kriner – No. 04-1712-CD

Dear Judge Ammerman:

On July 23, 2008, Defendant Al Hamilton Contracting Company [AHCC] filed a Petition for Bankruptcy under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Western District of Pennsylvania. On July 24, 2008, the Honorable Court continued the case and issued an Order requiring the Plaintiffs to file a motion within twenty [20] days "in order to frame the Plaintiffs' position that the Plaintiffs can proceed with jury trial against the remaining defendants in order that the Court may make further determination of the issue".

In response to the Court's Order, the Plaintiffs timely filed a motion styled "Motion to List for Trial All Defendant's [sic] Excluding Al Hamilton Contracting Company, Inc." The Defendants filed a timely answer and a hearing was held on the motion on October 6, 2008. At the conclusion of the hearing, the Court ordered letter briefs to be filed. This brief is to comply with that Order.

The Plaintiffs' motion asserted two reasons why they should be able to proceed by listing the case again for trial against all defendants except AHCC. The first was that no defendant had joined, or in any manner sought indemnification or any other relief from, any other defendant [Paragraph 7 of the Plaintiffs' Motion]. The second was that AHCC had previously sought bankruptcy protection [Paragraph 8 of the Plaintiffs' Motion]. There was not offered any substantive legal or procedural basis for the re-listing of the case for trial while AHCC is in bankruptcy, is a party to the litigation and the only signatory to the contract on which the litigation is based.

The Defendants argue that the Honorable Court cannot grant the motion filed and re-list the case for jury trial for two reasons, one legal and the other procedural. Legally, the Plaintiffs cannot proceed because of the automatic stay provisions of the federal bankruptcy act. Under the act, the filing of a bankruptcy petition operates as a stay of:

(a) (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

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The bankruptcy code halts and prohibits litigation in this case. That is why the Court acted properly in continuing the case on July 24. And, that is why the case cannot now go forward in the Court of Common Pleas of Clearfield County. Simply, it is proscribed legally. The agreement that is the only basis of the Plaintiffs' claim is with AHCC. None of the other defendants are signatories to the agreement. As per the depositional testimony of one of the Plaintiffs, there is no other document concerning the responsibilities of the parties to each other [Deposition of Zoe Withey dated July 10, 2007, page 12, lines 7 & 21].

The continuation of the judicial proceeding in the Court of Common Pleas after the filing of a bankruptcy petition by AHCC, where the basis of the litigation is a contract signed solely by AHCC, is a violation of the legal stay [11 USC Section 362(a)(1)]. And, continuing the litigation would be an act to collect, assess or recover a claim under the agreement of AHCC that arose before the bankruptcy petition in contravention of the stay [11 USC Section 362(a)(6)].

At argument on the motion, Plaintiffs argued that proceeding only against the other defendants would not violate the stay. After all, it is reasoned, the other parties are not covered by the stay. Commencing in 2004 with the first complaint filed in this matter, and in the subsequent two complaints, the Plaintiffs have consistently pled an agency relationship between AHCC and the other defendants. The argument is that AHCC somehow acted as the agent of other defendants in the case.

While a discussion of agency is beyond the scope of this brief, and the responsibility of the Plaintiffs to prove, it is clear that if AHCC was an agent for a principal it was through the negotiation and execution of the 1991 agreement under which AHCC was the only party. And, even if AHCC was determined to be an agent they still could be liable under the agreement either as the sole party in interest or from an agency standpoint. This is recognized by the pleadings of the Plaintiffs that seek joint and several liability against all defendants. It is this potential liability of AHCC that is

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A second reason for not granting the motion of the Plaintiffs is a procedural one. The Plaintiffs desire to list this case for trial against all defendants except AHCC. There is no valid procedural basis for doing such. AHCC is a defendant in this matter. The only way they will not continue to be a defendant is to have a discontinuance filed as to AHCC. As stated in Rule 229 (a):

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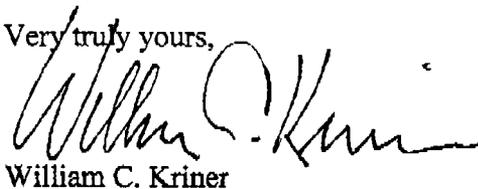
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For all the reasons set forth herein, the motion of Plaintiffs in this matter should be denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "William C. Kriner". The signature is fluid and cursive, with the first name "William" and last name "Kriner" clearly legible.

William C. Kriner

cc: Theron G. Noble, Esq.
(w/enclosure)

FERRARACCIO & NOBLE

301 East Pine Street
Clearfield, PA 16830
(814) 765-4990
(814) 375-2221
FAX: (814) 765-9377

Hon. Fredric, J. Ammerman, PJ
Court of Common Pleas
Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830

FAXED

COPY
COPY

October 22, 2008

Re: Withey v. Al Hamilton Contracting Co., Inc.;
04-1712-CD
Reply Letter Brief

Dear Judge Ammerman:

Just wanted to drop a quick note in response to Mr. Kriner's recently submitted letter brief. He continues to insist that Mr. and Mrs. Withey are seeking liability against the remaining defendants under some type of agency relationship. Plaintiffs have always asserted that the other defendants were parties to the agreement eo nomine, not as agents. Keeping in mind that Defendant Shannon Land and Mining owned the land promised to the Witheys by defendant in limbo Hamilton, it is the only construction of the 1991 contract which makes sense, unless Mr. C. Alan Walker, who signed the agreement, intended to defraud the Witheys at the time of the agreement.

It is also again noted that the remaining defendants have failed to supply any legal authority that either (i) the automatic stay does so apply to the remaining defendants; or (ii) Plaintiffs have effectively discontinued this action as to defendant in limbo Hamilton.

With regards, I am

Sincerely,


Theron G. Noble, Esquire

tn/TGN

cc: William C. Kriner, Esquire
Mr. and Mrs. Richard L. Withey

William C. Kriner

Law Office

E-Mail: krinerlawoffice@verizon.net

219 East Market Street

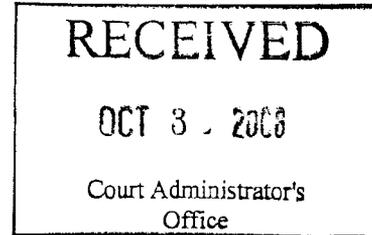
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Clearfield, PA 16830

Telephone 814-768-7393

Fax 814-768-7895

October 29, 2008



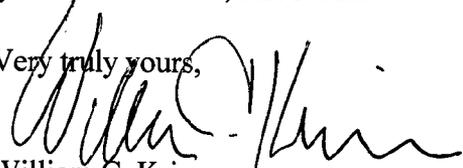
Dan Nelson, Court Administrator
Office of Court Administrator
Clearfield County Court House
Clearfield, PA 16830

Re: Richard L. Withey, et ux v. Al Hamilton Contracting Company, et al.
No. 04-1712-CD

Dear Sir:

Enclosed find a response to Plaintiffs' letter brief of October 16, 2008, in the above matter. I have forwarded a copy to the attorney for the Plaintiffs, Mr. Noble.

Very truly yours,


William C. Kriner

WCK:jrr
Enclosure

cc: Theron G. Noble, Esq.
(w/enclosure)

William C. Kriner

Law Office

E-Mail: krinerlawoffice@verizon.net

219 East Market Street

P. O. Box 1425

Clearfield, PA 16830

Telephone 814-768-7893

October 29, 2008

Fax 814-768-7895

The Honorable Fredric J. Ammerman
President Judge
Clearfield County Court House
1 North Second Street
Clearfield, PA 16830

Re: Richard L. Withey and Zoe E. Withey v. Al Hamilton Contracting Company, Inc.; Shannon Land and Mining Company; C. Alan Walker and Susan W. Kriner – No. 04-1712-CD

Dear Judge Ammerman:

This serves as a response to the Plaintiffs' letter brief dated October 16, 2008, in accordance with your Order of 6 October 2008.

To begin with, the Plaintiffs assert, as they have from the inception of this case that the non signatory defendants are liable to the Plaintiffs based on the legal theory of *eo nomine*. That is a Latin phrase that means "by or under that name." The theory is that even if not parties to the agreement, the signatory to the agreement, Al Hamilton Contracting Company [AHCC] was acting on behalf of the other defendants in negotiating and signing the 1991 agreement.

Specifically, ¶ 23 of the Plaintiffs' original complaint, which was replicated in both amended complaints, reads as follows:

23. That Hamilton and others associated with Shannon acted as Shannon's agent, disclosed or undisclosed, binding Shannon to the 1991 agreement, making Shannon a party eo nomine [sic] to the 1991 agreement.

Note that AHCC is alleged to have acted as Shannon's *agent*, thereby binding Shannon *eo nomine*. The legal theory *eo nomine* requires an agency relationship to be established. In other words, the actions of AHCC prior to the execution of the agreement in 1991, which the parties agree is the only basis of the litigation, created a relationship in which AHCC was acting by or under the name of the other defendants.

However, it is clear that none other than AHCC signed the agreement. And, the Plaintiffs have steadfastly alleged and argued that AHCC and others not signatories to the agreement are jointly and severally liable to Plaintiffs. How can the Plaintiffs pursue

other parties unless they pursue AHCC which is either primarily liable or jointly liable with others for which it acted as agent? How can the Plaintiffs pursue a principal/agency tact without exposing AHCC to liability directly if a jury finds no agency or as a responsible party in an agency relationship? These are the very exposures that are protected by the automatic stay of the Bankruptcy Court.

It is not that a stay has to be extended to other parties. The problem is that this case involves AHCC in some way or form that can translate into potential liability. They are the only signatory to the agreement. Either they acted alone in entering into the agreement, or on behalf of themselves and others. Whatever the relationship might be, it leads to a claim against AHCC that is prohibited by the stay.

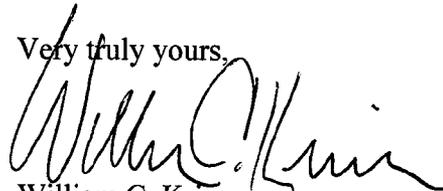
The Plaintiffs also argue that the case of *Gross v. Johns-Manville Corp, et al*, 410 Pa. Super. 486, 600 A.2d 558 (1991), shows that the case at bar can continue against the non-bankrupt defendants. In *Gross*, William Gross was a marine machinist employed by the Philadelphia Navel Shipyard from 1962-1983. During his employment, Mr. Gross was exposed to asbestos. He filed a lawsuit for personal injuries on account of that exposure to asbestos. Footnote #2 indicates that “[t]he automatic stay provisions of the Bankruptcy Code, 11 USC §362, *et sec*, are currently in effect” for three of the defendants. Plaintiffs assert *Gross* is dispositive here.

The present case is not a case sounding in Tort, as pleading was required before unified pleading forms in civil actions. *Gross* is litigation based on a claim of negligence against the defendants in exposing Mr. Gross to asbestos. Here we have a contract case where there is only one signatory to the contract and the question is whether the contract was breached by a party responsible under the contract. *Gross* is not applicable in a contract case.

Without plowing old ground, we refer to page 3 of our letter brief dated October 20, 2008. The Rules of Civil Procedure cited in our prior brief [229; 2231] are indicative of why a contract case such as this is different from a personal injury case. It is not permissible under the rules to fail to pursue the primarily liable party [in this case AHCC, the only signatory to the contract] in a contract case while pursuing the case against other parties allegedly liable under the contract. Proceeding as the Plaintiffs propose in a contract case is impossible under the Pennsylvania Rules of Civil Procedure.

For all the reasons set forth in the October 20, 2008 letter brief, as well as in this letter brief, the Motion of the Plaintiffs in this matter should be denied.

Very truly yours,



William C. Kriner

cc: Theron G. Noble, Esq.