

2004-1764-CD
Swisher Contracting vs Kenneth Rishele et al

04- 1764-CD
SWISHER CONTRACTING, INC. vs KENNETH J. RISHELE AND SONS,

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

SWISHER CONTRACTING, INC.,
Plaintiff

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No. 2004- 1764 -CD

VS

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KENNETH J. RISHEL and SONS
INC.,
Defendant

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* Type of Pleading: Complaint For
* Declaratory Judgment

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* Filed on Behalf of: Plaintiff

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* Counsel of Record for this Party:
* CHRIS A. PENTZ, Esquire

*
* Supreme Court I.D. # 39232
* 207 East Market Street
* P. O. Box 552
* Clearfield PA 16830
* 814 765-4000
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FILED
03/4/04 AM 11:45 AM
cc to City
NOV 05 2004

William A. Simon
Prothonotary

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

SWISHER CONTRACTING, INC., *
Plaintiff *
*
vs * No. 2004- -C.D.
*
*
KENNETH J. RISHEL and SONS, *
INC., *
Defendant *

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action on or before November 22, 2004 by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the matter set forth against you. You are warned that if you fail to do so the case may proceed without you and an order may be entered against you by the Court without further notice for relief requested by the Petitioner or Movant. You may lose rights important to you.

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

Office of Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield PA 16830
814 765-2641, Ext. 5982

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

SWISHER CONTRACTING, INC., *
Plaintiff * No. 2004 - C.D.
vs *
KENNETH J. RISHEL AND SONS,
INC., *
Defendant *

COMPLAINT FOR DECLARATORY JUDGMENT

1. The Plaintiff is Swisher Contracting, Inc., a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal place of business at P. O. Box 1223, Clearfield, Pennsylvania.

2. The Defendant is Kenneth J. Rishel and Sons, Inc., believed to be a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal place of business at 1229 Turnpike Avenue, Clearfield Pennsylvania.

3. By deed dated March 21, 2003 and recorded in the Recorder's Office of Clearfield County to Instrument # 200304498, Michael A. Cimino conveyed a certain piece or parcel of land located in Lawrence Township, Clearfield County, Pennsylvania to Barbara A. Jones, Diane C. Caddy and Tina M. Dick. Copy of said deed is attached hereto and marked Exhibit "A" and incorporated herein by reference as though set forth in full.

4. On January 1, 2004, Plaintiff entered into separate Lease Agreements with Barbara A. Jones, Diane C. Caddy and Tina

M. Dick for the purpose of obtaining the right for mining and removal of coal under the property described in Exhibit "A" attached hereto. Copies of the Leases are attached hereto and collectively marked Exhibit "B" and incorporated herein by reference as though set forth in full.

5. The Plaintiff believes and therefore avers that on or about January 19, 2004 Barbara A. Jones, Diane C. Caddy and Tina M. Dick were contacted by the Defendant to obtain a coal lease on the property set forth in Exhibit "A".

6. The Plaintiff believes and therefore avers that the Defendant was advised by Barbara A. Jones, Diane C. Caddy and Tina M. Dick that the property in question was subject to a lease in favor of the Plaintiff.

7. Barbara A. Jones, Diane C. Caddy and Tina M. Dick requested permission from Plaintiff to lease two (2) acres of the property covered by Plaintiff's Lease.

8. The Plaintiff gave its permission to Barbara A. Jones, Diane C. Caddy and Tina M. Dick to lease the two acres in question to the Defendant.

9. Barbara A. Jones, Diane C. Caddy and Tina M. Dick entered into a Lease Agreement with Kenneth K. Rishel and Sons, Inc. dated January 19, 2004 a copy of which is attached hereto and marked Exhibit "C", and incorporated by reference as though set forth in full.

11. The Lease Agreement of January 19, 2004 between Barbara A. Jones, Diane C. Caddy and Tina M. Dick and the Defendant

encompassed the entire tract of land which had been previously leased to the Plaintiff.

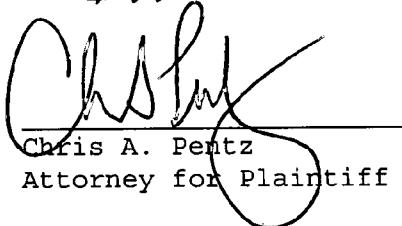
12. The Plaintiff believes and therefore avers that Barbara A. Jones, Diane C. Caddy and Tina M. Dick did not intend to lease the entire tract to the Defendant.

13. The Defendant was fully aware of plaintiff's Leases with Barbara A. Jones, Diane C. Caddy and Tina M. Dick for the entire parcel at the time Defendant obtained its Lease.

14. The Plaintiff no longer consents to the Defendant leasing any of the property in question.

WHEREFORE, Plaintiff prays for entry of a judgment declaring that the Leases between Barbara A. Jones, Diane C. Caddy and Tina M. Dick dated January 19, 2004 be declared null and void.

Respectfully submitted this 2nd day of November, 2004.



Chris A. Pentz
Attorney for Plaintiff

VERIFICATION

I, LEONARD SWISHER, Sr., President, verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

10-26-04

Date

Leonard Swisher
Swisher Contracting, Inc.
by Leonard Swisher, Sr.
President

DEED

MADE this 21st day of March, 2003, by and between **MICHAEL A. CIMINO**, a single adult of 11 Apple Street, Clearfield, Pennsylvania 16830; (hereinafter "GRANTOR")

A

N

D

DIANE CADDY, a single individual, of 511 East Fifth Street, Clearfield, Pennsylvania, 16830; **BARBARA A. JONES**, a single individual, of 212 Poplar Avenue, Clearfield, Pennsylvania 16830 and **TINA DICK**, a married individual, of 203 Spring Hill Circle, Oakland, Maryland 21550, as equal Tenants in Common; (hereinafter "GRANTEEES").

WITNESSETH:

That in consideration of One (\$1.00) Dollar, the receipt whereof is hereby acknowledged, the said GRANTOR does hereby grant and convey to the said GRANTEEES, the following description:

ALL those certain lots or pieces of ground, together with improvements thereof, situate in the Township of Lawrence, County of Clearfield and State of Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a hickory on line of land formerly of Hugh and James Orr, now owned by Nick Nicewonger; thence by land formerly of Alice Dale, now owned by Blair L. Ogden and Stella Thompson Ogden, East Fifty (50) perches to a post; thence by land formerly of Martin Nichols, Jr., now owned by Blair L. Ogden and Stella Thompson Ogden, One hundred thirty (130) perches to stones in line of land formerly owned by Thomas Lanich, now owned by Frank Williams; thence West Fifty (50) perches to White Pine; thence North by land formerly of Hugh and James Orr, now owned by Gaston LeBlanc and Vance Welch, One hundred thirty (130) perches to place of beginning. CONTAINING THIRTY-EIGHT (38) ACRES and allowance.

THE SECOND THEREOF: BEGINNING at a hickory corner in the line of Orr or Butler lands; thence along said Orr or Butler lands North six degrees and thirty-five minutes East One hundred ninety-three (193) feet to the middle of the public road leading from Mt. Zion to Clearfield; thence by the middle of said public road the following courses and distances: North seventy-five degrees and five minutes East One hundred eighty-one (181) feet; South seventy-seven degrees and twenty minutes East Two hundred ninety-five (295) feet; South sixty-six degrees East One hundred seventy-nine and six-tenths (179.6) feet; South forty three degrees fifty six minutes East Two hundred seventy-five (275) feet to the line of Blair Ogden land; thence along the line of Blair Ogden land North eighty three degrees and twenty

five minutes West eight hundred forty-four (844) feet to a hickory corner and the place of beginning. CONTAINING three and seventy four one-hundredths (3.74) Acres.

BEING the same premises conveyed to the Grantor by deed dated June 5, 2002 and recorded June 5, 2002 at Clearfield County Instrument Number 200208883.

THIS DEED IS A TRANSFER FROM FATHER TO DAUGHTERS AND EXEMPTED FROM PENNSYLVANIA REAL ESTATE TRANSFER TAX.

AND the GRANTORS will SPECIALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

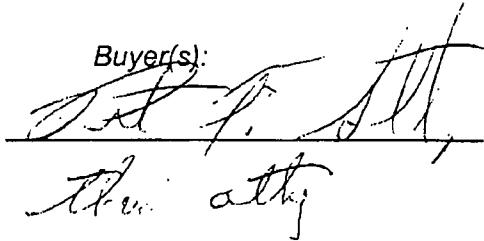
This document may not sell, convey, transfer, include or insure the title to the coal and right of support underneath the surface land described or referred to herein, and the owner or owners of such coal may have the complete legal right to remove all of such coal, and, in that connection, damage may result to the surface of the land, and any house, building or other structure on or in such land. The inclusion of this notice does not enlarge, restrict or modify any legal rights or estates otherwise created, transferred, excepted or reserved by this instrument.

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/We, the undersigned, hereby certify that I/We know and understand that I/We may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchase property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/We further certify that this certification is in a print style contrasting with that in the deed proper and is preceded by the word "notice" printed in large print above.

Witness:

Buyer(s):



This ____ day of March, 2003.

IN WITNESS WHEREOF, the GRANTOR has caused these presents to be properly executed on the day and year first written above.

Witness:

Michael A. Cimino
Michael A. Cimino

AFFIDAVIT

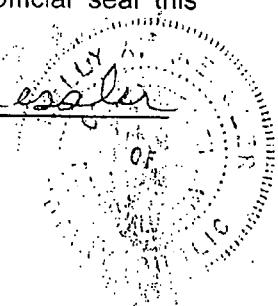
STATE OF PENNSYLVANIA
:SS
COUNTY OF CLEARFIELD

BEFORE ME, the undersigned officer, personally appeared **MICHAEL A. CIMINO**, who being duly sworn according to law deposes and say that they are the persons whose names are subscribed to the foregoing instrument and that they executed the same for the purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 21st day of March, 2003.

NOTARIAL SEAL
HOLLY A. BRESSLER, Notary Public
Clearfield Boro, Clearfield Co., PA
My Commission Expires Sept. 12, 2006

Holly A. Bressler
Notary Public



CERTIFICATE OF ADDRESS

I, hereby certify that the correct address of the GRANTEEES is as follows:

511 East Fifth Street,
Clearfield, Pennsylvania, 16830

Peter F. Smith

By: Peter F. Smith, Esquire
Attorney for the Grantees

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania
INSTRUMENT NUMBER
200304498
RECORDED ON
Mar 21, 2003
3:47:47 PM
Total Pages: 3

RECORDING FEES -	\$13.00
RECORDER	
COUNTY IMPROVEMENT	\$2.00
FUND	
RECORDER IMPROVEMENT	\$3.00
FUND	
JCS/ACCESS TO	\$10.00
JUSTICE	
STATE WRIT TAX	\$0.50
TOTAL	\$28.50
CUSTOMER	
SMITH, PETER	

AGREEMENT

THIS AGREEMENT OF LEASE is made and entered into the
First day of January, 20th between Barbara A. Jungs
whose address is 212 Poplar Ave. Clearfield, Pa 16830
parties of the first part, hereinafter referred to as "LESSORS",

AND

SWISHER CONTRACTING, INC., a Pennsylvania corporation, whose address is
P.O. box 1223, Clearfield, Pennsylvania 16830, party of the second part,
hereinafter referred to as "LESSEE".

WITNESSETH:

1. GRANT OF MINING RIGHTS: For and in consideration of the sum of One Hundred Dollars (\$100.00) cash in had paid, the receipt of which is hereby acknowledged, and in consideration of the rents, royalties, agreements, covenants and stipulations hereinafter contained to be paid, kept and performed by Lessee, Lessors do hereby lease, demise and let unto the Lessee for the purpose of mining and removing the merchantable and profitable mineable coal there from upon the term, covenants, and conditions, and provisions hereinafter stated, all of the surface and all mining rights appurtenant there that Lessors own and possess in, under and upon that certain parcel of land, situated and located in Clearfield county, Pennsylvania, (the "leased premises"), which parcel of land is more fully described in Exhibit "A", which is attached hereto and made a part hereof. Lessors hereby grant Lessee the exclusive right to mine said coal by the surface mining method and further grant the right of ingress, egress, and regress into, through and upon the Leased premises for the

purpose of examining, searching, prospecting, drilling, and mining said coal; the preparing storing and removing the same, together with the right to use and occupy so much of the Leased premises for roads, ditches, pipes, soil banks or stock piles, or other improvements that may be necessary or convenient for the removal of said coal and overburden. The lessee shall, during the term of this agreement, have a free right of way at anytime to transport coal, supplies, machinery, equipment, and other improvements to and from a public highway necessary or convenient for removal of said coal from the subject properties or from other lands owned or leased by Lessee. Additionally, lessee may exercise the aforesaid rights without any liability thereon, including streams, springs, and wells; timber or intervening strata, roads, or otherwise on Leased Premises.

2. LESSORS' WARRANTY OF TITLE: Lessors hereby represent and warrant that they are seized of good and marketable title to the Leased Premises, free of any liens or encumbrances which would interfere with the mining operations herein contemplated, and that so long as they Lessee shall perform his covenants and agreements hereunto set forth, Lessee shall enjoy quiet and peaceful possession of the Leased Premises. Lessors further represent and warrant that they have the full power to legal authority to enter into this agreement.

3. CONDUCT OF LESSEE'S MINING OPERATIONS: Lessee shall work and mine the Leased Premises in a workmanlike manner and shall comply with the laws of the Commonwealth of Pennsylvania and of the United States of America, now existing or hereafter passed, regulating the management and operation of coal mines.

4. TONNAGE ROYALTY: Lessee does hereby covenant and agree that it will pay as tonnage royalty to Lessors, a sum equal to .46 for mineral rights and .46 for surface rights per net ton of two thousand (2,000) pounds for all coal mined and removed from the Leased Premises during the term hereof or during any extension thereof. Such payments shall be made on the 30th day of each month for all coal mined and removed from the Leased Premises during the previous calendar month and

such payments shall be accompanied by certified truck scale weight statement showing the weight of all coal shipped from the Leased Premises during such monthly period. It is expressly understood and agreed by and between the parties hereto that lessee shall not be required to mine, remove, ship, or pay for coal, which in his sole judgment, is not merchantable, and profitably mineable.

5. LESSORS' RIGHT OF INSPECTION: Lessors shall have the right at all reasonable times at their own risk to enter Lessee's mining operations for themselves, their agents, or employees for the purpose of examining, inspecting and surveying such operations upon the Leased Premises.

6. TAXES: Lessors shall pay all taxes levied and assessed against the Leased Premises, it being provided that if Lessors shall fail to pay taxes, Lessee may at this option make payments to Lessors under the terms hereof Lessee shall pay during the term of this agreement all taxes levied or assessed upon all improvements placed upon the Leased Premises by Lessors upon the coal mined and removed from the Leased Premises by Lessee.

7. LESSEE'S INDEMNIFICATION OF LESSORS: Lessee does hereby covenant and agree that it will protect and save harmless Lessors from any claims or demands for damages to persons or property that may arise as a direct result of Lessee's mining operations upon the Leased Premises.

8. DEFAULT: Failure by Lessee to perform or comply with any of the terms, provisions or conditions of this Agreement, express or implied, shall not automatically terminate this agreement nor render it null and void. In case of default by Lessee, Lessors shall notify Lessee in writing of such default and Lessee shall have a period of ninety (90) days after Lessee's receipt of such notice within which to commence action to cure such default and, except as otherwise provided herein, if action to cure such default shall not have been commenced by Lessee within such ninety (90) days period, Lessors may terminate this agreement. However, Lessee shall have only 10 days after Lessee's receipt of written notice from Lessors of lessee's failure to pay royalties when due within which to cure such default, except if the amount of any royalty

payment is in dispute, then such failure of Lessee to pay the disputed royalty shall be dealt within the manner provided in Section 10 of this Agreement

9. **DISPUTE AS TO ROYALTY PAYMENTS:** In case of suit, adverse claims, dispute, or questions as to ownership of any payments, or some part thereof, to be made by Lessee under this agreement Lessee may delay or suspend payment thereof, or the part thereof in doubt, without interest, and shall not be held in default or payment thereof until such suit, claims, dispute or questions has been finally disposed of, and Lessee shall have sixty (60) days after being furnished at Lessee's principal place of business with written notice thereof and the original instrument or a certified copy or copies thereof, or after being furnished with proofs sufficient, in the Lessee's opinion to settle such questions, within which to make payment. In the event of a dispute as listed above, the Lessee shall put all payments due Lessors into an escrow account until such dispute is settled to the satisfaction of the parties involved.

10. **TERM AND EFFECTIVE DATE:** This Agreement of Lease shall become effective as of the date hereof and shall continue in full force and affect for a period of five (5) years thereafter or until all of the merchantable and profitably mineable coal that can be mined and removed therefrom whichever shall occur last. It being provided, however, that Lessee may at any time during the term thereof, terminate this Agreement of Lease by giving the Lessors thirty (30) days written notice thereof prior to the date of such termination.

11. **LESSEE'S RIGHT OF RE-ENTRY:** Upon the completion of surface mining operations hereunder and termination of this Agreement, Lessee shall have the right to re-enter the leased Premises without liability and to continue in possession thereof for such period of time as may be necessary or required in order to comply with the laws and regulations of the commonwealth of Pennsylvania and the United States of America concerning the reclamation and revegetation of the Leased Premises.

12. **FORCE MAJEUR:** Any obligations of Lessee hereunder shall be suspended during such period as lessee is rendered unable, in whole or in

part, from complying therewith by strikes, lockouts, riots, insurrections, sever weather, storms, floods, fires, plant shutdowns, unusual mining conditions, faults in coal seams, damage to or destruction of plant, machinery, equipment or facilities, accidents, governmental laws, rules or regulations, orders or actions of any governmental agency, acts of god, or any other cause, condition or matter whether of the kind herein enumerated or otherwise, beyond the control of Lease and the period of any delay or interruptions of Lessee occasioned thereby shall be disregarded in computing timely performance by Lessee Hereunder. The term of this Agreement or any extension thereof shall be extended for a period of time equal to the time Lessee is prohibited or precluded from, or is delayed or interrupted in, mining, treating, cleaning, processing, selling, or using the coal covered by this Agreement by any law, order, regulations, judgment, decree, or other action of any agency or branch of government, provided, however, that this provision shall not be construed as permitting extension of this Agreement beyond the permissible term for Leases of this nature as provided by applicable state law.

13. LESSER INTEREST: If Lessors own a lesser interest in the surface of Leased premises than as represented herein, all royalties herein provided for shall be paid to the Lessors only in the proportion which Lessors' ownership interest bears to the whole and undivided fee simple estate in the surface of Lease Premises.

14. REQUIRED FORMS: Lessors hereby agree to execute and deliver to Lessee the "consent of Landowner" from and any and all other forms as may be from time to time required by the Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Surface Mine Reclamation or by any other governmental or other regulatory agency in connection with the mining operations hereunder.

15. PAYMENTS: All payments required to be made by Lessee to Lessors hereunder shall be made to: _____.

16. NOTICES: All notices herein provided for shall be given by delivering the same in person or by United States certified mail, return receipt

required, postage prepaid, addressed to Lessors or Lessee at the addresses shown above. Either party may change his or her address to receive notices by giving written notice of such change of address to the other party.

17. SEVERABILITY: The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof unless it substantially and adversely affects the value of this Agreement to one of the parties; and in the absence of any such substantial and adverse affect, this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

18. INTERPRETATION: This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania. The topical headings used herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms and provisions of this Agreement. As used herein, any gender shall include any other gender, the singular shall include the singular, wherever appropriate.

19. WAIVER OF REMEDIES: The failure of either Lessors or Lessee to insist, in any one or more instances, upon strict performance of any other provision of this Agreement, or to take advantage of any of their or its rights to hereunder, shall not be construed as waiver of any such provision or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

20. COUNTERPARTS: This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall collectively constitute one of the same instrument.

21. AMENDMENTS: Any modification or amendment of the terms and provision of this agreement shall be valid and effective only if and when made in writing and duly executed on behalf of the parties hereto.

22. ENTIRE AGREEMENT: The Agreement constitutes the entire agreement between Lessors and Lessee and supersedes all other prior negotiations, undertakings, notices, memoranda, and agreements between

Lessors and Lessee, whether oral or written, with respect to the subject matter hereof.

23. LEGALLY BINDING EFFECT OF AGREEMENT: It is the intention of the parties hereto to be legally bound hereby and that this Agreement shall be binding upon the insure to the benefits of heirs, executors, administrators, nominees, successors and assigns of the parties hereto.

24. ASSIGNABILITY: It is hereby understood and agreed by and between the parties hereto that this Agreement of Lease may be assigned, transferred, or sublet by Lessee's authority.

IN WITNESS WHEREOF, the parties hereto, with intent to be legally bound hereby, have executed this Agreement of Lease as of the date and year first above written.

WITNESS:

LESSORS

Carbara A Jones (SEAL)

(SEAL)

ATTEST:

Kimberly Kwall

SWISHER CONTRACTING, INC.

By Leonard Swisher Sr

AGREEMENT

THIS AGREEMENT OF LEASE is made and entered into the
First day of January, 2004 between Diane C. Caddy
whose address is 511 E. 5th Street Clearfield, Pa. 16830
parties of the first part, hereinafter referred to as "LESSORS",

AND

SWISHER CONTRACTING, INC., a Pennsylvania corporation, whose address is
P.O. box 1223, Clearfield, Pennsylvania 16830, party of the second part,
hereinafter referred to as "LESSEE".

WITNESSETH:

1. GRANT OF MINING RIGHTS: For and in consideration of the sum of One Hundred Dollars (\$100.00) cash in had paid, the receipt of which is hereby acknowledged, and in consideration of the rents, royalties, agreements, covenants and stipulations hereinafter contained to be paid, kept and performed by Lessee, Lessors do hereby lease, demise and let unto the Lessee for the purpose of mining and removing the merchantable and profitable mineable coal there from upon the term, covenants, and conditions, and provisions hereinafter stated, all of the surface and all mining rights appurtenant there that Lessors own and possess in, under and upon that certain parcel of land, situated and located in Clearfield county, Pennsylvania, (the "leased premises"), which parcel of land is more fully described in Exhibit "A", which is attached hereto and made a part hereof. Lessors hereby grant Lessee the exclusive right to mine said coal by the surface mining method and further grant the right of ingress, egress, and regress into, through and upon the Leased premises for the

purpose of examining, searching, prospecting, drilling, and mining said coal; the preparing storing and removing the same, together with the right to use and occupy so much of the Leased premises for roads, ditches, pipes, soil banks or stock piles, or other improvements that may be necessary or convenient for the removal of said coal and overburden. The lessee shall, during the term of this agreement, have a free right of way at anytime to transport coal, supplies, machinery, equipment, and other improvements to and from a public highway necessary or convenient for removal of said coal from the subject properties or from other lands owned or leased by Lessee. Additionally, lessee may exercise the aforesaid rights without any liability thereon, including streams, springs, and wells; timber or intervening strata, roads, or otherwise on Leased Premises.

2. LESSORS' WARRANTY OF TITLE: Lessors hereby represent and warrant that they are seized of good and marketable title to the Leased Premises, free of any liens or encumbrances which would interfere with the mining operations herein contemplated, and that so long as they Lessee shall perform his covenants and agreements hereunto set forth, Lessee shall enjoy quiet and peaceful possession of the Leased Premises. Lessors further represent and warrant that they have the full power to legal authority to enter into this agreement.

3. CONDUCT OF LESSEE'S MINING OPERATIONS: Lessee shall work and mine the Leased Premises in a workmanlike manner and shall comply with the laws of the Commonwealth of Pennsylvania and of the United States of America, now existing or hereafter passed, regulating the management and operation of coal mines.

4. TONNAGE ROYALTY: Lessee does hereby covenant and agree that it will pay as tonnage royalty to Lessors, a sum equal to .46 for mineral rights and .46 for surface rights per net ton of two thousand (2,000) pounds for all coal mined and removed from the Leased Premises during the term hereof or during any extension thereof. Such payments shall be made on the 30th day of each month for all coal mined and removed from the Leased Premises during the previous calendar month and

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6. TAXES: Lessors shall pay all taxes levied and assessed against the Leased Premises, it being provided that if Lessors shall fail to pay taxes, Lessee may at this option make payments to Lessors under the terms hereof Lessee shall pay during the term of this agreement all taxes levied or assessed upon all improvements placed upon the Leased Premises by Lessors upon the coal mined and removed from the Leased Premises by Lessee.

7. LESSEE'S INDEMNIFICATION OF LESSORS: Lessee does hereby covenant and agree that it will protect and save harmless Lessors from any claims or demands for damages to persons or property that may arise as a direct result of Lessee's mining operations upon the Leased Premises.

8. DEFAULT: Failure by Lessee to perform or comply with any of the terms, provisions or conditions of this Agreement, express or implied, shall not automatically terminate this agreement nor render it null and void. In case of default by Lessee, Lessors shall notify Lessee in writing of such default and Lessee shall have a period of ninety (90) days after Lessee's receipt of such notice within which to commence action to cure such default and, except as otherwise provided herein, if action to cure such default shall not have been commenced by Lessee within such ninety (90) days period, Lessors may terminate this agreement. However, Lessee shall have only 10 days after Lessee's receipt of written notice from Lessors of lessee's failure to pay royalties when due within which to cure such default, except if the amount of any royalty

payment is in dispute, then such failure of Lessee to pay the disputed royalty shall be dealt within the manner provided in Section 10 of this Agreement

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11. LESSEE'S RIGHT OF RE-ENTRY: Upon the completion of surface mining operations hereunder and termination of this Agreement, Lessee shall have the right to re-enter the leased Premises without liability and to continue in possession thereof for such period of time as may be necessary or required in order to comply with the laws and regulations of the commonwealth of Pennsylvania and the United States of America concerning the reclamation and revegetation of the Leased Premises.

12. FORCE MAJEUR: Any obligations of Lessee hereunder shall be suspended during such period as lessee is rendered unable, in whole or in

part, from complying therewith by strikes, lockouts, riots, insurrections, severe weather, storms, floods, fires, plant shutdowns, unusual mining conditions, faults in coal seams, damage to or destruction of plant, machinery, equipment or facilities, accidents, governmental laws, rules or regulations, orders or actions of any governmental agency, acts of god, or any other cause, condition or matter whether of the kind herein enumerated or otherwise, beyond the control of Lease and the period of any delay or interruptions of Lessee occasioned thereby shall be disregarded in computing timely performance by Lessee Hereunder. The term of this Agreement or any extension thereof shall be extended for a period of time equal to the time Lessee is prohibited or precluded from, or is delayed or interrupted in, mining, treating, cleaning, processing, selling, or using the coal covered by this Agreement by any law, order, regulations, judgment, decree, or other action of any agency or branch of government, provided, however, that this provision shall not be construed as permitting extension of this Agreement beyond the permissible term for Leases of this nature as provided by applicable state law.

13. LESSER INTEREST: If Lessors own a lesser interest in the surface of Leased premises than as represented herein, all royalties herein provided for shall be paid to the Lessors only in the proportion which Lessors' ownership interest bears to the whole and undivided fee simple estate in the surface of Lease Premises.

14. REQUIRED FORMS: Lessors hereby agree to execute and deliver to Lessee the "consent of Landowner" from and any and all other forms as may be from time to time required by the Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Surface Mine Reclamation or by any other governmental or other regulatory agency in connection with the mining operations hereunder.

15. PAYMENTS: All payments required to be made by Lessee to Lessors hereunder shall be made to: _____.

16. NOTICES: All notices herein provided for shall be given by delivering the same in person or by United States certified mail, return receipt

required, postage prepaid, addressed to Lessors or Lessee at the addresses shown above. Either party may change his or her address to receive notices by giving written notice of such change of address to the other party.

17. SEVERABILITY: The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof unless it substantially and adversely affects the value of this Agreement to one of the parties; and in the absence of any such substantial and adverse affect, this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

18. INTERPRETATION: This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania. The topical headings used herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms and provisions of this Agreement. As used herein, any gender shall include any other gender, the singular shall include the singular, wherever appropriate.

19. WAIVER OF REMEDIES: The failure of either Lessors or Lessee to insist, in any one or more instances, upon strict performance of any other provision of this Agreement, or to take advantage of any of their or its rights to hereunder, shall not be construed as waiver of any such provision or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

20. COUNTERPARTS: This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall collectively constitute one of the same instrument.

21. AMENDMENTS: Any modification or amendment of the terms and provision of this agreement shall be valid and effective only if and when made in writing and duly executed on behalf of the parties hereto.

22. ENTIRE AGREEMENT: The Agreement constitutes the entire agreement between Lessors and Lessee and supersedes all other prior negotiations, undertakings, notices, memoranda, and agreements between

Lessors and Lessee, whether oral or written, with respect to the subject matter hereof.

23. LEGALLY BINDING EFFECT OF AGREEMENT: It is the intention of the parties hereto to be legally bound hereby and that this Agreement shall be binding upon the insure to the benefits of heirs, executors, administrators, nominees, successors and assigns of the parties hereto.

24. ASSIGNABILITY: It is hereby understood and agreed by and between the parties hereto that this Agreement of Lease may be assigned, transferred, or sublet by Lessee's authority.

IN WITNESS WHEREOF, the parties hereto, with intent to be legally bound hereby, have executed this Agreement of Lease as of the date and year first above written.

WITNESS:

LESSORS

Dian C. Codd (SEAL)

ATTEST:

Kimberly A. Knall

SWISHER CONTRACTING, INC.

By Leonard Swisher, Sr

AGREEMENT

THIS AGREEMENT OF LEASE is made and entered into the
First day of January, 20²⁴ between Tina M. DICK
whose address is 203 Spring Hill Circle Oakland, Maryland 21550
parties of the first part, hereinafter referred to as "LESSORS",

AND

SWISHER CONTRACTING, INC., a Pennsylvania corporation, whose address is
P.O. box 1223, Clearfield, Pennsylvania 16830, party of the second part,
hereinafter referred to as "LESSEE".

WITNESSETH:

1. GRANT OF MINING RIGHTS: For and in consideration of the sum of One Hundred Dollars (\$100.00) cash in had paid, the receipt of which is hereby acknowledged, and in consideration of the rents, royalties, agreements, covenants and stipulations hereinafter contained to be paid, kept and performed by Lessee, Lessors do hereby lease, demise and let unto the Lessee for the purpose of mining and removing the merchantable and profitable mineable coal there from upon the term, covenants, and conditions, and provisions hereinafter stated, all of the surface and all mining rights appurtenant there that Lessors own and possess in, under and upon that certain parcel of land, situated and located in Clearfield county, Pennsylvania, (the "leased premises"), which parcel of land is more fully described in Exhibit "A", which is attached hereto and made a part hereof. Lessors hereby grant Lessee the exclusive right to mine said coal by the surface mining method and further grant the right of ingress, egress, and regress into, through and upon the Leased premises for the

purpose of examining, searching, prospecting, drilling, and mining said coal; the preparing storing and removing the same, together with the right to use and occupy so much of the Leased premises for roads, ditches, pipes, soil banks or stock piles, or other improvements that may be necessary or convenient for the removal of said coal and overburden. The lessee shall, during the term of this agreement, have a free right of way at anytime to transport coal, supplies, machinery, equipment, and other improvements to and from a public highway necessary or convenient for removal of said coal from the subject properties or from other lands owned or leased by Lessee. Additionally, lessee may exercise the aforesaid rights without any liability thereon, including streams, springs, and wells; timber or intervening strata, roads, or otherwise on Leased Premises.

2. LESSORS' WARRANTY OF TITLE: Lessors hereby represent and warrant that they are seized of good and marketable title to the Leased Premises, free of any liens or encumbrances which would interfere with the mining operations herein contemplated, and that so long as they Lessee shall perform his covenants and agreements hereunto set forth, Lessee shall enjoy quiet and peaceful possession of the Leased Premises. Lessors further represent and warrant that they have the full power to legal authority to enter into this agreement.

3. CONDUCT OF LESSEE'S MINING OPERATIONS: Lessee shall work and mine the Leased Premises in a workmanlike manner and shall comply with the laws of the Commonwealth of Pennsylvania and of the United States of America, now existing or hereafter passed, regulating the management and operation of coal mines.

4. TONNAGE ROYALTY: Lessee does hereby covenant and agree that it will pay as tonnage royalty to Lessors, a sum equal to .46 for mineral rights and .46 for surface rights per net ton of two thousand (2,000) pounds for all coal mined and removed from the Leased Premises during the term hereof or during any extension thereof. Such payments shall be made on the 30th day of each month for all coal mined and removed from the Leased Premises during the previous calendar month and

such payments shall be accompanied by certified truck scale weight statement showing the weight of all coal shipped from the Leased Premises during such monthly period. It is expressly understood and agreed by and between the parties hereto that lessee shall not be required to mine, remove, ship, or pay for coal, which in his sole judgment, is not merchantable, and profitably mineable.

5. LESSORS' RIGHT OF INSPECTION: Lessors shall have the right at all reasonable times at their own risk to enter Lessee's mining operations for themselves, their agents, or employees for the purpose of examining, inspecting and surveying such operations upon the Leased Premises.

6. TAXES: Lessors shall pay all taxes levied and assessed against the Leased Premises, it being provided that if Lessors shall fail to pay taxes, Lessee may at this option make payments to Lessors under the terms hereof Lessee shall pay during the term of this agreement all taxes levied or assessed upon all improvements placed upon the Leased Premises by Lessors upon the coal mined and removed from the Leased Premises by Lessee.

7. LESSEE'S INDEMNIFICATION OF LESSORS: Lessee does hereby covenant and agree that it will protect and save harmless Lessors from any claims or demands for damages to persons or property that may arise as a direct result of Lessee's mining operations upon the Leased Premises.

8. DEFAULT: Failure by Lessee to perform or comply with any of the terms, provisions or conditions of this Agreement, express or implied, shall not automatically terminate this agreement nor render it null and void. In case of default by Lessee, Lessors shall notify Lessee in writing of such default and Lessee shall have a period of ninety (90) days after Lessee's receipt of such notice within which to commence action to cure such default and, except as otherwise provided herein, if action to cure such default shall not have been commenced by Lessee within such ninety (90) days period, Lessors may terminate this agreement. However, Lessee shall have only 10 days after Lessee's receipt of written notice from Lessors of lessee's failure to pay royalties when due within which to cure such default, except if the amount of any royalty

payment is in dispute, then such failure of Lessee to pay the disputed royalty shall be dealt within the manner provided in Section 10 of this Agreement

9. DISPUTE AS TO ROYALTY PAYMENTS: In case of suit, adverse claims, dispute, or questions as to ownership of any payments, or some part thereof, to be made by Lessee under this agreement Lessee may delay or suspend payment thereof, or the part thereof in doubt, without interest, and shall not be held in default or payment thereof until such suit, claims, dispute or questions has been finally disposed of, and Lessee shall have sixty (60) days after being furnished at Lessee's principal place of business with written notice thereof and the original instrument or a certified copy or copies thereof, or after being furnished with proofs sufficient, in the Lessee's opinion to settle such questions, within which to make payment. In the event of a dispute as listed above, the Lessee shall put all payments due Lessors into an escrow account until such dispute is settled to the satisfaction of the parties involved.

10. TERM AND EFFECTIVE DATE: This Agreement of Lease shall become effective as of the date hereof and shall continue in full force and affect for a period of five (5) years thereafter or until all of the merchantable and profitably mineable coal that can be mined and removed therefrom whichever shall occur last. It being provided, however, that Lessee may at any time during the term thereof, terminate this Agreement of Lease by giving the Lessors thirty (30) days written notice thereof prior to the date of such termination.

11. LESSEE'S RIGHT OF RE-ENTRY: Upon the completion of surface mining operations hereunder and termination of this Agreement, Lessee shall have the right to re-enter the leased Premises without liability and to continue in possession thereof for such period of time as may be necessary or required in order to comply with the laws and regulations of the commonwealth of Pennsylvania and the United States of America concerning the reclamation and revegetation of the Leased Premises.

12. FORCE MAJEUR: Any obligations of Lessee hereunder shall be suspended during such period as lessee is rendered unable, in whole or in

part, from complying therewith by strikes, lockouts, riots, insurrections, sever weather, storms, floods, fires, plant shutdowns, unusual mining conditions, faults in coal seams, damage to or destruction of plant, machinery, equipment or facilities, accidents, governmental laws, rules or regulations, orders or actions of any governmental agency, acts of god, or any other cause, condition or matter whether of the kind herein enumerated or otherwise, beyond the control of Lease and the period of any delay or interruptions of Lessee occasioned thereby shall be disregarded in computing timely performance by Lessee Hereunder. The term of this Agreement or any extension thereof shall be extended for a period of time equal to the time Lessee is prohibited or precluded from, or is delayed or interrupted in, mining, treating, cleaning, processing, selling, or using the coal covered by this Agreement by any law, order, regulations, judgment, decree, or other action of any agency or branch of government, provided, however, that this provision shall not be construed as permitting extension of this Agreement beyond the permissible term for Leases of this nature as provided by applicable state law.

13. LESSER INTEREST: If Lessors own a lesser interest in the surface of Leased premises than as represented herein, all royalties herein provided for shall be paid to the Lessors only in the proportion which Lessors' ownership interest bears to the whole and undivided fee simple estate in the surface of Lease Premises.

14. REQUIRED FORMS: Lessors hereby agree to execute and deliver to Lessee the "consent of Landowner" from and any and all other forms as may be from time to time required by the Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Surface Mine Reclamation or by any other governmental or other regulatory agency in connection with the mining operations hereunder.

15. PAYMENTS: All payments required to be made by Lessee to Lessors hereunder shall be made to: _____.

16. NOTICES: All notices herein provided for shall be given by delivering the same in person or by United States certified mail, return receipt

required, postage prepaid, addressed to Lessors or Lessee at the addresses shown above. Either party may change his or her address to receive notices by giving written notice of such change of address to the other party.

17. SEVERABILITY: The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof unless it substantially and adversely affects the value of this Agreement to one of the parties; and in the absence of any such substantial and adverse affect, this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

18. INTERPRETATION: This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania. The topical headings used herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms and provisions of this Agreement. As used herein, any gender shall include any other gender, the singular shall include the singular, wherever appropriate.

19. WAIVER OF REMEDIES: The failure of either Lessors or Lessee to insist, in any one or more instances, upon strict performance of any other provision of this Agreement, or to take advantage of any of their or its rights to hereunder, shall not be construed as waiver of any such provision or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

20. COUNTERPARTS: This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall collectively constitute one of the same instrument.

21. AMENDMENTS: Any modification or amendment of the terms and provision of this agreement shall be valid and effective only if and when made in writing and duly executed on behalf of the parties hereto.

22. ENTIRE AGREEMENT: The Agreement constitutes the entire agreement between Lessors and Lessee and supersedes all other prior negotiations, undertakings, notices, memoranda, and agreements between

Lessors and Lessee, whether oral or written, with respect to the subject matter hereof.

23. LEGALLY BINDING EFFECT OF AGREEMENT: It is the intention of the parties hereto to be legally bound hereby and that this Agreement shall be binding upon the insure to the benefits of heirs, executors, administrators, nominees, successors and assigns of the parties hereto.

24. ASSIGNABILITY: It is hereby understood and agreed by and between the parties hereto that this Agreement of Lease may be assigned, transferred, or sublet by Lessee's authority.

IN WITNESS WHEREOF, the parties hereto, with intent to be legally bound hereby, have executed this Agreement of Lease as of the date and year first above written.

WITNESS:

LESSORS

Laura M. Dick (SEAL)

(SEAL)

ATTEST:

Kimberly A Koval

SWISHER CONTRACTING, INC.

By Leonard Swisher Sr.

AGREEMENT

THIS AGREEMENT OF LEASE is made and entered into the
19th day of January 2004, between
Diane Caddy-Barbara Jones- Tina Dick, whose address is
Clearfield Pa. 16830 parties of the first part,
hereinafter referred to as "LESSORS",

AND

Kenneth K Rishel & Sons Inc. a Pennsylvania corporation, whose address
is 1229 Turnpike Clearfield, Pennsylvania 16830, party of the second part,
hereinafter referred to as "LESSEE"

WITNESSETH:

GRANT OF MINING RIGHTS: For and in consideration of the sum of One Hundred Dollars (\$100.00) cash in hand paid, the receipt of which is hereby acknowledged, and in consideration of the rents, royalties, agreements, covenants and stipulations hereinafter contained to be paid, kept and performed by Lessee, Lessors do hereby lease, demise and let unto the Lessee for the purpose of mining and removing the merchantable and profitable mineable coal there from upon the term, covenants, and conditions, and provisions hereinafter stated, all of the surface and all mining rights appurtenant thereto that Lessors own and possess in, under and upon that certain parcel of land, situated and located in Clearfield county, Pennsylvania; (the "leased premises"), which parcel of land is more fully described in Exhibit "A", which is attached hereto and made a part hereof. Lessors hereby grant Lessee the exclusive right to mine said coal by the surface mining method and further grant the right of

ingress, egress, and regress into, through and upon the Leased premises for the purpose of examining, searching, prospecting, drilling, and mining said coal; the preparing storing and removing the same, together with the right to use and occupy so much of the Leased premises for roads, ditches, pipes, soil banks or stock piles, or other improvements that may be necessary or convenient for the removal of said coal and overburden. The lessee shall, during the term of this agreement, have a free right of way at anytime to transport coal, supplies, machinery, equipment, and other improvements to and from a public highway necessary or convenient for removal of said coal from the subject properties or from other lands owned or leased by Lessee. Additionally, lessee may exercise the aforesaid rights without any liability thereon, including streams, springs, and wells; timber or intervening strata, roads, or otherwise on Leased Premises.

LESSORS' WARRANTY OF TITLE: Lessors hereby represent and warrant that they are seized of good and marketable title to the Leased Premises, free of any liens or encumbrances which would interfere with the mining operations herein contemplated, and that so long as they Lessee shall perform his covenants and agreements hereunto set forth, Lessee shall enjoy quiet and peaceful possession of the Leased Premises. Lessors further represent and warrant that they have the full power to legal authority to enter into this agreement.

CONDUCT OF LESSEE'S MINING OPERATIONS: Lessee shall work and mine the Leased Premises in a workmanlike manner and shall comply with the laws of the Commonwealth of Pennsylvania and of the United States of America, now existing or hereafter passed, regulating the management and operation of coal mines.

*DK
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Bj*

Minimum Royalty. Lessee shall pay to Lessors a minimum royalty of one hundred fifty dollars (\$150.00) per month on the thirtieth of each month. Tonnage royalty paid for coal mined, removed, and sold shall be applied as a credit against the monthly installments of minimum royalty which would otherwise be due. The Lessee shall have the right, during the term of this Agreement of Lease or any renewals, to reimburse itself at the applicable tonnage royalty rate on coal mined from the leased premises only for any minimum royalty credits previously accumulated and carried forward by mining from the leased premises, without liability of payment of tonnage royalty, a sufficient quantity of coal so as to recoup all accumulated minimum royalty credits. Lessee, on or before the dates tonnage royalties are due, shall provide Lessors with a statement showing credits previously accumulated and not previously credited, if any; Lessee shall apply those credits against any tonnage royalties due. Should any credits remain uncredited at the termination of this Agreement of Lease, they shall be the property of the Lessor.

TONNAGE ROYALTY: Lessee does hereby covenant and agree that it will pay as tonnage royalty to Lessors, a sum equal to \$2.76 per net ton of two thousand (2,000) pounds for all coal mined and removed from the Leased Premises during the term hereof or during any extension thereof. Such payments shall be made on the 30th day of each month for all coal mined and removed from the Leased Premises during the previous calendar month and such payments shall be accompanied by certified truck scale weight statement showing the weight of all coal shipped from the Leased Premises during such monthly period. It is expressly understood and agreed by and between the parties hereto that lessee shall not be required to mine, remove, ship, or pay for coal, which in his sole judgment, is not merchantable, and profitably mineable.

LESSORS' RIGHT OF INSPECTION: Lessors shall have the right at all reasonable times at their own risk to enter Lessee's mining operations for themselves, their agents, or employees for the purpose of examining, inspecting and surveying such operations upon the Leased Premises.

TAXES: Lessors shall pay all taxes levied and assessed against the Leased Premises, it being provided that if Lessors shall fail to pay taxes, Lessee may at this option make payments to Lessors under the terms hereof Lessee shall pay during the term of this agreement all taxes levied or assessed upon all improvements placed upon the Leased Premises by Lessors upon the coal mined and removed from the Leased Premises by Lessee.

LESSEE'S INDEMNIFICATION OF LESSORS: Lessee does hereby covenant and agree that it will protect and save harmless Lessors from any claims or demands for damages to persons or property that may arise as a direct result of Lessee's mining operations upon the Leased Premises.

DEFAULT: Failure by Lessee to perform or comply with any of the terms, provisions or conditions of this Agreement, express or implied, shall not automatically terminate this agreement nor render it null and void. In case of default by Lessee, Lessors shall notify Lessee in writing of such default and Lessee shall have a period of ninety (90) days after Lessee's receipt of such notice within which to commence action to cure such default and, except as

otherwise provided herein, if action to cure such default shall not have been commenced by Lessee within such ninety (90) days period, Lessors may terminate this agreement. However, Lessee shall have only 10 days after Lessee's receipt of written notice from Lessors of lessee's failure to pay royalties when due within which to cure such default, except if the amount of any royalty payment is in dispute, then such failure of Lessee to pay the disputed royalty payment Dispute as to Royalty Payments Sec shall be dealt within the manner provided in Section 10 of this Agreement. *bx jwd xl*

DISPUTE AS TO ROYALTY PAYMENTS: In case of suit, adverse claims, dispute, or questions as to ownership of any payments, or some part thereof, to be made by Lessee under this agreement Lessee may delay or suspend payment thereof, or the part thereof in doubt, without interest, and shall not be held in default or payment thereof until such suit, claims, dispute or questions has been finally disposed of, and Lessee shall have sixty (60) days after being furnished at Lessee's principal place of business with written notice thereof and the original instrument or a certified copy or copies thereof, or after being furnished with proofs sufficient, in the Lessee's opinion to settle such questions, within which to make payment. In the event of a dispute as listed above, the Lessee shall put all payments due Lessors into an escrow account until such dispute is settled to the satisfaction of the parties involved.

TERM AND EFFECTIVE DATE: This Agreement of Lease shall become effective as of the date hereof and shall continue in full force and affect for a period of five (5) years thereafter or until all of the merchantable and profitably mineable coal that can be mined and removed therefrom whichever shall occur last. It being provided, however, that Lessee may at any time during the term thereof, terminate this Agreement of Lease by giving the Lessors thirty (30) days written notice thereof prior to the date of such termination. The primary term of this Lease shall commence when Lessors' property is connected to a public water supply system. In conjunction herewith the effective date of this Lease shall not accrue nor shall Lessee be responsible for any advance royalty.

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BY

TERM AND EFFECTIVE DATE:

This Agreement of Lease shall be for an initial period of five (5) years, commencing on the date of this Agreement of Lease; provided, however, that the Lessee shall have the right to extend this Agreement of Lease for two additional periods of two (2) years each after the expiration of the initial term, provided there is active continuous mining in process by the Lessee; and provided, further, that the Lessee gives written notice to the Lessors of its intention to extend this Agreement of Lease at least thirty (30) days prior to the expiration of the initial term or the preceding renewal period. Active, continuous mining shall mean continuous mining of coal during the preceding twelve (12) months on the leased premises.

It being provided, however, that Lessee may at any time during the term thereof, terminate this Agreement of Lease by giving the Lessors thirty (30) days written notice thereof prior to the date of such termination.

~~payment until such time as the same may be required to a public~~

~~water supply system~~

LESSEE'S RIGHT OF RE-ENTRY: Upon the completion of surface mining operations hereunder and termination of this Agreement, Lessee shall have the right to re-enter the leased Premises without liability and to continue in possession thereof for such period of time as may be necessary or required in order to comply with the laws and regulations of the commonwealth of Pennsylvania and the United States of America concerning the reclamation and revegetation of the Leased Premises.

FORCE MAJEUR: Any obligations of Lessee hereunder shall be suspended during such period as lessee is rendered unable, in whole or in part, from complying therewith by strikes, lockouts, riots, insurrections, severe weather, storms, floods, fires, plant shutdowns, unusual mining conditions, faults in coal seams, damage to or destruction of plant, machinery, equipment or facilities, accidents, governmental laws, rules or regulations, orders or actions of any governmental agency, acts of god, or any other cause, condition or matter whether of the kind herein enumerated or otherwise, beyond the control of Lease and the period of any delay or interruptions of Lessee occasioned thereby shall be disregarded in computing timely performance by Lessee Hereunder. The term of this Agreement or any extension thereof shall be extended for a period of time equal to the time Lessee is prohibited or precluded from, or is delayed or interrupted in, mining, treating, cleaning, processing, selling, or using the coal covered by this Agreement by any law, order, regulations, judgment, decree, or other action of any agency or branch of government, provided, however, that this provision shall not be construed as permitting extension of this Agreement beyond the permissible term for Leases of this nature as provided by applicable state law.

LESSER INTEREST: If Lessors own a lesser interest in the surface of Leased premises than as represented herein, all royalties herein provided for shall be paid to the Lessors only in the proportion which Lessors'

ownership interest bears to the whole and undivided fee simple estate in the surface of Lease Premises.

REQUIRED FORMS: Lessors hereby agree to execute and deliver to Lessee the "consent of Landowner" from and any and all other forms as may be from time to time required by the Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Surface Mine Reclamation or by any other governmental or other regulatory agency in connection with the mining operations hereunder.

PAYMENTS: All payments required to be made by Lessee to Lessors hereunder shall be made to: Diane Caddy Barbara Jones Tina Dick

NOTICES: All notices herein provided for shall be given by delivering the same in person or by United States certified mail, return receipt required, postage prepaid, addressed to Lessors or Lessee at the addresses shown above. Either party may change his or her address to receive notices by giving written notice of such change of address to the other party.

SEVERABILITY: The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof unless it substantially and adversely affects the value of this Agreement to one of the parties; and in the absence of any such substantial and adverse affect, this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

INTERPRETATION: This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania. The topical headings used herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms and provisions of this Agreement. As used herein, any gender shall include any other gender, the singular shall include the singular, wherever appropriate.

WAIVER OF REMEDIES: The failure of either Lessors or Lessee to insist, in any one or more instances, upon strict performance of any other provision of this Agreement, or to take advantage of any of their or its rights

to hereunder, shall not be construed as waiver of any such provision or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

COUNTERPARTS: This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall collectively constitute one of the same instrument.

AMENDMENTS: Any modification or amendment of the terms and provision of this agreement shall be valid and effective only if and when made in writing and duly executed on behalf of the parties hereto.

ENTIRE AGREEMENT: The Agreement constitutes the entire agreement between Lessors and Lessee and supersedes all other prior negotiations, undertakings, notices, memoranda, and agreements between Lessors and Lessee, whether oral or written, with respect to the subject matter hereof.

LEGALLY BINDING EFFECT OF AGREEMENT: It is the intention of the parties hereto to be legally bound hereby and that this Agreement shall be binding upon the insure to the benefits of heirs, executors, administrators, nominees, successors and assigns of the parties hereto.

ASSIGNABILITY: It is hereby understood and agreed by and between the parties hereto that this Agreement of Lease may be assigned, transferred, or sublet by Lessee's authority.

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Final Completion Report. Upon completion of mining operations under this Agreement of Lease and the release of the leased premises by the Pa. DER, Lessee shall promptly deliver to Lessor a copy of the Final Completion Report as submitted by the Lessee to DER, together with a copy of the Final Completion Report issued by the United States Office of Surface Mining.

IN WITNESS WHEREOF, the parties hereto, with intent to be legally bound hereby, have executed this Agreement of Lease as of the date and year first above written.

WITNESS:

Andrew J. Breyer

Andrew J. Breyer

Andrew Breyer

LESSORS

Dinner Culdry (SEAL)

Barbara A. Jones (SEAL)

Vina Dick (SEAL)

ATTEST:

By _____

Exhibit A

As found in Clearfield County land atlas & plat book of 1999
on page 57 As Discibed as 33.7 acres formely owned by
Freda L. Ludwig now by the Lessors Bordered by Rishel
Twigg & Gulich and Township Rd. T521

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b7d
b7e

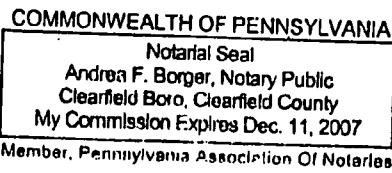
Diane Caddy, Barbara Jones, Tina Dick property owners, of the property formerly owned by our father Michael Cimino hereby request that the surface mine operator Kenneth K. Rishel & Sons, Inc. be granted permission to fill in the area on our property from Williams Road on the East to the current access road-haul on the west. ~~We understand that a sediment pond~~
~~will be reconstructed in the approximate location of the existing pond.~~

Notary

Andrea F. Berger

Diane Caddy
Diane Caddy

Seal



Barbara Jones
Barbara Jones

Tina Dick
Tina Dick

Date: 04-10-04

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

SWISHER CONTRACTING, INC.,
Plaintiff

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* NO. 2004- 1764 -CD

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VS

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KENNETH J. RISHEL and SONS,
INC.,
Defendant

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DEC 03 2004
cc

William A. Shaw
Prothonotary/Clerk of Courts

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

SWISHER CONTRACTING, Inc.,
Plaintiff

vs

* NO. 04-1764-C.D.

KENNETH J. RISHEL and SONS,
Inc.,

Defendant

*

ACCEPTANCE OF SERVICE

I, Kim C. Kesner, attorney at law, accept service of the
Complaint on behalf of the Defendant in the above captioned
matter.

Date:

11/24/04



Kim C. Kesner
Attorney at Law

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

SWISHER CONTRACTING, INC.	:	No. 2004-1764-CD
Plaintiff	:	
vs.	:	Type of Pleading: Complaint to
KENNETH K. RISHEL AND SONS, INC.	:	Join Additional Plaintiffs/
Defendant	:	Defendants
vs.	:	Filed on Behalf of: Defendant
MICHAEL A. CIMINO, BARBARA A. JONES:	:	Counsel of Record for this Party:
DIANE C. CADDY and TINA M. DICK,	:	Kim C. Kesner, Esquire
Additional Plaintiffs/Defendants	:	Supreme Ct. I.D. 28307
	:	23 North Second Street
	:	Clearfield, PA 16830
	:	814-765-1706

FILED *cc*
6K of 9:50 AM *Attn: Kresner*
DEC 30 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

SWISHER CONTRACTING, INC.	:	No. 2004-1764-CD
Plaintiff	:	
vs.	:	
KENNETH K. RISHEL AND SONS, INC.	:	
Defendant	:	
vs.	:	
MICHAEL A. CIMINO, BARBARA A. JONES:	:	
DIANE C. CADDY and TINA M. DICK,	:	
Additional Plaintiffs/Defendants	:	

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may process without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator's Office
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830
Telephone: (814) 765-2641

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff :

vs. :

KENNETH K. RISHEL AND SONS, INC. :
Defendant :

vs. :

MICHAEL A. CIMINO, BARBARA A. JONES:
DIANE C. CADDY and TINA M. DICK, :
Additional Plaintiffs/Defendants :

**COMPLAINT TO JOIN MICHAEL A. CIMINO,
BARBARA A. JONES, DIANE C. CADDY AND TINA M. DICK
AS ADDITIONAL PLAINTIFFS/ADDITIONAL DEFENDANTS**

AND NOW COMES, the Defendant Kenneth K. Rishel and Sons, Inc., by its counsel Kim C. Kesner, Esquire and in accordance with Pa.R.Civ.P. Rule 2227 and Rule 2252 seeks to join Michael A. Cimino, Barbara A. Jones, Diane C. Caddy and Tina M. Dick as Additional Plaintiffs or Defendants in this action and in support hereof avers:

1. The averments contained in Plaintiff's Complaint for Declaratory Judgment, Defendant's Answer, New Matter and Counterclaim are incorporated herein by reference as if set forth verbatim.

2. 42 Pa.C.S.A. §7540 provides that: "when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be effected by the declaration. No declaration shall prejudice the rights of persons not parties to the proceeding."

3. Defendant in its counterclaim seeks a declaration that under its Article of Agreement dated June 14, 2002 it was transferred and conveyed a fee simple title in the mineral estate of the premises being the subject matter of Plaintiff's Complaint and Defendant's Counterclaim and that Barbara A. Jones, Diane C. Caddy and Tina M. Dick had no right or

ability to grant coal mining rights to Plaintiff under the documents attached to Plaintiff's Complaint as Exhibit "B".

4. Defendant believes and therefore avers that Michael A. Cimino and his assigns, Barbara A. Jones, Diane C. Caddy and Tina M. Dick are parties who have or maintain an interest which would be effected by this declaration.

5. Defendant believes and therefore avers that Michael A. Cimino, Barbara A. Jones, Diane C. Caddy, and Tina M. Dick could be joined as either Additional Plaintiffs or Additional Defendants at the election of this court.

WHEREFORE, Defendant respectfully requests your Honorable Court to add Michael A. Cimino, Barbara A. Jones, Diane C. Caddy and Tina M. Dick as parties to this Action as Additional Plaintiffs or Defendants as this Court deems just and proper.

Respectfully submitted,



Kim C. Kesner, Esquire
Attorney for Defendant
Supreme Ct. I.D. 28307

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

VERIFICATION

I, Kenneth K. Rishel, verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

Date: 12-29-04


Kenneth K. Rishel

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

SWISHER CONTRACTING, INC.

Plaintiff

vs.

KENNETH K. RISHEL AND SONS, INC.

Defendant

: No. 2004-1764-CD

2

- Type of Pleading: Defendant's Answer, New Matter and Counterclaim to Plaintiff's Complaint for Declaratory Judgment

: Filed on Behalf of: Defendant

2

Counsel of Record for this Party:
Kim C. Kesner, Esquire
Supreme Ct. I.D. 28307

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

64^K FILED 2 CC
09:50 AM
DEC 30 2004
Amy Kneser

William A. Shaw
Prothonotary/Clerk of Courts

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff :
: :
vs. : :
: :
KENNETH K. RISHEL AND SONS, INC. :
Defendant

NOTICE

TO: Swisher Contracting, Inc.
c/o Chris A. Pentz, Attorney for Plaintiff
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

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

Kim C. Kesner, Esquire
Attorney for Defendant
Supreme Ct. I.D. 28307
23 North Second Street
Clearfield, PA 16830
(814) 765-1706

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD

Plaintiff :

:

vs.

:

KENNETH K. RISHEL AND SONS, INC. :

Defendant :

**DEFENDANT'S ANSWER, NEW MATTER
AND COUNTERCLAIM TO PLAINTIFF'S
COMPLAINT FOR DECLARATORY JUDGMENT**

AND NOW COMES, the Defendant Kenneth K. Rishel and Sons, Inc., by its counsel Kim C. Kesner, Esquire and files the following:

Answer

1. Admitted.

2. Admitted.

3. It is admitted that Michael A. Cimino conveyed all of his remaining right, title, claim or interest in that real estate identified in Paragraph 3 of Plaintiff's Complaint ("Subject Realty") to his daughters, Barbara A. Jones, Diane C. Caddy and Tina M. Dick by his deed recited in Paragraph 3 and attached to Plaintiff's Complaint as Exhibit "A". However, previously, on June 14, 2002 Michael A. Cimino executed an Article of Agreement with Defendant, a copy of which is annexed hereto as Exhibit "D-1" which constituted a conveyance of the mineral estate of the Subject Realty, including the coal and mining rights to Defendant.

4. Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 4 of Plaintiff's Complaint for Declaratory Judgment. Proof thereof is demanded. By way of further answer, the purported leases attached to Plaintiff's Complaint as Exhibits "B" are not of record in Clearfield County.

5. From and after 2002, Defendant has mined and is mining a portion of the Subject Realty consisting of two (2) acres by authority of Defendant's Article of Agreement with Michael A. Cimino annexed hereto as Exhibit "D-1". This two (2) acre portion of the Subject Realty was added to an existing mining permit issued by the Pennsylvania Department of Environmental Protection (DEP). In January 2004, it was Defendant's understanding that DEP policy prevented Defendant from adding any of the remaining acreage of the Subject Realty to that permit. Prior to January 19, 2004, Defendant was contacted by Diane C. Caddy on behalf of herself, Barbara A. Jones and Tina M. Dick who advised Defendant that Plaintiff was interested in securing authority from Defendant and a mining permit from DEP to mine some of the remaining acreage of the Subject Realty. Defendant advised Diane C. Caddy that Defendant was amenable to discussions with Plaintiff on a lease. However, Defendant never executed any lease or other document granting authority to mine to Plaintiff. Diane C. Caddy also advised Defendant that it was her belief and opinion that Defendant's Article of Agreement with Michael A. Cimino had terminated. While Defendant has continuously believed and maintained that it has continued rights to the coal under Exhibit "D-1", it prepared and presented the document annexed to Plaintiff's Complaint as Exhibit "C" to Barbara A. Jones, Diane C. Caddy and Tina M. Dick in order to resolve any dispute with them. However, Defendant believes and therefore avers that Defendant never executed the document.

6. Defendant specifically denies that it was ever advised by Barbara A. Jones, Diane C. Caddy and Tina M. Dick that the documents attached to Plaintiff's Complaint as Exhibit "B" had been executed. To the contrary, it was the belief and position of Defendant on and about January 19, 2004 that any right to mine the Subject Realty by Plaintiff would require execution of a lease or other document by Defendant.

7. Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 7 of Plaintiff's Complaint for Declaratory

Judgment. Proof thereof is demanded. By way of further answer, Defendant has no knowledge of what discussions, if any occurred between Barbara A. Jones, Diane C. Caddy, Tina M. Dick and the Plaintiff. However, permission from Plaintiff for Defendant to lease two (2) acres of the Subject Realty was not required in January of 2004.

8. Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 8 of Plaintiff's Complaint for Declaratory Judgment. Proof thereof is demanded. By way of further answer, Defendant has no knowledge of what discussions, if any occurred between Barbara A. Jones, Diane C. Caddy, Tina M. Dick and the Plaintiff. However, permission from Plaintiff for Defendant to lease two (2) acres of the Subject Realty was not required in January of 2004.

9. It is admitted that Barbara A. Jones, Diane C. Caddy and Tina M. Dick executed the document attached to Plaintiff's Complaint as Exhibit "C".

11.(sic) It is admitted that the realty being the subject matter of the recited lease agreement is described in Exhibit "A", being a part thereof.

12. Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 12 of Plaintiff's Complaint for Declaratory Judgment. However, Defendant believes and therefore avers that Barbara A. Jones, Diane C. Caddy and Tina M. Dick knew or should have known that Defendant owned the mineral estate, including the coal and mining rights to the Subject Realty in January of 2004, was mining two (2) acres of the Subject Realty under full legal authority and had the right to mine the remainder of the Subject Realty upon issuance by DEP of an additional permit or an enlargement of Defendant's existing permit. In addition, Barbara A. Jones, Diane C. Caddy and Tina M. Dick knew or should have known that any right by Plaintiff to mine any portion of the Subject Realty was dependent upon Defendant's execution of a lease or other document with Plaintiff.

13. Defendant specifically denies that on or about January 19, 2004 it was aware of the execution of the documents attached to Plaintiff's Complaint as Exhibit "B". To the contrary, it was the belief and position of Defendant on and about January 19, 2004 that any right to mine the Subject Realty by Plaintiff would require execution of a lease or other document by Defendant.

14. The averments contain in Paragraph 14 do not require a response. By way of further answer, Defendant specifically denies that Plaintiff's consent is required for the exercise of its rights under its Article of Agreement with Michael A. Cimino which is binding on his assigns.

WHEREFORE, Defendant respectfully requests this Honorable Court to dismiss Plaintiff's Complaint with prejudice.

New Matter

15. The averments contained in Paragraphs 1 through 14 of Defendant's Answer are incorporated herein by reference as if set forth verbatim.

16. The Article of Agreement dated June 14, 2002 between Michael A. Cimino and Defendant annexed hereto as Exhibit "D-1" effected a conveyance of fee simple title in the mineral estate including the coal and mining rights to Defendant.

17. Plaintiff has failed to state a cause of action upon which the relief of a declaratory judgment may be granted, because Michael A. Cimino's assigns had no right, title, claim or interest with which to support their purported lease agreements with Plaintiff.

WHEREFORE, Defendant respectfully requests this Honorable Court to dismiss Plaintiff's Complaint with prejudice.

Counterclaim

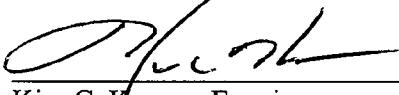
18. The averments contained in Paragraphs 1 through 14 of Defendant's Answer above and Paragraphs 15 through 17 of Defendant's New Matter are incorporated herein by reference as if set forth verbatim.

19. Defendant's Article of Agreement with Michael A. Cimino, annexed hereto as Exhibit "D-1" constitutes an unconditional sale of the merchantable coal in place to Defendant and a transfer of fee simple title to the mineral estate including coal and mining rights.

20. Defendant believes and therefore avers that a construction and declaration of its rights under the Article of Agreement is necessary to remove any cloud to its title arising from the claims made by Plaintiff and any potential claims by Michael A. Cimino, Barbara A. Jones, Diane C. Caddy and Tina M. Dick.

WHEREFORE, Defendant respectfully requests this Honorable Court to enter a judgment declaring that it is the owner of fee simple title in and to the mineral estate of the Subject Realty including the coal and mining rights free and clear of the claims of Plaintiff under or by virtue of the lease agreements attached to Plaintiff's Complaint as Exhibits "B" as well as any adverse claims by Michael A. Cimino, Barbara A. Jones, Diane C. Caddy and Tina M. Dick.

Respectfully submitted,



Kim C. Kesner, Esquire
Attorney for Defendant
Supreme Ct. I.D. 28307

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

VERIFICATION

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

Date: 12-29-04



A handwritten signature in black ink, appearing to read "K K Rishel". The signature is written over a horizontal line that extends from the date on the left.

Kenneth K. Rishel

Option and Lease Agreement

THIS ARTICLE OF AGREEMENT made and concluded this 14th day of JUNE, 2002,
between Michael A. Cimino, 19,

part INC. of the first part, hereinafter designated as lessor, and Kenneth K. Rishel + Sons part
of the second part, hereinafter designated as Lessee, witnesseth:

1. In consideration of the sum of 100.00, in hand paid, receipt whereof is hereby acknowledged, Lessor
hereby leases, lets, and demises unto Lessee, ALL of the (C-1) seam or vein of coal in, under and upon all that certain piece, parcel or tract of land situated in LAWRENCE
Township, CYB, Former Edgar Property, Former Landwag Property, Bounded by
Williams Rd, Charlie Gulich, BRishel, Tim Rishel, 15111 Twigg.

containing 35.152 acres, more or less.

TOGETHER with all the mining rights and easements owned by Lessor and appurtenant to the coal and land herein
described, including the right of ingress, egress, and regress, in, to and upon said land for the purpose of exploring for and of
mining, manufacturing, testing and preparing said coal for market, to build roads, railroads and tram roads, to build buildings,
tipples, and chutes, to deposit waste material and refuse on the surface of the land, to build wire and pipe lines, to drain water
upon the surface by any means, to transport coal from other properties through or over this premises and to do all things necessary,
usual and proper in connection with said operations, and Lessor hereby waives all right to surface support, both laterally and
subjacent, and releases all liability for damage to buildings and objects thereon and waters therein and thereon. Said coal may
be removed by any mechanical process either by auger mining, drift mining or stripping process or any other method and all of
the usual rights and privileges are hereby granted in connection therewith including the right to tear up the surface and the
removal and redeposit of all strata and other objects and materials including the removal of trees overlying said coal, to be
exercised without further cost or liability for the damage caused thereby.

ALSO TOGETHER WITH

EXCEPTING AND RESERVING

2. Lessee covenants and agrees to pay to lessor the sum of 11.85 cents per ton of 2,000
pounds for all mineable, merchantable and marketable coal mined and removed from said premises. Settlements to be made on
the twenty-fifth day of each month for all such coal mined and removed from the premises during the preceding calendar month
and all settlements shall be based upon the weights by which the coal is marketed. It is further understood and agreed that

3. Lessee covenants and agrees to commence mining operations upon said premises within 90 Days,
from the effective date of this lease and in event of failure so to commence mining operations agrees to pay Lessor as a minimum
royalty the sum or price of 100.00, ONE Thousand dollars, X, per year, payable quarterly in advance with the right to take a credit against said minimum. Said minimum shall also be full con-
sideration for any delay in working or removing the coal.

4. Lessee agrees that all mining operations shall be conducted in accordance with the laws of Pennsylvania and modern
mining methods prevailing in the industry. It is also understood that Lessor shall have access to the operations and scale
records of Lessee at all reasonable times in person or by duly authorized agent.

5. This lease shall continue until all of the mineable and merchantable coal has been exhausted from the premises. Lessee
may remove all equipment, buildings and machinery from the premises at the end of the term provided no royalty is then due.

6. This article of agreement shall constitute and be construed an option granted by Lessor to Lessee so that Lessee may elect
to accept or reject it at any time during 90 days from the date hereof. Upon acceptance of this instrument
shall become immediately effective in all its terms as a lease of the coal in place. During the option period Lessee may go upon
the premises for the purpose of surveying, drilling, digging, exploring, testing, taking samples, and otherwise examining said coal,
without liability for the damage, caused thereby or for the coal taken in such explorations. Lessee may exercise this option by
notifying Lessor in writing of its elections to do so within the option period aforesaid.

7. It is understood and agreed that in the event that Lessee should default in any payment provided for herein and remain
in such default for a period of ninety days from the date when said payment becomes due, or should Lessee be in default in any
other respect and continue in such default for a period of ninety days after being notified in writing of such default by Lessor,
then, in either event, at the option of Lessor, this lease shall cease and terminate and Lessee hereby authorizes any attorney of
any Court of Record to appear for it and in its name to confess a judgment against it in an amicable action of ejection to the end
that a writ of habere facias possessionem may issue forthwith for the delivery of possession to Lessor, together with clause of fieri
facias for rent in arrears and costs.

8. It is further understood and agreed that Lessee has the right to cancel this lease at any time by giving a thirty (30) day
written notice.

(OVER)

Exhibit "D-1"

(1 of 2)

9. It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and be binding upon the parties, their heirs, executors, administrators and assigns, and that the singular herein shall include the plural.

10. Lessor hereby warrants generally the title to said coal, surface and mining rights herein designated and this lease shall be free and clear of all encumbrances except those for which waiver and consent hereto is obtained and Lessee may in all cases apply royalty payments to the satisfaction of such encumbrances as may be found to exist.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and caused this article of agreement to be duly executed by their officers, the day and year aforesaid.

Witness:

Michael A. Cimino

James B. M. S. (Seal)

Michael A. Cimino (Seal)

(Seal)

(Seal)

(Seal)

(Seal)

STATE OF PENNSYLVANIA

} ss:

COUNTY OF

DOE

, 1958; before me

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

In witness whereof, I hereunto set my hand and official seal.

..... Title of Officer

My Commission Expires

INFORMATION

Grantors:

Marital Status

Age

Address

Name

Michael Cimino Divorced 69 11 Apple St. Clifd Pa 16830

LAND

Acquired from *Freda Ludwig*.

By deed, will or inheritance

Date Acquired *December 2000*

Deed Book

, Page

Is deed recorded

To whom assessed

Who owns surface *Michael Cimino*

Who occupies surface

Michael Cimino

NOTE: Give all further information about the title and property. If acquired by inheritance, give full information as to date of death, names of children alive at date of death of intestate, names of children deceased at date of death of intestate who were survived by children, and names of all heirs alive today:

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff :

vs. :

KENNETH K. RISHEL AND SONS, INC. :
Defendant

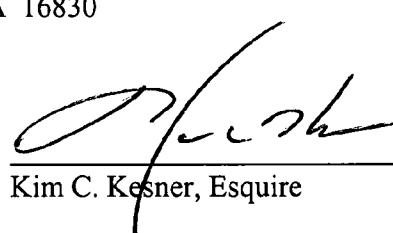
CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 30th day of December, 2004, I caused to be served a true and correct, time stamped copy of the Defendant's Answer, New Matter and Counterclaim to Plaintiff's Complaint for Declaratory Judgment, on the following and in the manner indicated below:

By United States Mail, Regular Mail, Addressed as Follows:

Swisher Contracting, Inc.
c/o Chris A. Pentz
Attorney for Plaintiff
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Date: 12-30-04



Kim C. Kesner, Esquire

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

*
SWISHER CONTRACTING, INC.,
Plaintiff

*
* NO. 2004-1764 -CD

*
VS
*
*
*
*

KENNETH J. RISHEL AND SONS, INC*
Defendant

*
* Type of Pleading: Answer to
* Defendant's Complaint

*
*
*
*
*
*
*
*
* Filed on Behalf of: Plaintiff

*
*
*
*
*
* Counsel of Record for this Party:
* CHRIS A. PENTZ, Esquire

*
* Supreme Court I.D. # 39232
* 207 East Market Street
* P. O. Box 552
* Clearfield PA 16830
* 814 765-4000

*
*

FILED ^{6K}
1/3:4/04
JAN 28 2005
NO CC

William A. Shaw
Prothonotary/Clerk of Courts

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

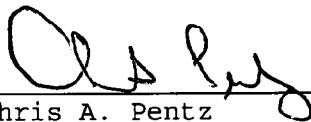
SWISHER CONTRACTING, INC., *
Plaintiff * No. 2004 -1764- C.D.
vs *
*
KENNETH J. RISHEL AND SONS,
INC., *
Defendant *
*

PLAINTIFF'S ANSWER TO COMPLAINT JOINING MICHAEL A. CIMINO,
BARBARA A. JONES, DIANE C. CADDY and TINA M. DICK
AS ADDITIONAL PLAINTIFFS/ADDITIONAL DEFENDANTS

1. The averments contained in the Pleadings filed by the Plaintiff in this matter are incorporated herein by reference as though set forth in full.
2. No response required.
3. Paragraph 1 above is incorporated herein by reference as though set forth in full.
4. No response required.
5. No response required.

WHEREFORE, Plaintiff respectfully requests Your Honorable Court to grant the relief as requested in its Complaint.

Respectfully submitted this 28 day of Jan., 2004.

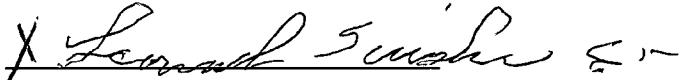


Chris A. Pentz
Attorney for Plaintiff

VERIFICATION

I, Leonard Swisher, Sr., as President of Swisher Contracting, Inc. verify that the statements made in this Answer are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

1-28-05
Date


Swisher Contracting, Inc.
Leonard Swisher, Sr.
President

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

*
SWISHER CONTRACTING, INC., *
Plaintiff *
* No. 2004-1764 -CD
*
VS *
*
*
*
*
KENNETH J. RISHEL AND SONS, INC*
Defendant *
* Type of Pleading: Reply to
* Defendant's New Matter and
* Counterclaim with New Matter
* to Counterclaim
*
*
*
* Filed on Behalf of: Plaintiff
*
*
*
*
* Counsel of Record for this Party:
* CHRIS A. PENTZ, Esquire
*
* Supreme Court I.D. # 39232
* 207 East Market Street
* P. O. Box 552
* Clearfield PA 16830
* 814 765-4000
*
*

FILED ^{6K}
01/31/05 BY Atty Pentz
JAN 28 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

SWISHER CONTRACTING, INC., *
Plaintiff * No. 2004 -1764- C.D.
vs *
KENNETH J. RISHEL AND SONS,
INC., *
Defendant *

REPLY TO DEFENDANT'S NEW MATTER AND COUNTERCLAIM
WITH NEW MATTER TO COUNTERCLAIM

New Matter

15. The averments contained in the Paragraphs 1 through 14 of Plaintiff's Complaint are incorporated herein by reference as though set forth in full.

16. Paragraph 16 is a conclusion of law to which no response is required.

17. Paragraph 17 is a conclusion of law to which no response is required.

WHEREFORE, Plaintiff respectfully requests Your Honorable Court to grant the relief sought in its Complaint.

COUNTER CLAIM

18. The averments contained in Paragraphs 1 through 14 of Plaintiff's Complaint and Paragraphs 15 through 17 of Plaintiff's Reply to New Matter are incorporated herein by reference as though set forth in full.

19. Paragraph 19 is a conclusion of law to which no response is required.

20. Paragraph 20 is a conclusion of law to which no

response is required.

WHEREFORE, Plaintiff respectfully requests Your Honorable Court to grant the relief sought in its Complaint.

NEW MATTER TO COUNTER CLAIM

21. The averments contained in Paragraphs 1 through 14 of Plaintiff's Complaint, Paragraphs 15 through 17 of Plaintiff's Reply to New Matter, and Paragraphs 18 through 20 of Plaintiff's Reply to Counter Claim are incorporated herein by reference as though set forth in full.

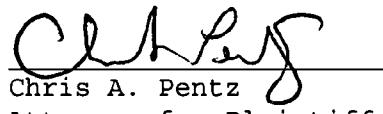
22. The Plaintiff, at the time it entered into lease agreements, was unaware of any agreements with Kenneth A. Rishel and Sons, Inc. concerning the property in question.

23. None of the documents which Defendant claims provides it with an unconditional sale of merchantable coal have been recorded in the Clearfield County Courthouse.

24. The Plaintiff has expended substantial funds for the lease of the property in question by way of exploratory drilling, surveying of the property and steps necessary to obtain a permit (s) from the Pennsylvania Department of Environmental Protection.

WHEREFORE, Plaintiff respectfully requests Your Honorable Court to grant the relief sought in its Complaint.

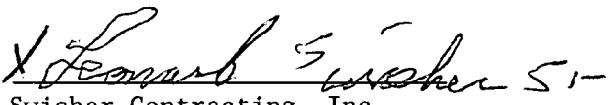
Respectfully submitted this 20 day of Jan, 2005.


Chris A. Pentz
Attorney for Plaintiff

VERIFICATION

I, Leonard Swisher, Sr., as President of Swisher Contracting, Inc. verify that the statements made in this Reply are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

JAN 20 2005
Date


Swisher Contracting, Inc.
by Leonard Swisher, Sr.
President

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100096
NO. 04-1764-CD
SERVICE # 1 OF 4
COMPLAINT TO JOIN ADDITIONAL

PLAINTIFFS/DEFENDANTS

PLAINTIFF: SWISHER CONTRACTING INC

vs.

DEFENDANT: KENNETH K. RISHEL AND SONS INC

-VS-MICHAEL A. CIMINO, BARBARA A. JONES, DIANE C. CADDY and TINA M. DICK, ADDL. DEFTS

SHERIFF RETURN

NOW, January 18, 2005 AT 1:55 PM SERVED THE WITHIN COMPLAINT TO JOIN ADDITIONAL PLAINTIFFS/DEFENDANTS ON MICHAEL A. CIMINO DEFENDANT AT 11 APPLE ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MICHAEL A. CIMINO, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO JOIN ADDITIONAL PLAINTIFFS/DEFENDANTS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN /

FILED

6th FEB 08 2005
6/3/05
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100096
NO. 04-1764-CD
SERVICE # 2 OF 4
COMPLAINT TO JOIN ADDITIONAL

PLAINTIFFS/DEFENDANTS

PLAINTIFF: SWISHER CONTRACTING INC

vs.

DEFENDANT: KENNETH K. RISHEL AND SONS INC

-VS-MICHAEL A. CIMINO, BARBARA A. JONES, DIANE C. CADDY and TINA M. DICK, ADDL. DEFTS

SHERIFF RETURN

NOW, January 17, 2005 AT 10:14 AM SERVED THE WITHIN COMPLAINT TO JOIN ADDITIONAL PLAINTIFFS/DEFENDANTS ON BARBARA A JONES DEFENDANT AT 212 POPLAR AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO BARBARA A. JONES, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO JOIN ADDITIONAL PLAINTIFFS/DEFENDANTS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER / NEVLING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100096
NO: 04-1764-CD
SERVICE # 3 OF 4
COMPLAINT TO JOIN ADDITIONAL

PLAINTIFFS/DEFENDANTS

PLAINTIFF: SWISHER CONTRACTING INC

vs.

DEFENDANT: KENNETH K. RISHEL AND SONS INC

-VS-MICHAEL A. CIMINO, BARBARA A. JONES, DIANE C. CADDY and TINA M. DICK, ADDL. DEFTS

SHERIFF RETURN

NOW, January 17, 2005 AT 9:15 AM SERVED THE WITHIN COMPLAINT TO JOIN ADDITIONAL PLAINTIFFS/DEFENDANTS ON DIANE C. CADDY DEFENDANT AT 511 E. 5TH ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO ANGELA CADDY, DAUGHTER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO JOIN ADDITIONAL PLAINTIFFS/DEFENDANTS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER / NEVLING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100096
NO. 04-1764-CD
SERVICE # 4 OF 4
COMPLAINT TO JOIN ADDITIONAL

PLAINTIFFS/DEFENDANTS

PLAINTIFF: SWISHER CONTRACTING INC

VS.

DEFENDANT: KENNETH K. RISHEL AND SONS INC

-VS-MICHAEL A. CIMINO, BARBARA A. JONES, DIANE C. CADDY and TINA M. DICK, ADDL. DEFTS

SHERIFF RETURN

NOW, January 18, 2005 SERVED THE WITHIN COMPLAINT TO JOIN ADDITIONAL PLAINTIFFS/DEFENDANTS ON TINA M. DICK DEFENDANT AT 203 SPRING HILL CIRCLE, OAKLAND, MD., 21550 BY CERTIFIED MAIL # 7002 3150 0000 7854 6518. THE RETURN RECEIPT IS HERETO ATTACHED ENDORSED BY ALYSSA DICK.

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	KESNER	3623	40.00
SHERIFF HAWKINS	KESNER	3623	47.02

Sworn to Before Me This

____ Day of _____ 2005

So Answers,



Chester A. Hawkins
Sheriff

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TINA M. DICK
203 Spring Hill Circle
Oakland, MD. 21550

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

Tina M. Dick Agent
 A. Dick Addressee

B. Received by (Printed Name)

A. Dick **C. Date of Delivery**
7/18/05

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes**2. Article Number**

(Transfer from service label)

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

CHESTER A. HAWKINS
SHERIFF OF CLEARFIELD COUNTY
1 N. 2nd St. Suite 116
CLEARFIELD, PA. 16830

100096

02



U.S. POSTAL SERVICE
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

 OFFICIAL USE

7854	6518	Postage	\$ 10.60	0830
0000	0000	Certified Fee	\$2.30	07 Postmark Here
0000	0000	Return Receipt Fee (Endorsement Required)	\$1.75	
0000	0000	Restricted Delivery Fee (Endorsement Required)	\$0.00	
3150	2002	Total Postage & Fees	\$ 4.65	01/12/2005

Sent To
TINA M. DICK
Street, Apt. No.,
or PO Box No. 203 Spring Hill Circle
City, State, ZIP+4
Oakland, MD. 21550

PS Form 3800, June 2002

See Reverse for Instructions

Certified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

PS Form 3800, June 2002 (Reversal)

Important Reminders:

- Certified Mail may **ONLY** be combined with First-Class Mail® or Priority Mail®.
- Certified Mail is *not* available for any class of international mail.
- **NO INSURANCE COVERAGE IS PROVIDED** with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

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

100096

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

*
SWISHER CONTRACTING, INC., *
Plaintiff *
* No. 2004-1764 -CD
*
VS *
*
*
*
*
*
KENNETH J. RISHEL and SONS *
INC., *
Defendant *
* Type of Pleading: Notice to Plead/
* Certificate of Service
*
* Filed on Behalf of: Plaintiff
*
*
*
* Counsel of Record for this Party:
* CHRIS A. PENTZ, Esquire
*
* Supreme Court I.D. # 39232
* 207 East Market Street
* P. O. Box 552
* Clearfield PA 16830
* 814 765-4000
*
*

FILED NO
6P 010-5001 CC
FEB 24 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

SWISHER CONTRACTING, INC., *
Plaintiff

* No. 2004 - 1764 - C.D.

vs

KENNETH J. RISHEL AND SONS,
INC., *

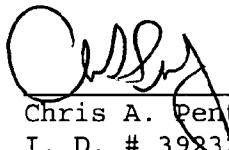
Defendant

*

TO: Kenneth J. Rishel and Sons, Inc.

c/o Kim Kesner, Esquire

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



Chris A. Pentz, Esquire
I. D. # 39832
Attorney for Plaintiff
Swisher Contracting, Inc.

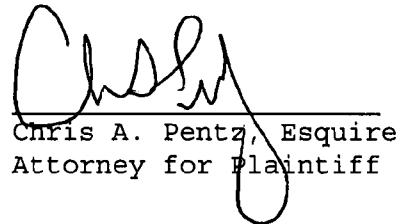
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SWISHER CONTRACTING, INC., *
Plaintiff *
*
vs * No. 2004-1764-C.D.
*
KENNETH J. RISHEL AND SONS *
INC., *
Defendant *

CERTIFICATE OF SERVICE

This is to certify that on the 24 day of February
2005, the undersigned served a true and correct copy of the
Notice to Plead upon counsel for the Defendant. Such document
was personally served upon:

Attorney Kim Kesner
23 North Second Street
Clearfield PA 16830


Chris A. Pentz, Esquire
Attorney for Plaintiff

CLEARFIELD, PENNSYLVANIA 16880
207 East Market Street P. O. Box 552
ATTORNEY AT LAW
CHRIS A. PENNZ

— Fold Here —

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SWISHER CONTRACTING, INC.,
Plaintiff

Vs.

KENNETH K. RISHEL AND SONS,
INC.,
Defendant

Vs.

MICHAEL A. CIMINO, BARBARA A.
JONES, DIANE C. CADDY and TINA
M. DICK,
Additional Defendants

CIVIL DIVISION

No. 04 -1764 - CD

MICHAEL A. CIMINO ANSWER TO
COMPLAINT OF KENNETH K. RISHEL
AND SONS, INC. JOINING MICHAEL
A. CIMINO AS AN ADDITIONAL
DEFENDANT

Filed on Behalf of:

Additional Defendant, MICHAEL
A. CIMINO

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED
01/21/2005
MAR 03 2005
2nd Atty

William A. Shaw
Prothonotary/Clerk of Courts

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

SWISHER CONTRACTING, INC., :
Plaintiff :
:
vs. : No. 2004 - 1764 - CD
:
KENNETH K. RISHEL AND SONS, INC., :
Defendant :
:
vs. :
:
MICHAEL A. CIMINO, BARBARA A. :
JONES, DIANE C. CADDY and TINA :
M. DICK, :
Additional Defendants:

MICHAEL A. CIMINO ANSWER TO COMPLAINT
OF KENNETH K. RISHEL AND SONS, INC. JOINING
MICHAEL A. CIMINO AS AN ADDITIONAL DEFENDANT

Michael A. Cimino, through his Attorney, Joseph Colavecchi,
Esquire, files his Answer to the Complaint of Kenneth K. Rishel and
Sons, Inc. joining Michael A. Cimino as an Additional Defendant,
and respectfully avers as follows:

1. This does not require an answer.
2. This is a statement of the law and does not require an answer.

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

3. Denied. The Option Agreement speaks for itself. The option was never exercised and in any event, would not convey a fee simple interest since it specifically provided that the so-called Option Agreement could be canceled at any time by Kenneth K. Rishel and Sons, Inc. by a thirty (30) day written notice.

It is further alleged on information and belief that mining operations were not commenced on this property by September 14, 2002.

4. It is denied that Michael A. Cimino has any interest in this property. Said interest was conveyed to his daughters, Barbara A. Jones, Diane C. Caddy and Tina M. Dick by deed dated March 21, 2003, recorded at Clearfield as Instrument Number 200304498.

5. Denied for the reasons as set out above.

WHEREFORE, Michael A. Cimino demands that the Complaint of Defendant, Kenneth J. Rishel and Sons, Inc., against Michael A. Cimino as Additional Defendant, be dismissed and that judgment be entered in favor of Michael A. Cimino together with costs.

Respectfully submitted:



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Michael A. Cimino
221 East Market Street
Clearfield, PA 16830

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

I verify that the statements made in this Answer by Michael A. Cimino to the Complaint of Kenneth K. Rishel and Sons, Inc. Joining Michael A. Cimino as an Additional Defendant are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Michael A. Cimino
MICHAEL A. CIMINO

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

SWISHER CONTRACTING, INC.,	:	
	Plaintiff	:
vs.		: No. 2004 - 1764 - CD
		:
KENNETH K. RISHEL AND SONS, INC.	:	
	Defendant	:
vs.		:
		:
MICHAEL A. CIMINO, BARBARA A.	:	
JONES, DIANE C. CADDY and TINA	:	
M. DICK,	:	
	Additional Defendants	:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 3, 2005, a true and correct copy of an Answer by Michael A. Cimino to Complaint of Kenneth K. Rishel and Sons, Inc. Joining Michael A. Cimino as an Additional Defendant in the above matter was served on the following by depositing said copy in the United States Mail, first class, postage prepaid and addressed as follows:

Kim C. Kesner
Attorney at Law
23 North Second Street
Clearfield, PA 16830

Chris A. Pentz
Attorney at Law
P.O. Box 552
Clearfield, PA 16830

Gary Knaresboro
Attorney at Law
33 Beaver Drive, Suite 2
DuBois, PA 15801

DATE: 3/3/05

BY: Joseph Colavecchi
JOSEPH COLAVECCHI, ESQUIRE
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

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

RECEIVED
01/06/2005 4cc
MAR 1 2005
AttyKesner

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff :

vs. :

KENNETH K. RISHEL AND SONS, INC. :
Defendant :

vs. :

MICHAEL A. CIMINO, BARBARA A. JONES:
DIANE C. CADDY and TINA M. DICK, :
Additional Plaintiffs/Defendants :

**DEFENDANT RISHEL'S REPLY TO PLAINTIFF
SWISHER'S NEW MATTER TO COUNTERCLAIM**

AND NOW COMES, the Defendant Kenneth K. Rishel and Sons, Inc., by its counsel Kim C. Kesner, Esquire and files the following Reply to Plaintiff Swisher Contracting, Inc.'s New Matter to Counterclaim:

21. The averments contained in Paragraph 21 of Plaintiffs New Matter to Counterclaim require no response. To the extent that they require a response and are relevant, Defendant Rishel incorporates herein by reference its Answer, New Matter and Counterclaim to Plaintiff's Complaint for Declaratory Judgment as if set forth verbatim.

22. It is specifically denied that Plaintiff was unaware of Defendant Rishel's Article of Agreement annexed to Defendant's Answer, New Matter and Counterclaim as Exhibit "D-1". To the contrary, Plaintiff had actual and constructive knowledge that Defendant Rishel had an agreement to mine the property being the subject matter of this action. Plaintiff had actual and constructive knowledge of Defendant Rishel's agreement to mine from multiple sources including by way of illustration but not limitation, Defendant Rishel's Contractual Consent of Landowner (Supplement C) executed by Michael A. Cimino on March 13, 2001 and recorded on March 13, 2001 in the Office of the Recorder of Deeds of Clearfield County at Instrument

Number 200103599; execution by Leonard Swisher, Sr. on January 27, 2004 of a Consent to Defendant Rishel to use Plaintiff's pre-blast surveys associated with its Mt. Zion surface mine project for Defendant Rishel's Cimino job; public advertisements regarding Defendant Rishel's Surface Mining Permit appearing in August and September of 2002 and December of 2003 and multiple discussions between Defendant Rishel, its agents and employees and Plaintiff, its agents and employees.

23. It is admitted that Exhibit "D-1" to Defendant Rishel's Answer, New Matter and Counterclaim is not recorded. However, it is customary in the industry for such documents not to be recorded as evidenced by the fact that none of Plaintiff's documents annexed to its pleadings have been recorded.

24. Defendant Rishel is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 24 and therefore strict proof is demanded. By way of further answer, any amounts expended by Plaintiff in the face of Defendant Rishel's clear rights were at Plaintiff's risk and are irrelevant to an adjudication of Defendant Rishel's Counterclaim.

WHEREFORE, Defendant respectfully requests this Honorable Court to enter a judgment declaring that it is the owner of fee simple title in and to the mineral estate of the Subject Realty including the coal and mining rights free and clear of the claims of Plaintiff under or by virtue of the lease agreements attached to Plaintiff's Complaint as Exhibits "B" as well as any adverse claims by Michael A. Cimino, Barbara A. Jones, Diane C. Caddy and Tina M. Dick.

Respectfully submitted,



Kim C. Kesner, Esquire
Attorney for Defendant

VERIFICATION

I, Kenneth K. Rishel, verify that the statements made in this Reply to Plaintiff's New Matter to Counterclaim are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

Date: 3-10-05



Kenneth K. Rishel

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff

vs.

KENNETH K. RISHEL AND SONS, INC. :
Defendant

vs.

MICHAEL A. CIMINO, BARBARA A. JONES:
DIANE C. CADDY and TINA M. DICK,
Additional Plaintiffs/Defendants :

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 10th day of March, 2005, I caused to be served a true and correct, time stamped copy of the Defendant Rishel's Reply to Plaintiff Swisher Contracting, Inc.'s New Matter to Counterclaim, on the following by U.S. Regular Mail, postage prepaid:

Chris A. Pentz, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830
(*Attorney for Swisher Contracting, Inc.*)

Joseph Colavecchi, Esquire
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
(*Attorney for Michael A. Cimino*)

Gary Knaresboro, Esquire
33 Beaver Drive
DuBois, PA 15801
(*Attorney for Barbara A. Jones, Diane C. Caddy & Tina M. Dick*)

Date: 3/10/05



Kim C. Kesner, Esquire

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

SWISHER CONTRACTING, INC.

Plaintiff

vs.

KENNETH K. RISHEL AND SONS, INC.

Defendant

vs.

MICHAEL A. CIMINO, BARBARA A.
JONES, DIANE C. CADDY and TINA M.
DICK,

Additional Plaintiffs/Defendants

: No. 2004-1764-CD

: Type of Pleading: Praecept for Trial
NONJURY

: Filed on Behalf of: Defendant

: Counsel of Record for this Party:
Kim C. Kesner, Esquire

: Supreme Ct. I.D. 28307

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

: Opposing Counsel of Record:

: Chris A. Pentz, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830
814-765-4000

: *Attorney for Swisher Contracting, Inc.*

: Gary Knaresboro, Esquire
33 Beaver Drive
DuBois, PA 15801
814-375-2311

: *Attorney for Barbara A. Jones, Diane C.
Caddy and Tina M. Dick*

: Joseph Colavecchi, Esquire
Colavecchi & Colavecchi
221 East Market Street
Clearfield, PA 16830
814-765-1566

: *Attorney for Michael A. Cimino*

FILED 6cc
01/21/2005 Amy
OCT 26 2005 Kesner

William A. Shaw
Prothonotary/Clerk of Courts

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff :
:
vs.
:
KENNETH K. RISHEL AND SONS, INC. :
Defendant :
:
vs.
:
MICHAEL A. CIMINO, BARBARA A. :
JONES, DIANE C. CADDY and TINA M. :
DICK, :
Additional Plaintiffs/Defendants :

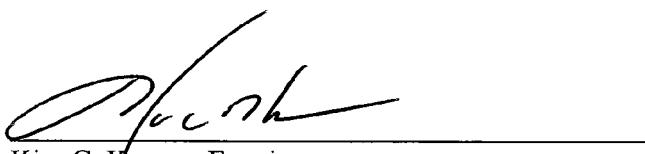
PRAECIPE FOR TRIAL

TO: WILLIAM A. SHAW, PROTHONOTARY

Please list the above-captioned matter for trial on the civil nonjury trial list.

I hereby certify that no motions are outstanding; that discovery has been completed; and/or I reasonably believe completion of remaining discovery will not obstruct proceedings in this case; and that the case is ready for trial. A Certificate of Readiness is attached hereto and is incorporated herein by reference.

I further certify that notice of this Praeclipe has been given to the attorneys of record representing the Defendants.



Kim C. Kesner, Esquire
Attorney for Defendant Kenneth K. Rishel and
Sons, Inc.

Dated: October 26, 2005

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

2004-1764-CD DATE PRESENTED 10/26/2005
CASE NUMBER TYPE TRIAL REQUESTED ESTIMATED TRIAL TIME

() Jury (xx) Non-Jury
Date Complaint () Arbitration 1 Days
Filed: November 5, 2004

PLAINTIFF(S)

Swisher Contracting, Inc. ()
DEFENDANT(S)

Kenneth J. Rishel and Sons, Inc. () a Minor is a Party to the Case
ADDITIONAL DEFENDANT(S)

ADDITIONAL DEFENDANT(S)

Michael A. Cimino, Barbara A. Jones, Diane C. Caddy ()
and Tina M. Dick

JURY DEMAND FILED BY: N/A

DATE JURY DEMAND FILED: N/A

AMOUNT AT ISSUE

CONSOLIDATION

DATE CONSOLIDATION ORDERED

more than

\$ () yes () no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel. /

Chris A. Bentz, Esquire, 207 E. Market St., P.O. Box 552, Clfd., PA 16830 814-765-4000
FOR THE PLAINTIFF **TELEPHONE NUMBER**

Kim C. Kesner, Esquire, 23 N. 2nd Street, Clearfield, PA 16830 814-765-1706
FOR THE DEFENDANT **TELEPHONE NUMBER**

Gary Knaresboro, Esq., 33 Beaver Drive, DuBois, PA, 15801 831-375-2311 (for Jones,
FOR ADDITIONAL DEFENDANT Caddy & Dick)
TELEPHONE NUMBER
Joseph Colavecchi, Esquire, 221 E. Market St., Clearfield, PA 16830 814-765-1566
(for Michael A. Cimino)

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 26th day of October, 2005, I caused to be served a true and correct copy of Defendant Rishel's Certification of Readiness and Praecipe For Trial on the following and in the manner indicated below:

BY PERSONAL SERVICE

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830

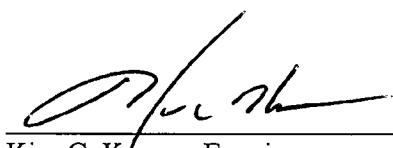
BY UNITED STATES MAIL, FIRST CLASS, POSTAGE PREPAID

Chris A. Pentz, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830
Attorney for Swisher Contracting, Inc.

Gary Knaresboro, Esquire
33 Beaver Drive
DuBois, PA 15801
Attorney for Barbara A. Jones
Diane C. Caddy and Tina M. Dick

Joseph Colavecchi, Esquire
Colavecchi & Colavecchi
221 East Market Street
Clearfield, PA 16830
Attorney for Michael A. Cimino

Date: October 26, 2005



Kim C. Kesner, Esquire
Attorney for Defendant Kenneth K. Rishel and
Sons, Inc.

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

SWISHER CONTRACTING, INC.,
Plaintiff

vs.

*

*

*

NO. 04-1764-CD

KENNETH K. RISHEL AND SONS, INC.,
Defendant

vs.

*

*

*

MICHAEL A. CIMINO, BARBARA A. JONES,
DIANE C. CADDY and TINA M. DICK,
Additional Defendants

*

*

*

ORDER

NOW, this 19th day of January, 2006, following pre-trial conference among the Court and counsel, it is the ORDER of this Court as follows:

1. Non-Jury Trial shall be held before the Court commencing at 9:00 a.m. on Tuesday, March 7, 2006 and Wednesday, March 8, 2006 in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

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JAN 20 2006

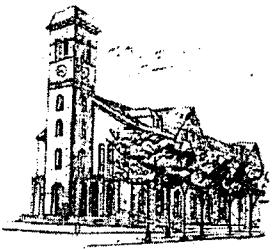
William A. Shaw
Prothonotary/Clerk of Courts

lcc:

Barbara Jones- 212 Poplar Ave, Clearfield, PA 16830

Diane C. Caddy- 511 E. Fifth St, Clearfield, PA 16830

Tina Dick- 203 Spring Hill Circle, Oakland, MD 21550



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 1/20/04

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:

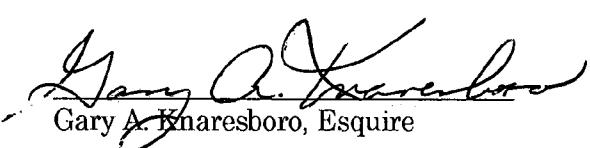
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SWISHER CONTRACTING, INC. :
Plaintiff :
:
vs. : NO. 04-1764-CD
:
KENNETH K. RISHEL AND SONS, INC. :
Defendant :
:
vs. :
:
MICHAEL A. CIMINO, BARBARA A. JONES, :
DIANE C. CADDY and TINA M. DICK, :
Additional Defendants :
:

PRAECIPE FOR ENTRY OF APPEARANCE

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly enter my appearance as counsel on behalf of Barbara A. Jones, Diane C. Caddy, and Tina M. Dick, Defendants in the above captioned matter. Direct all pleadings and matters concerning the Defendants to the undersigned.


Gary A. Knaresboro, Esquire

1-25-06

Date

FILED 3CC
m/12/32671 Atty Knaresboro
FEB 01 2006
Copy to cIA
William A. Shaw
Prothonotary/Clerk of Courts

Gary A. Thoresboro, Esquire

33 BEAVER DRIVE, SUITE 2

DUBOIS, PA 15801

TELEPHONE (814) 375-2311

FAX (814) 375-2314

FILED

FEB 01 2006

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff :
vs. : Type of Pleading: Motion for Continuance
of Trial
: :
KENNETH K. RISHEL AND SONS, INC. : Filed on Behalf of: Defendant
Defendant :
vs. : Counsel of Record for this Party:
: Kim C. Kesner, Esquire
MICHAEL A. CIMINO, BARBARA A. JONES: Supreme Ct. I.D. 28307
DIANE C. CADDY and TINA M. DICK, :
Additional Plaintiffs/Defendants : 23 North Second Street
: Clearfield, PA 16830
: 814-765-1706
: :
: Opposing Counsel of Record:
: :
: Chris A. Pentz, Esquire
: 207 East Market Street
: P.O. Box 552
: Clearfield, PA 16830
: 814-765-4000
: *Attorney for Swisher Contracting, Inc.*
: :
: Gary Knaresboro, Esquire
: 33 Beaver Drive
: DuBois, PA 15801
: 814-375-2311
: *Attorney for Barbara A. Jones, Diane C.*
: *Caddy and Tina M. Dick*
: :
: Joseph Colavecchi, Esquire
: Colavecchi & Colavecchi
: 221 East Market Street
: Clearfield, PA 16830
: 814-765-1566
: *Attorney for Michael A. Cimino*
: :
: :

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01945 PM AMY
MAR 03 2006 Kesner

William A. Shaw
Prothonotary/Clerk of Courts

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

SWISHER CONTRACTING, INC.	:	No. 2004-1764-CD
Plaintiff	:	
vs.	:	
KENNETH K. RISHEL AND SONS, INC.	:	
Defendant	:	
vs.	:	
MICHAEL A. CIMINO, BARBARA A. JONES:	:	
DIANE C. CADDY and TINA M. DICK,	:	
Additional Plaintiffs/Defendants	:	

MOTION FOR CONTINUANCE OF TRIAL

AND NOW COMES, Defendant Kenneth K. Rishel and Sons, Inc. by its Counsel, Kim C. Kesner, Esquire and in support of this Motion for Continuance of Trial avers:

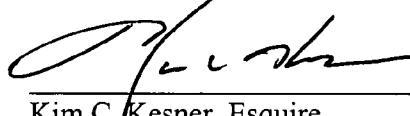
1. Kenneth K. Rishel is President and the owner of Defendant Kenneth K. Rishel and Sons, Inc. and is a necessary trial witness in this matter which is scheduled for trial on Tuesday, March 7 and Wednesday, March 8, 2006.
2. Kenneth K. Rishel has been suffering with heart problems and Stage IV lung cancer.
3. He was hospitalized at the DuBois Regional Medical Center when his condition deteriorated until he was life-flighted on Tuesday, February 28, 2006 to Shadyside Hospital in Pittsburgh. He was life-flighted because a tumor was constricting his blood flow.
4. He has been in an induced coma on life support since arriving at Shadyside Hospital.
5. His son, James Rishel, an employee of Defendant Kenneth K. Rishel and Sons, Inc. and another necessary trial witness is in Pittsburgh with his father and plans to remain until his father is brought out of the coma and his condition is stabilized. Kenneth K. Rishel's

physicians have provided no prognosis, but it is clear that his situation is dire and his condition may not stabilize.

6. If Kenneth K. Rishel remains unavailable, James Rishel can provide sufficient testimony to support Defendant's position(s) at trial. However, at this juncture, given Kenneth K. Rishel's condition and James Rishel's relative inability to insure his availability on March 7 and 8, 2006, the grant of an indefinite continuance for trial is warranted.

WHEREFORE, the undersigned counsel on behalf of the Defendant respectfully requests a continuance of the non-jury trial scheduled for Tuesday, March 7 and Wednesday, March 8, 2006.

Respectfully submitted,

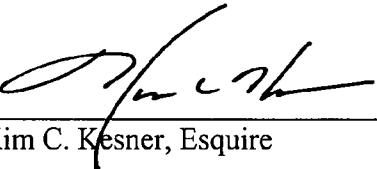


Kim C. Kesner, Esquire
Attorney for Defendant Kenneth K. Rishel
and Sons, Inc.

VERIFICATION

The undersigned verifies that he is the attorney for Kenneth K. Rishel and Sons, Inc., Defendant, named in the within action, that as such attorney he is authorized to make this verification, and that the statements made in the foregoing Motion for Continuance of Trial are true and correct, not from his own knowledge, but from the information supplied to him by James Rishel at 3:30 p.m. on Thursday, March 2, 2006, and believed to be true, and that this Verification is filed by him for the purposes of expediting this litigation, and in the event a Verification from Defendant Kenneth K. Rishel and Sons, Inc., is required, same will be supplied. The undersigned understands that false statements made herein are subject to the penalties of 18 PA. C.S. 4904 relating to unsworn falsification to authorities.

Date: 3/3/06



Kim C. Kesner, Esquire

CERTIFICATE OF SERVICE

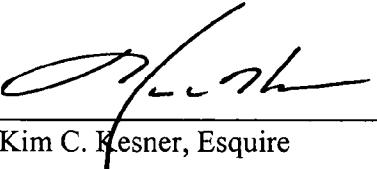
AND NOW, I do hereby certify that on the 3rd day of March, 2006, I caused to be served a true and correct copy of the Motion for Continuance of Trial on the following by facsimile and by U.S. Regular Mail, postage prepaid:

Chris A. Pentz, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830
Attorney for Swisher Contracting, Inc.

Joseph Colavecchi, Esquire
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
Attorney for Michael A. Cimino

Gary Knaresboro, Esquire
33 Beaver Drive
DuBois, PA 15801
Attorney for Barbara A. Jones, Diane C. Caddy & Tina M. Dick

Date: 3/3/06



Kim C. Kesner, Esquire

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff : Type of Pleading: ORDER
vs. : Filed on Behalf of: Defendant
KENNETH K. RISHEL AND SONS, INC. : Counsel of Record for this Party:
Defendant : Kim C. Kesner, Esquire
Supreme Ct. I.D. 28307
vs. : Additional Plaintiffs/Defendants : 23 North Second Street
MICHAEL A. CIMINO, BARBARA A. JONES: Clearfield, PA 16830
DIANE C. CADDY and TINA M. DICK, : 814-765-1706
: Opposing Counsel of Record:
: Chris A. Pentz, Esquire
: 207 East Market Street
: P.O. Box 552
: Clearfield, PA 16830
: 814-765-4000
: *Attorney for Swisher Contracting, Inc.*
: Gary Knaresboro, Esquire
: 33 Beaver Drive
: DuBois, PA 15801
: 814-375-2311
: *Attorney for Barbara A. Jones, Diane C.*
: *Caddy and Tina M. Dick*
: Joseph Colavecchi, Esquire
: Colavecchi & Colavecchi
: 221 East Market Street
: Clearfield, PA 16830
: 814-765-1566
: *Attorney for Michael A. Cimino*
: FILED 4/14/2004 10:45 AM
: CLERK'S OFFICE, CLEARFIELD COUNTY COURT

FILED
018:51251
MAR 06 2006 4cc
Amy Kosner
(will serve)

William A. Shaw
Prothonotary/Clerk of Courts

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff :

vs. :

KENNETH K. RISHEL AND SONS, INC. :
Defendant :

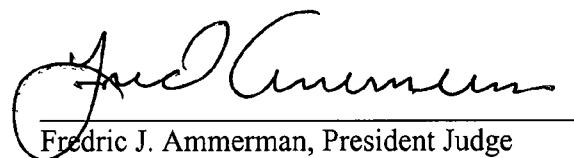
vs. :

MICHAEL A. CIMINO, BARBARA A. JONES:
DIANE C. CADDY and TINA M. DICK, :
Additional Plaintiffs/Defendants :

ORDER

AND NOW, this 3rd day of March, 2006, upon consideration of Defendant Kenneth K. Rishel and Sons, Inc.'s Motion for Continuance of Trial, the Motion is hereby GRANTED.

BY THE COURT:



Fredric J. Ammerman, President Judge

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 2004-1764-CD

SWISHER CONTRACTING, INC.,

Plaintiff

vs.
KENNETH K. RISHEL AND SONS, INC.,

Defendant

vs.
MICHAEL A. CIMINO, BARBARA A.
JONES, DIANE C. CADDY AND TINA
M. DICK,
ADDITIONAL Plaintiffs/Defendants

ORDER

FILED
MAR 06 2006

William A. Shaw,
Prothonotary/Clerk of Courts

KIM C. KESNER
ATTORNEY AT LAW
23 North Second Street
CLEARFIELD, Pa. 16830
(814) 765-1706

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

SWISHER CONTRACTING, INC. :
vs. : No. 04-1764-CD
KENNETH K. RISHEL AND SONS, INC., :
vs. :
MICHAEL A. CIMINO, BARBARA A. :
JONES, DIANE C. CADDY and :
TINA M. DICK :
:

ORDER

AND NOW, this 29th day of March, 2006, it is the ORDER of the Court that Civil Non-Jury Trial in the above-captioned matter has been scheduled for Tuesday, August 22, 2006 and Wednesday, August 23, 2006 commencing at 9:00 A.M. each day in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA. One and one-half (1 1/2) days has been allotted for this trial.

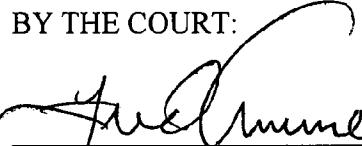
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William A. Shaw
Prothonotary/Clerk of Courts

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BY THE COURT:


FREDRIC J. AMMERMAN
President Judge



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 3-29-06

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
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SWISHER CONTRACTING, INC.

Plaintiff

vs.

KENNETH K. RISHEL AND SONS, INC.

Defendant

vs.

MICHAEL A. CIMINO, BARBARA A. JONES:

DIANE C. CADDY and TINA M. DICK,

Additional Plaintiffs/Defendants

: No. 2004-1764-CD

: Type of Pleading: Order

: Filed on Behalf of: Defendant

: Counsel of Record for this Party:

: Kim C. Kesner, Esquire

: Supreme Ct. I.D. 28307

: 23 North Second Street

: Clearfield, PA 16830

: 814-765-1706

: Opposing Counsel of Record:

: Chris A. Pentz, Esquire

: 207 East Market Street

: P.O. Box 552

: Clearfield, PA 16830

: 814-765-4000

: *Attorney for Swisher Contracting, Inc.*

: Gary Knaresboro, Esquire

: 33 Beaver Drive

: DuBois, PA 15801

: 814-375-2311

: *Attorney for Barbara A. Jones, Diane C. Caddy and Tina M. Dick*

: Joseph Colavecchi, Esquire

: Colavecchi & Colavecchi

: 221 East Market Street

: Clearfield, PA 16830

: 814-765-1566

: *Attorney for Michael A. Cimino*

FILED

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William A. Shaw
Prothonotary/Clerk of Courts

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff :
vs. :
KENNETH K. RISHEL AND SONS, INC. :
Defendant :
vs. :
MICHAEL A. CIMINO, BARBARA A. JONES:
DIANE C. CADDY and TINA M. DICK, :
Additional Plaintiffs/Defendants :

ORDER

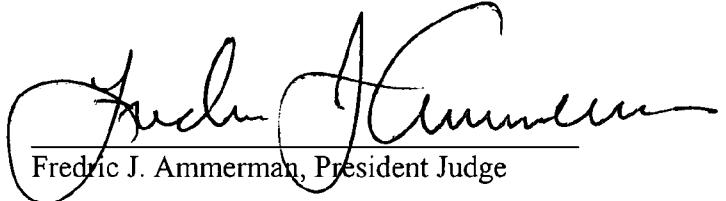
AND NOW, this 22nd day of August, 2006, this being the date scheduled for non-jury trial in this Declaratory Judgment action, Attorney for Plaintiff having informed this Court on August 21, 2006 that Plaintiff wishes to withdraw its Complaint as well as its defenses to the Counterclaim filed by Defendant Kenneth K. Rishel and Sons, Inc., and Additional Plaintiffs/Defendants, Michael A. Cimino, Barbara A. Jones, Diane C. Caddy and Tina M. Dick having appeared and consented to the entry of the following Order in lieu of trial, it is hereby ORDERED and DECREED:

1. Plaintiff's withdrawal of its Complaint and its defenses to the Counterclaim of Defendant Kenneth K. Rishel and Sons, Inc. is hereby permitted and approved.
2. It is hereby declared that Plaintiff Swisher Contracting, Inc. has no right, title, claim or interest in or to the coal to that parcel being the subject matter of its Complaint and/or Plaintiff Swisher Contracting, Inc. waives and releases any rights it has to the coal or mining rights under any leases or agreements with Additional Plaintiffs/Defendants and/or any competing right, title claim or interest to that of Defendant Kenneth K. Rishel and Sons, Inc. which Rishel has under that

Agreement dated June 14, 2002 between Michael A. Cimino and Defendant Kenneth K. Rishel and Sons, Inc. and/or any defenses to the rights, title, claim or interest of Defendant Kenneth K. Rishel and Sons, Inc. in and to the coal in and to that parcel in Lawrence Township described in that Deed from Michael Cimino to Diane Caddy, Barbara Jones and Tina Dick dated March 21, 2003 recorded in the Office of the Recorder of Deeds of Clearfield County at Instrument Number 200304498.

3. It is hereby declared that the rights, title, claims and interests of Defendant Kenneth K. Rishel and Sons, Inc. from or by the Agreement dated June 14, 2006 between Michael A. Cimino and Defendant K. Rishel and Sons, Inc. are free and clear of any rights, title, claims or interest of Plaintiff Swisher Contracting, Inc. A copy of this Agreement is annexed hereto as Exhibit "A".
4. It is hereby declared that the Agreement dated June 14, 2002 between Michael A. Cimino and Defendant Kenneth K. Rishel and Sons, Inc. is existing, in effect and binding by its terms as modified below.
5. As a part of the disposition of this matter, Defendant Kenneth K. Rishel and Sons, Inc. and Additional Plaintiffs/Defendants, Barbara A. Jones, Diane C. Caddy and Tina M. Dick agree that Paragraph 2 of the Agreement dated June 14, 2002 be amended and modified to provide that eight (8%) percent of the selling price per ton of 2000 pounds of coal mined from the premises be paid. Also, Defendant Kenneth K. Rishel and Sons, Inc. shall pay minimum royalties of Five Hundred (\$500.00) Dollars per calendar month by the fifth (5th) day of each month commencing October 2006 and continuing until tonnage royalties are payable, with the right to take a credit against such minimums.
6. It is also agreed that Defendant Kenneth K. Rishel and Sons, Inc. shall pay Additional Plaintiffs the sum of One Thousand Two Hundred Seventy-two and 80/100 (\$1,272.80) Dollars within two (2) weeks hereof which shall be final payment for unpaid tonnage royalties for prior mining by Defendant Rishel on the premises.
7. Additional Plaintiffs/Defendants shall cooperate with Defendant Rishel to obtain authority to mine the premises from the Pennsylvania Department of Environmental Protection at the earliest possible date.

BY THE COURT:



Fredric J. Ammerman, President Judge

OPTION AND LEASE AGREEMENT

THIS ARTICLE OF AGREEMENT made and concluded this 14th day of JUNE, 2002,
between Michael A. Cimino,
and Kenneth K. Rishel & Sons

part of the first part, hereinafter designated as lessor, and Kenneth K. Rishel & Sons
part of the second part, hereinafter designated as lessee, witnesseth:

1. In consideration of the sum of 100.00 in hand paid, receipt whereof is hereby acknowledged, Lessor
hereby leases, lets, and demises unto Lessee, ALL of the (0.01) seam or vein of coal in, under and upon all that certain place, parcel or tract of land situated in LAWRENCE
Township, PA, County, Pennsylvania, bounded and described as follows:
Former Edger, Property former Ludwig Property, owned by
Williams, Ed Charlie Rishel, Twp 1st, 6th Tract

containing 3.5157 acres, more or less.

TOGETHER with all the mining rights and easements owned by Lessor and appurtenant to the coal and land herein
described, including the right of ingress, egress, and regress, in, to and upon said land for the purpose of exploring for and of
mining, manufacturing, testing and preparing said coal for market, to build roads, railroads and tram roads, to build buildings,
tipples and chutes, to deposit waste material and refuse on the surface of the land, to build wire and pipe lines, to drain water
upon the surface by any means, to transport coal from other properties through or over this premises, and to do all things necessary,
usual and proper in connection with said operations, and Lessor hereby waives all right to surface support, both laterally and
subjacent, and releases all liability for damage to buildings and objects thereon and waters therein and thereom. Said coal may
be removed by any mechanical process either by auger mining, drift mining or stripping process or any other method and all of
the usual rights and privileges are hereby granted in connection therewith including the right to tear up the surface and the
removal and redeposit of all strata and other objects and materials including the removal of trees overlying said coal, to be
exercised without further cost or liability for the damage caused thereby.

ALSO TOGETHER WITH

EXCEPTING AND RESERVING

2. Lessee covenants and agrees to pay to lessor the sum of 11.05 cents per ton of 2,000
pounds for all mineable, merchantable and marketable coal mined and removed from said premises. Settlements to be made on
the twenty-fifth day of each month for all such coal mined and removed from the premises during the preceding calendar month
and all settlements shall be based upon the weights by which the coal is marketed. It is further understood and agreed that

3. Lessee covenants and agrees to commence mining operations upon said premises within 90 days
from the effective date of this lease and in event of failure so to commence mining operations agrees to pay lessor as a minimum
royalty the sum or price of 4,000.00 ONE THOUSAND DOLLARS X.6 per year, payable quarterly in advance with the right to take a credit against said minimum. Said minimum shall also be full con-
sideration for any delay in working or removing the coal.

4. Lessee agrees that all mining operations shall be conducted in accordance with the laws of Pennsylvania and modern
mining methods prevailing in the industry. It is also understood that Lessor shall have access to the operations and scale
records of Lessee at all reasonable times in person or by duly authorized agent.

5. This lease shall continue until all of the mineable and merchantable coal has been exhausted from the premises. Lessee
may remove all equipment, buildings and machinery from the premises at the end of the term provided no royalty is then due.

6. This article of agreement shall constitute and be construed an option granted by Lessor to Lessee so that Lessee may elect
to accept or reject it at any time during days from the date hereof. Upon acceptance of this instrument
shall become immediately effective in all its terms as a lease of the coal in place. During the option period Lessee may go upon
the premises for the purpose of surveying, drilling, digging, exploring, testing, taking samples, and otherwise examining said coal,
without liability for the damage, caused thereby or for the coal taken in such explorations. Lessee may exercise this option by
notifying Lessor in writing of its elections to do so within the option period aforesaid.

7. It is understood and agreed that in the event that Lessee should default in any payment provided for herein and remain
in such default for a period of ninety days from the date when said payment becomes due, or should Lessee be in default in any
other respect and continue in such default for a period of ninety days after being notified in writing of such default by Lessor,
then, in either event, at the option of Lessor, this lease shall cease and terminate and Lessee hereby authorizes any attorney of
any Court of Record to appear for it and in its name to confess a judgment against it in an amicable action of election to the end
that a writ of habeere facias possessionem may issue forthwith for the delivery of possession to Lessor, together with clause of fieri
facias for rent in arrears and costs.

8. It is further understood and agreed that Lessee has the right to cancel this lease at any time by giving a thirty (30) day
written notice.

9. It is mutually understood and agreed that the rights, duties and obligations created hereby shall extend to and be binding upon the parties, their heirs, executors, administrators and assigns, and that the singular herein shall include the plural.

10. Lessor hereby warrants generally the title to said coal, surface and mining rights herein designated and this lease shall be free and clear of all encumbrances except those for which waiver and consent hereto is obtained and Lessee may in all cases apply royalty payments to the satisfaction of such encumbrances as may be found to exist.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and caused this article of agreement to be duly executed by their officers, the day and year aforesaid.

Witness:

Michael A. Cimino

John R. Miller

John A. Miller (Seal)

Michael A. Cimino (Seal)

(Seal)

(Seal)

(Seal)

(Seal)

STATE OF PENNSYLVANIA

COUNTY OF

ss:

2002

On this, the day of 1968; before me known to me (or satisfactorily the undersigned officer, personally appeared known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Title of Officer

My Commission Expires

INFORMATION

Grantors:
Name:

Marital Status

Age

Address

Michael Cimino

Divorced

69

11424 St. Christopher Rd 16130

LAND

Acquired from *Freida Ludwig*.

By deed, will or inheritance

Date Acquired *December 2000*

Is deed recorded

To whom assesseed

Deed Book

Page

144-145 C 12000

Who owns surface *Michael Cimino*

Who occupies surface *Michael Cimino*

NOTE: Give all further information about the title and property. If acquired by inheritance, give full information as to date of death, names of children alive at date of death of intestate, names of children deceased at date of death of intestate who were survived by children, and names of all heirs alive today:

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff : Type of Pleading: Certificate of Service
vs. :
KENNETH K. RISHEL AND SONS, INC. : Filed on Behalf of: Defendant
Defendant :
vs. : Counsel of Record for this Party:
MICHAEL A. CIMINO, BARBARA A. JONES: Kim C. Kesner, Esquire
DIANE C. CADDY and TINA M. DICK, : Supreme Ct. I.D. 28307
Additional Plaintiffs/Defendants : 23 North Second Street
: Clearfield, PA 16830
: 814-765-1706
: Opposing Counsel of Record:
: Chris A. Pentz, Esquire
: 207 East Market Street
: P.O. Box 552
: Clearfield, PA 16830
: 814-765-4000
: *Attorney for Swisher Contracting, Inc.*
: Gary Knaresboro, Esquire
: 33 Beaver Drive
: DuBois, PA 15801
: 814-375-2311
: *Attorney for Barbara A. Jones, Diane C.*
: *Caddy and Tina M. Dick*
: Joseph Colavecchi, Esquire
: Colavecchi & Colavecchi
: 221 East Market Street
: Clearfield, PA 16830
: 814-765-1566
: *Attorney for Michael A. Cimino*

FILED
0 11:59 a.m. 6K
AUG 22 2006 1cc-to AMY

William A. Shaw
Prothonotary/Clerk of Courts

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

SWISHER CONTRACTING, INC. : No. 2004-1764-CD
Plaintiff :
:
vs. :
:
KENNETH K. RISHEL AND SONS, INC. :
Defendant :
:
vs. :
:
MICHAEL A. CIMINO, BARBARA A. JONES:
DIANE C. CADDY and TINA M. DICK, :
Additional Plaintiffs/Defendants :

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 22nd day of August, 2006, I caused to be served a true and correct copy of the Order of Court on the following by personal service:

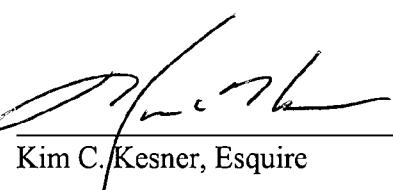
Chris A. Pentz, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830
Attorney for Swisher Contracting, Inc.

Joseph Colavecchi, Esquire
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
Attorney for Michael A. Cimino

And upon the following by U.S. Regular Mail, postage prepaid:

Gary Knaresboro, Esquire
33 Beaver Drive
DuBois, PA 15801
Attorney for Barbara A. Jones, Diane C. Caddy & Tina M. Dick

Date: 8-22-06


Kim C. Kesner, Esquire