

04-2002-CD  
KENNETH B. PRISK vs. DONALD G. PRISK, Etal.

**Kenneth Prisk vs Donald Prisk et al**  
**2004-2002-CD**

Current Judge: Fredric Joseph Ammerman

Kenneth B. Prisk vs. Donald G. Prisk, George L. Prisk

## Civil Other

Date	Judge
12/20/2004 ✓ X New Case Filed.	No Judge
	No Judge
12/22/2004 ✓ X Scheduling Order: AND NOW, this 21st day of December, 2004, upon consideration of the plaintiff's Complaints filed by Chris A. Pentz, attorney for Plaintiff, a hearing is hereby scheduled for the 7th day of Feb., 2005, at 9:00 a.m. in Court Room no. 1 of the Clfd. Co. Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, Judge. 2CC Atty Pentz	Fredric Joseph Ammerman
01/12/2005 ✓ X Praeclipe For Entry of Appearance, filed, enter appearance on behalf of Donald G. Prisk and George L. Prisk, Defendants. Filed by s/ John Sughrue. 3CC Atty Sughrue	Fredric Joseph Ammerman
✓ X Acceptance of Service of Complaint, signed by Donald G. Prisk, and George L. Prisk, Defendants. Filed by s/ John Sughrue, Esquire. 2CC Atty Sughrue	Fredric Joseph Ammerman
01/28/2005 ✓ X Preliminary Objections filed by Atty. Sughrue. 2 CC to Atty.	Fredric Joseph Ammerman
02/01/2005 ✓ X Scheduling Motion, filed by s/ John Sughrue, Esquire. 1CC Atty Sughrue	Fredric Joseph Ammerman
02/02/2005 ✓ X Petition to Allocate Coal Royalties filed by Atty. Pentz. 1 CC to Atty.	Fredric Joseph Ammerman
✓ X Praeclipe To Enter Judgment By Default, filed by s/ Chris A. Pentz, Esquire. 1CC to Atty	Fredric Joseph Ammerman
02/04/2005 ✓ X Rule to Show Cause Why Petition to Allocate Coal Royalties Should Not Be Granted, AND NOW, this 4th day of February, 2005, Rule issued. Rule returnable the 24 day of April, 2005, for a written response. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney Pentz	Fredric Joseph Ammerman
02/17/2005 ✓ X Scheduling Order, AND NOW, this 16th day of Feb., 2005, on Motion of defendants, Argument on Preliminary Objections filed by Defendants shall be heard on the 9th day of March, 2005 at 3:00 p.m. in Court Room 1. By the Court: /s/ Fredric J. Ammerman, Judge. 4CC Atty Sughrue	Fredric Joseph Ammerman
02/18/2005 ✓ X Certificate of Service, certified copy of Petition to Allocate Coal Royalties Inventory, upon Atty. John Sughrue on the 11th day of Feb., 2005. Filed by s/ Chris A. Pentz, Esquire. No CC	Fredric Joseph Ammerman
03/14/2005 ✓ X Order, NOW, this 9th day of March, 2005, Preliminary Objection I and Preliminary Objection II are granted. Preliminary Objection III is hereby dismissed. BY THE COURT, /s/ Fredric J. Ammerman. 1CC Atty Sughrue, Pentz	Fredric Joseph Ammerman
03/28/2005 ✓ X First Amended Complaint, filed by s/ Chris A. Pentz, Esquire. 2CC To Atty	Fredric Joseph Ammerman
04/08/2005 ✓ X Certificate of Service, on the 29th of March 2005, 2 certified copies of the First Amended Complaint upon Attorney John Sughrue. Filed by s/ Chris A. Pentz, Esquire. no CC	Fredric Joseph Ammerman
04/22/2005 ✓ X Answer and New Matter to Petition to Allocate Coal Royalties, filed by s/ John Sughrue, Esquire. 3cc Atty Sughrue.	Fredric Joseph Ammerman
04/26/2005 ✓ X Answer and New Matter To First Amended Complaint, filed. By s/ John Sughrue. 5CC to Atty Sughrue	Fredric Joseph Ammerman

Date: 08/11/2005

Time: 08:50 AM

Page 2 of 2

**Clearfield County Court of Common Pleas**

**ROA Report**

**Case: 2004-02002-CD**

User: LBENDER

**Current Judge: Fredric Joseph Ammerman**

**Kenneth B. Prisk vs. Donald G. Prisk, George L. Prisk**

**Civil Other**

Date		Judge
06/06/2005	✓ Order, AND NOW, this 3rd day of June, 2005, it is the ORDER of the Court that hearing on Plaintiff's Petition to Allocate Coal Royalties has been scheduled for Friday, July 8, 2005 at 9:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pentz, Sughrue	Fredric Joseph Ammerman
06/27/2005	✓ Reply To New Matter, filed by s/ Chis A. Pentz, Esquire. No CC	Fredric Joseph Ammerman
06/28/2005	✓ Certificate of Service of correct copy of Reply to New Matter upon counsel for the defendants filed by s/ Chris A Pentz Esquire. NO cc	Fredric Joseph Ammerman
07/07/2005	✓ Motion for Continuance, filed by s/John Sughrue, Esq. One CC Attorney Sughrue	Fredric Joseph Ammerman
07/08/2005	✓ Order, this 7th day of July, 2005, upon consideration of Motion by Defense Counsel to continue hearing scheduled for July 8, 2005, it is Ordered that the hearing shall be re-scheduled to the 15th day of August, 2005 at 9:00 a.m. in Courtroom No.1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Atty	Fredric Joseph Ammerman

Date: 06/29/2005

**Clearfield County Court of Common Pleas**

User: BILLSHAW

Time: 02:18 PM

**ROA Report**

Page 2 of 2

**Case: 2004-02002-CD**

Current Judge: Fredric Joseph Ammerman

Kenneth B. Prisk vs. Donald G. Prisk, George L. Prisk

**Civil Other**

Date		Judge
06/06/2005	✓ Order, AND NOW, this 3rd day of June, 2005, it is the ORDER of the Court that hearing on Plaintiff's Petition to Allocate Coal Royalties has been scheduled for Friday, July 8, 2005 at 9:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pentz, Sughrue	Fredric Joseph Ammerman
06/28/2005	✓ Certificate of Service of correct copy of Reply to New Matter upon counsel Fredric Joseph Ammerman for the defendants filed by s/ Chris A Pentz Esquire. NO cc	

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

KENNETH B. PRISK,  
Plaintiff

\* No. 2004- 2002 -CD

VS

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

\* Type of Pleading: 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 *2cc*  
*013-3304 Atty Pentz*  
DEC 20 2004 *Atty pd .85.00*  
William A. Shaw  
Prothonotary/Clerk of Courts

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

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KENNETH B. PRISK,  
Plaintiff

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vs \* No. 2004- -CD

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DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

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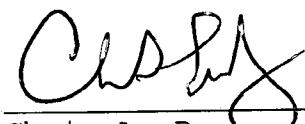
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**NOTICE**

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

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

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



Chris A. Pentz  
Attorney for Plaintiff

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

**Kenneth B. Prisk,**  
Plaintiff

\*  
\*  
\*  
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vs

\* No. 04- -CD

\*  
\*  
\*

**Donald G. Prisk and**  
**George L. Prisk,**  
Defendants

**COMPLAINT**

1. Plaintiff Kenneth B. Prisk is an adult individual who resides at 2205 Watts Road, Curwensville, Pennsylvania.
2. Defendant Donald G. Prisk is an adult individual who resides at 248 Hollow View Road, Curwensville, Pennsylvania.
3. Defendant George L. Prisk is an adult individual who resides at 316 Prisk Road, Curwensville, Pennsylvania.
4. Plaintiff and defendants are equal partners in Prisk Dairy Farms, a Pennsylvania general partnership with offices at 248 Hollow View Road, Curwensville, Pennsylvania. A copy of the Partnership Agreements are attached and incorporated herein.
5. On or about 1995 to present, defendants began timbering operations on partnership property and third parties' property with partnership equipment generating sums in excess of \$523,475.93.
6. Plaintiff believes and therefore avers that the defendants kept some or all of the timbering profits for their personal gains to the exclusion of the partnership.
- 7 On or about August 2002 to present, defendants began retaining all partnership profits to the exclusion of

plaintiff.

8. On or about 1992 to 2000, defendants began altering the partnership records so as not to allocate any income to plaintiff's 1/3 interest in the partnership resulting in a depletion of plaintiff's basis in the partnership.

9. On or about 1992 to 2000, defendants began retaining partnership gas profits to the exclusion of plaintiff.

10. On or about 1990 to 2000, defendants began retaining partnership coal profits to the exclusion of plaintiff.

11. On or about 1992, defendants began selling partnership assets and relieved partial cash payments to the exclusion of plaintiff and his 1/3 partnership interest.

12. On or about 1998 to present, defendants began paying partnership funds for Carla J. Prisk's income tax liability when she was not an employee of the partnership.

13. Defendants improper and illegal actions may ruin the aforementioned business entity, thereby destroying not only the entity, but also the personal reputations and credit of the above-mentioned plaintiff who is also signator and co-guarantor of the various loans.

14. Defendants have appropriated and converted to their own use sums in excess of \$25,000.00.

15. Defendants have breached their various fiduciary duties to the above-mentioned plaintiff.

16. Defendants have committed a fraud upon plaintiff.

WHEREFORE, plaintiff requests the following relief:

(a) that defendants provide an accounting of all monies, properties, or other assets taken and/or wrongfully converted by them;

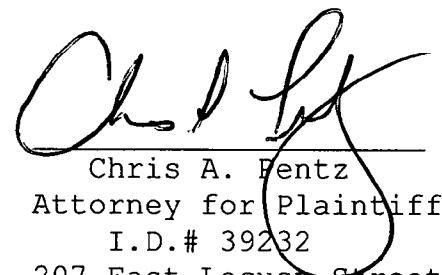
(b) that judgment be entered against defendants for compensatory damages in excess of \$25,000;

(c) that punitive damages be entered against defendants;

(d) such other relief as the Court deems just and proper;

(e) jury trial demanded.

Respectfully submitted this 2 day of November, 2004.



Chris A. Bentz  
Attorney for Plaintiff  
I.D. # 39232  
207 East Locust Street  
Clearfield, PA 16830

814 765 4000

VERIFICATION

I, KENNETH B. PRISK, 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.

11/2/2004  
Date

Kenneth B. Prisk  
Kenneth B. Prisk

Final 2nd draft

## PARTNERSHIP AGREEMENT

This Partnership Agreement made and entered into as of October 1, 1972 by and among LYNN H. PRISK, first party, GEORGE L. PRISK, second party, DONALD G. PRISK, third party, and KENNETH B. PRISK, fourth party, all of R. D. #2, Curwensville, Pennsylvania.

### WITNESSETH:

WHEREAS, for more than five (5) years prior to the date of this Partnership Agreement, the parties have engaged in the dairy and farming business under a parol agreement and now by this written agreement hereby reduces to writing the terms of the said Partnership Agreement.

NOW THEREFORE in consideration of the mutual promises herein contained and with the intent to be legally bound hereby, the parties hereby agree as follows:

1. Business Name: The name of the partnership shall be Prisk Dairy Farms.

2. Place of Business: The principal place of business shall be in Ferguson and Greenwood Township, Clearfield County, Pennsylvania, R. D. #2 Curwensville, Pennsylvania, and such other places agreed upon by the parties.

3. Purpose: The partnership shall engage in the business of dairy farming, producing and selling milk, milk products, and other farm products and any other businesses as agreed upon by the partners.

4. Capital: The partnership capital consists of livestock, machinery, equipment, feed, farm products and cash, which capital has been contributed equally by all the partners. Individual capital accounts shall

be maintained for each partner. A partner may draw on and reduce his capital account only with the written consent of all other partners. It is agreed that the value of the partnership capital, as of the date of this agreement is \$80,000 and hereafter on or before the fifteenth of January of each succeeding year the partners shall determine and enter in the partnership records the value of the partnership capital as of the first day of January of that year. Should a partner withdraw or die, the partnership capital valuation which is then entered in the partnership records, as of the date of withdrawal or death, shall be used in determining the value due the withdrawing partner or the estate of a deceased partner. If at any time the partners fail to annually determine the partnership capital valuation the prior determination shall continue until the subsequent determination is made.

5. Management: Each partner shall have equal voice in the management and conduct of the partnership business and all decisions shall be by a majority vote and each partner shall be entitled to one vote. The second, third and fourth parties should devote their full time and attention to the partnership business, while the first party shall devote only the time and attention which he desires to devote to the business.

6. Profit and Loss: The net profit and loss of the partnership shall be distributed or chargeable, as the case may be, to each partner in equal proportions. An individual income account shall be maintained for each partner and there shall be a monthly drawing from the income account of \$150.00 for each partner. Notwithstanding any other provisions in this agreement, if in any month there is not sufficient income to provide the \$150.00 drawings they shall be credited against the capital account.

Annually, as soon as possible after the close of the calender year the partners shall calculate the net profit, and after crediting the distributions made on the drawings, setting aside an agreed amount for additional capital, shall distribute the residue equally among the partners.

7. Insurance: Lifeinsurance policies of equal amounts have been obtained for each of the insurable partners, the premium of which have been and shall be paid from the partnership funds. The beneficiary in each policy shall be the wife of the insured partner. One partner, Lynn H. Prisk, is not presently insurable and in the event of his death the partnership shall pay, in lieu of insurance, the sum of One Hundred Fifty (\$150.00) Dollars per month to Arlene I. Prisk, his surviving widow, so long as she lives, subject to the provisions hereafter stated relating to dissolution.

8. Withdrawal of a Partner: The withdrawal of a partner shall not dissolve the partnership. Should a partner desire to withdraw he shall give the remaining partners sixty (60) days written notice of his intention to withdraw. Within said period the value of the withdrawn partner's share shall be calculated by dividing the partnership capital valuation in effect at the time when the withdrawn partner's notice is received by the number of partners, including the withdrawing partner. The partnership shall then distribute to the withdrawn partner share in sixty (60) equal monthly payments with the first payment to be made on the ninetieth (90) day after the withdrawal is received and monthly thereafter, until the withdrawn partner's share is paid in full together with four (4%) per cent interest on the unpaid amount.

The remaining partners, at their option, may distribute to the withdrawing partner greater amounts, at more frequent intervals, or by a lump sum.

The cash surrender value of the life insurance policy on the withdrawn partner's life, paid is from partnership funds, shall be credited against the amount due the withdrawing partner. Should there not be sufficient assets to pay all the debts and obligations of the partnership the said debts and obligations shall be paid equally by all the partners.

The withdrawn partner shall have no voice in the partnership.

In the event Lynn H. Prisk is not living at the time the partnership is dissolved, the difference between Twenty Thousand (\$20,000) Dollars, which is the agreed present value of the Lynn H. Prisk share of the partnership capital value in effect at the time of the deceased partner's death by the number of partners, including the deceased partner. In the event the amount Prisk, his surviving widow, shall be an obligation of the partnership to be paid to said widow prior to the distribution of the proceeds of liquidation of the deceased partner's share, as calculated above, the partnership shall pay the widow of the deceased partner an amount sufficient which when added to the amount to or exceed the \$20,000 there is no amount due from the partnership insurance payment shall equal the deceased partner's share. In the event the to Arlene I. Prisk.

insurance payment received by the widow of the deceased partner is equal to

11. Powers and Limitations: The partnership shall maintain a bank account or bank accounts as may be agreed upon by the partners and further payment to the said widow.

all checks shall be signed by Lynn H. Prisk or George L. Prisk.

12. In the event of the death of Lynn H. Prisk, the partnership agrees no partner may without consent of the other partners withdraw to pay to Arlene I. Prisk, so long as she shall live the sum of One Hundred money, pledge any property, lease or sell any property of the partnership Fifty (\$150.00) Dollars per month.

without the written consent of jointer of other partners.

Both of the foregoing provisions are subject to the provisions hereinafter stated relating to dissolution.

13. Books and Records: The partnership shall keep proper and complete books and accounts which may be examined by any of the partners or the accredited representative at any reasonable business hours.

14. Dissolution: Notwithstanding the provision that the withdrawal of a partner shall not dissolve the partnership, in the event all of the partners

desire to dissolve the partnership, the same can be done at anytime, before or after the withdrawal of death of a partner. In the event a dissolution takes place the net proceeds from the dissolution shall be divided equally among one (1) day after mailing. Written notices may also be delivered in person the partners after paying all of the debts and obligations of the partnership or otherwise.

Including any amounts due the widows of any deceased partners. Said amounts due a widow shall be an obligation of the partnership and shall be paid before any distribution is made to the partners.

Should there not be sufficient assets to pay all the debts and  
obligation of the partnership the said debts and obligations shall be paid  
equally by all the partners. (Sca)

In the event Lynn H. Prisk is not living at the time the partnership is dissolved, the difference between Twenty Thousand (\$20,000) Dollars, which is the agreed present value of the Lynn H. Prisk share of the partnership, and the total amount of \$150.00 monthly payments paid to Arlene I. (Sca)

Prisk, his surviving widow, shall be an obligation of the partnership to be paid to said widow prior to the distribution of the proceeds of liquidation to the surviving partners. In the event the \$150.00 monthly payments are equal to or exceed the \$20,000 there is no amount due from the partnership to Arlene I. (Sca)

11. Powers and Limitations: The partnership shall maintain a bank account or bank accounts as may be agreed upon by the partners and (Sca)

all checks shall be signed by Lynn H. Prisk or George L. Prisk. (Sca)

No partner may without consent of the other partners borrow money, pledge any property, lease or sell any property of the partnership, without the written consent or joinder of other partners. (Sca)

12. Books and Records: The partnership shall keep proper and complete books and accounts which may be examined by any of the partners or the accredited representative at any reasonable business hours. (Sca)

13. Notices: All notices provide for under this agreement shall be in writing and when sent by registered or certified mail to the last known address of the party to whom it is addressed shall be considered received one (1) day after mailing. Written notices may also be delivered in person or otherwise. (Sca)

IN WITNESS WHEREOF the parties hereto have set their hands  
and seals the day and year first above written.

(Seal)

Lynn H. Prisk

(Seal)

George L. Prisk

(Seal)

Donald G. Prisk

(Seal)

Kenneth B. Prisk

**Consent of Partners' Wives**

We, the undersigned wives of the above partners, with the intent  
to be legally bound, hereby approve and consent to the foregoing partner-  
ship agreement.

(Seal)

Wife of

(Seal)

Wife of

(Seal)

Wife of

(Seal)

Wife of

ACKNOWLEDGMENT OF CAPITAL CONTRIBUTION OF  
LYNN H. PRISK TO PRISK DAIRY FARMS,  
A PARTNERSHIP, DATED JUNE 23, 1979

THIS MEMORANDUM OF AGREEMENT, DATED MARCH 31, 1972, AND  
THIS MEMORANDUM OF AGREEMENT, DATED JUNE 23, 1979, BY AND BETWEEN LYNN H. PRISK, GEORGE L.  
PRISK, DONALD G. PRISK AND KENNETH B. PRISK, CO-PARTNERS, T/A  
PRISK DAIRY FARMS

ACKNOWLEDGMENT OF CAPITAL CONTRIBUTION OF LYNN H. PRISK

WITNESSETH:

WHEREAS, the parties hereto have heretofore entered into  
a partnership agreement dated October 1, 1972, relating to a  
partnership known as Prisk Dairy Farms, and

WHEREAS, Lynn H. Prisk by deed dated March 31, 1972  
granted and conveyed to Lynn H. Prisk, George L. Prisk, Kenneth  
B. Prisk and Donald G. Prisk certain tracts or parcels situate in  
the Townships of Ferguson and Greenwood, Clearfield County, Penn-  
sylvania, as joint tenants with the right of survivorship, and  
which deed is recorded in Deed Book 594, Page 142, and

WHEREAS, the said conveyance of said real estate was  
intended by Lynn H. Prisk as a capital contribution to the partner-  
ship known as Prisk Dairy Farms and which partnership consisted  
solely of the parties named herein, and

WHEREAS, Lynn H. Prisk, George L. Prisk, Kenneth B.  
Prisk and Donald G. Prisk, being all of the partners of Prisk  
Dairy Farms, desire to acknowledge the said capital contribution  
of Lynn H. Prisk to the partnership known as Prisk Dairy Farms.

NOW, THEREFORE, the parties, intending to be legally  
bound, covenant and agree as follows:

1. That the real estate described in the deed of Lynn

H. Prisk and Arlene I. Prisk, his wife, to Lynn H. Prisk, George L. Prisk, Kenneth B. Prisk and Donald G. Prisk, as joint tenants with the right of survivorship, dated March 31, 1972 and recorded in Deed Book 594, Page 142, is herewith acknowledged to be a capital contribution of Lynn H. Prisk to the assets of the partnership consisting of Lynn H. Prisk, George L. Prisk, Kenneth B. Prisk and Donald B. Prisk known as Prisk Dairy Farms.

2. That the said capital contribution of Lynn H. Prisk to Prisk Dairy Farms, a partnership, is herewith acknowledged to be in the amount of \$45,000.00

3. It is agreed that Lynn H. Prisk shall be entitled to withdraw the amount of his capital contribution to the said partnership during his lifetime.

4. In the event of the death of Lynn H. Prisk, the balance of his capital contribution shall be subject to the provisions of the partnership agreement dated October 1, 1972 and the amendment thereto dated April 10, 1979 as heretofore executed by the parties hereto.

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

PRISK DAIRY FARMS

BY \_\_\_\_\_ (SEAL)  
Co-partner

BY \_\_\_\_\_ (SEAL)  
Co-partner

BY \_\_\_\_\_ (SEAL)  
Co-partner

BY \_\_\_\_\_ (SEAL)  
Co-partner

ARTICLES OF AMENDMENT

TO PARTNERSHIP AGREEMENT

Articles of Amendment to Partnership Agreement made and entered into this 19<sup>th</sup> day of April, 1979 by and between LYNN H. PRISK, first party, GEORGE L. PRISK, second party, DONALD G. PRISK, third party, and KENNETH B. PRISK, fourth party, all of R. D. # 2, Curwensville, Pennsylvania.

W I T N E S S E T H :

WHEREAS, the parties hereto have entered into a Partnership Agreement dated October 1, 1972, and

WHEREAS, the parties hereto desire to amend the Partnership Agreement dated October 1, 1972 as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises herein contained and with the intent to be legally bound hereby, the parties hereby agree as follows:

1. That the following paragraph:

"3. Purpose: The partnership shall engage in the business of dairy farming, producing and selling milk, milk products, and other farm products and any other businesses as agreed upon by the partners."

shall be amended to read as follows:

"3. Purpose: The partnership shall engage in the business of dairy farming, producing and selling milk,

milk products, and other products and any other business as agreed upon by the partners, including the purchase and sale of real estate for partnership purposes."

2. The parties hereto agree that all other covenants and agreements as set forth therein shall remain the same.

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

Lynn H. Prisk \_\_\_\_\_ (SEAL)

George L. Prisk \_\_\_\_\_ (SEAL)

Donald G. Prisk \_\_\_\_\_ (SEAL)

Kenneth B. Prisk \_\_\_\_\_ (SEAL)

THIS AGREEMENT made and entered into this 28 day of July, 1980 by and between LYNN H. PRISK, first party, GEORGE L. PRISK, second party, DONALD G. PRISK, third party and KENNETH B. PRISK, fourth party, as Co-partners, t/a PRISK DAIRY FARMS

W I T N E S S E T H :

WHEREAS, the parties hereto entered into a written partnership agreement dated October 1, 1972 acknowledging that said parties had been a partnership under a parol agreement for more than five years engaging in the dairy and farming business known as PRISK DAIRY FARMS, and

WHEREAS, the said written partnership agreement included covenants relating to capital, management, profit and loss, withdrawal of partner and death of a partner, etc., and

WHEREAS, the said written partnership agreement dated October 1, 1972 was amended by written articles of amendment on April 19, 1979 to provide that the purpose of the said partnership be amended to include the purchase and sale of real estate for partnership purposes, and

WHEREAS, the above parties as co-partners t/a PRISK DAIRY FARMS, entered into a written memorandum on July 23, 1979 acknowledging the capital contribution of LYNN H. PRISK, first party and co-partner, in the partnership known as PRISK DAIRY FARMS for real estate described in deed of Lynn H. Prisk et al to Lynn H.

Prisk, George L. Prisk, Kenneth B. Prisk and Donald G. Prisk as joint tenants with right of survivorship t/a PRISK DAIRY FARMS dated March 31, 1972 and recorded in Deed Book 594, Page 142 to be in the amount of \$45,000.00 and further that Lynn H. Prisk, first party, shall be entitled to withdraw the amount of his capital contribution to said partnership during his lifetime and further that balance of said capital contribution upon death of Lynn H. Prisk, first party, shall be subject to the provisions of the written partnership agreement dated October 1, 1972 as amended, and

WHEREAS, Lynn H. Prisk, first party and co-partner, has given George L. Prisk, second party, Donald G. Prisk, third party and Kenneth B. Prisk, fourth party and remaining co-partners, notice of his intention to withdraw as a co-partner in the partnership known as PRISK DAIRY FARMS effective Jan. 1, 1980, and

WHEREAS, all parties hereto, desire to enter into an agreement relating to withdrawal of Lynn H. Prisk as a co-partner; providing and fixing the net equity interest of Lynn H. Prisk, first party and co-partner in said partnership; transfer and assignment of interests of Lynn H. Prisk, first party and co-partner, to the remaining co-partners, t/a PRISK DAIRY FARMS and for payment of the net equity interest of Lynn H. Prisk, withdrawing partner, by the remaining co-partners, t/a PRISK DAIRY FARMS.

NOW, THEREFORE, in consideration of the mutual promises and agreements, herein contained and with the intent of the parties

to be legally bound thereby, it is agreed as follows:

1. The net equity interest of Lynn H. Prisk, withdrawing partner, in all the assets, business, personal property and real estate of the partnership known as PRISK DAIRY FARMS as valued January 1, 1980 shall be the sum of \$62,446.61 and said sum shall constitute the purchase price of all the interests of Lynn H. Prisk in assets in the partnership known as PRISK DAIRY FARMS.

2. Lynn H. Prisk, first party, shall grant, convey, transfer and assign all of his interests in partnership personal property, chattels, livestock, machinery, farm products, accounts receivable, cash and real estate appearing in name of Lynn H. Prisk as a joint tenant with right of survivorship with the second, third and fourth parties herein, and/or in name of Lynn H. Prisk, a co-partner of PRISK DAIRY FARMS and/or PRISK DAIRY FARMS, subject to all liens, mortgages and judgment, to George L. Prisk, Donald G. Prisk and Kenneth B. Prisk, the second, third and fourth parties, co-partners and trading as PRISK DAIRY FARMS as grantees or buyers. All bills of sale, assignments and deeds shall provide that the George L. Prisk, Donald G. Prisk and Kenneth B. Prisk, co-partners trading as PRISK DAIRY FARMS shall assume and be liable for all indebtedness, including all liens, mortgages and judgments affecting the same. George L. Prisk, Donald G. Prisk and Kenneth B. Prisk, grantees and co-partners t/a PRISK DAIRY FARMS, hereby covenant and agree to indemnify and save harmless Lynn H. Prisk, his heirs and assigns, of and from all claims, actions, suits and liens, in law

or equity, that may filed or commenced affecting any and all interest heretofore owned by Lynn H. Prisk, co-partner, in the partnership known as PRISK DAIRY FARMS and being conveyed, transferred and assigned to George L. Prisk, Donald G. Prisk and Kenneth B. Prisk, co-partners, t/a PRISK DAIRY FARMS as provided herein.

3. The purchase price in the sum of \$62,446.61, shall be secured and evidenced by a negotiable promissory judgment note payable to Lynn H. Prisk by George L. Prisk, Donald G. Prisk and Kenneth B. Prisk, co-partners trading as PRISK DAIRY FARMS with interest at the rate of 6% per annum and payable on or before 1st day of August, 1990 in 125 equal monthly installments in sum of \$673.05 each, commencing on 1st day of April, 1980 and payable on 1st day of each month thereafter until fully paid. George L. Prisk, Donald G. Prisk and Kenneth B. Prisk, co-partners t/a PRISK DAIRY FARMS shall have the right to prepay the same or any amount thereof.

Should Lynn H. Prisk, the withdrawing partner, predecease payment in full of the said purchase price, any unpaid balance of said purchase price owing at the death of Lynn H. Prisk shall be forgiven, conditioned upon George L. Prisk, Donald G. Prisk and Kenneth B. Prisk, co-partners t/a PRISK DAIRY FARMS, paying to Arlene I. Prisk, surviving spouse of Lynn H. Prisk, the sum of ONE HUNDRED FIFTY (\$150.00) DOLLARS per month for the term of her natural life or until the said unpaid balance owing at the death of Lynn H. Prisk has been paid in full, which ever shall first

occur.

4. George L. Prisk, Donald G. Prisk and Kenneth B. Prisk, the second, third and fourth named parties herein and as sole remaining co-partners in the partnership known as PRISK DAIRY FARMS, hereby ratify and affirm the written partnership agreement dated October 1, 1972 and written amendments thereto and agree that all terms and conditions, thereof shall continue in full force and effect as if Lynn H. Prisk was not originally included therein and as if no reference was included therein relating to Lynn H. Prisk as a co-partner and as if George L. Prisk, Donald G. Prisk and Kenneth B. Prisk were the only co-partners.

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

Lynn H. Prisk (SEAL)  
Lynn H. Prisk, first party

George Prisk (SEAL)  
George L. Prisk, second party

Donald G. Prisk (SEAL)  
Donald G. Prisk, thirty party

Kenneth B. Prisk (SEAL)  
Kenneth B. Prisk, fourth party

The Undersigned, Arlene I. Prisk, wife of Lynn H. Prisk, by these presents approve the within Agreement.

Arlene I. Prisk (SEAL)  
Arlene I. Prisk

AMENDMENT TO PARTNERSHIP AGREEMENT  
DATED OCTOBER 1, 1972

THIS AMENDMENT to the aforementioned Partnership Agreement is entered into this 1st day of January, 1991 by the remaining partners of the entity trading and doing business as PRISK DAIRY FARMS, namely: GEORGE L. PRISK, the first party, DONALD G. PRISK, the second party, and KENNETH B. PRISK, the third party.

W I T N E S S E T H :

WHEREAS the parties hereto entered into an written Partnership Agreement dated October 1, 1972 and since that time have operated the entity known as PRISK DAIRY FARMS in accordance with/ said Agreement; and

WHEREAS, the Partnership Agreement of October 1, 1972 contained no contingency provision should any partner become disabled so as not to be able to attend to the affairs of the partnership; and

WHEREAS, all parties hereto agree that such a provision would be in the best interest of all parties and therefore should be incorporated into the existing Partnership Agreement for the entity trading and doing business as PRISK DAIRY FARMS.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and with the intent to the legally bound hereby, the parties hereby agree as follows:

1. The following provision shall be incorporated into and

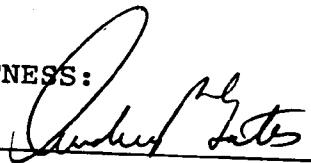
shall become part of the PRISK DAIRY FARM Partnership Agreement dated October 1, 1972:

"DISABILITY. In the event that any partner shall become disabled so as to be unable to attend to the affairs of the partnership, as is determined by a majority of the partners, said disabled partner shall be entitled to receive disability payments from the profits of the partnership, on a monthly basis, in an amount and for such a period of time as can be agreed upon by the partners. Likewise, nothing set forth in this paragraph shall be construed to in any way limit the disabled partner's right to withdraw funds from his capital account up to the balance remaining in said account.".

2. Except as set forth herein, GEORGE L. PRISK, DONALD G. PRISK and KENNETH B. PRISK, the first, second and third named parties herein, and as the sole remaining co-partners in the partnership known as PRISK DAIRY FARMS, hereby ratify and affirm all the other terms, covenants and conditions as set forth in the written Partnership Agreement dated October 1, 1972 and any other written amendments thereto.

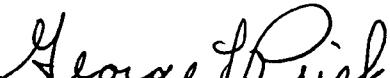
IN WITNESS WHEREOF, the parties hereto have executed the within Amendment the day and year first above written.

WITNESS:

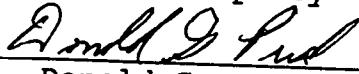


as to

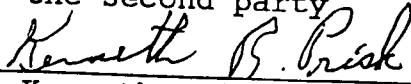
all parties



George L. Prisk,  
the first party



Donald G. Prisk,  
the second party



Kenneth B. Prisk,  
the third party

(SEAL)

(SEAL)

(SEAL)

AMENDMENT TO PARTNERSHIP AGREEMENT  
DATED OCTOBER 1, 1972

THIS AMENDMENT to the aforementioned Partnership Agreement is entered into this 14<sup>th</sup> day of <sup>FEBRUARY</sup> January, 2001 by the remaining partners of the entity trading and doing business as PRISK DAIRY FARMS, namely: GEORGE L. PRISK, the first party, DONALD G. PRISK, the second party, and KENNETH B. PRISK, the third party.

W I T N E S S E T H :

WHEREAS the parties hereto entered into a written Partnership Agreement dated October 1, 1972 and since that time have operated the entity known as PRISK DAIRY FARMS in accordance with said Agreement; and

WHEREAS, at the time said Partnership Agreement was executed, life insurance policies of equal amounts had been obtained for each of the insurable partners with the initial premiums having been paid from partnership funds;

WHEREAS, since that time, George L. Prisk and Donald G. Prisk have cashed in their respective life insurance policies and have retained for their benefit the cash surrender value of said policies;

WHEREAS, although the life insurance policy taken out on the life of Kenneth B. Prisk is still in existence, for many years, the premiums have been paid by Kenneth B. Prisk, individually, and not by the partnership;

WHEREAS, because of the above circumstances, the surviving partners of Prisk Dairy Farms wish to remove the

AMENDMENT TO PARTNERSHIP AGREEMENT  
DATED OCTOBER 1, 1972

THIS AMENDMENT to the aforementioned Partnership Agreement is entered into this 14<sup>th</sup> day of <sup>FEBRUARY</sup> January, 2001 by the remaining partners of the entity trading and doing business as PRISK DAIRY FARMS, namely: GEORGE L. PRISK, the first party, DONALD G. PRISK, the second party, and KENNETH B. PRISK, the third party.

W I T N E S S E T H :

WHEREAS the parties hereto entered into a written Partnership Agreement dated October 1, 1972 and since that time have operated the entity known as PRISK DAIRY FARMS in accordance with said Agreement; and

WHEREAS, at the time said Partnership Agreement was executed, life insurance policies of equal amounts had been obtained for each of the insurable partners with the initial premiums having been paid from partnership funds;

WHEREAS, since that time, George L. Prisk and Donald G. Prisk have cashed in their respective life insurance policies and have retained for their benefit the cash surrender value of said policies;

WHEREAS, although the life insurance policy taken out on the life of Kenneth B. Prisk is still in existence, for many years, the premiums have been paid by Kenneth B. Prisk, individually, and not by the partnership;

WHEREAS, because of the above circumstances, the surviving partners of Prisk Dairy Farms wish to remove the

provisions regarding said life insurance policies from the terms of the existing Partnership Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and with the intent to be legally bound hereby, the parties hereby agree as follows:

1. Paragraph 7 of the Partnership Agreement for PRISK DAIRY FARMS of October 1, 1972 (entitled "Insurance") is hereby deleted in its entirety and from this date forward the same will no longer be an enforceable provision between the existing partners or otherwise have any legal effect.

2. The next to the last sentence in Paragraph 8 of the Partnership Agreement of October 1, 1972 (entitled "Withdrawal of a Partner") which reads as follows:

"The cash surrender value of the life insurance policy on the withdrawn partner's life, paid from partnership funds, shall be credited against the amount due of the withdrawing partner." is hereby deleted from the aforementioned Partnership Agreement in its entirety and from the date hereof the same will no longer be an enforceable provision between the existing partners nor will the same have any legal effect.

3. Paragraph 9 (entitled "Death of a Partner") in the existing Partnership Agreement of October 1, 1972 is to be deleted in its entirety with a new paragraph to be substituted therefor which shall have the following content:

"9. Death of a Partner: Upon the death of a partner, the deceased partner's share shall be calculated by dividing the partnership's capital value in effect at the time of the deceased partner's death

by the number of partners, including the deceased partner. The partnership shall then distribute either to the deceased partner's widow or to the deceased partner's estate said deceased partner's dollar interest in the partnership by virtue of making sixty (60) equal monthly payments with the first payment to be made on the ninetieth (90) day after the date of death of the deceased partner, until the deceased partner's share is paid in full, together with 4% interest on the unpaid amount.

The foregoing provision is subject to the provisions hereafter stated relating to dissolution."

As of the date of this Amendment, the prior terms of Paragraph 9 of the Partnership Agreement dated October 1, 1972 (entitled "Death of a Partner") will no longer be legally binding upon the existing partners nor otherwise have any legal effect.

4. Except as set forth herein, George L. Prisk, Donald G. Prisk and Kenneth B. Prisk, the first, second and third named parties herein, and as sole remaining co-partners in the partnership known as "PRISK DAIRY FARMS" hereby ratify and affirm all other terms, covenants and conditions as set forth in the written Partnership Agreement dated October 1, 1972, including all other written amendments thereto.

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

WITNESS:

James J. Many

George L. Prisk (SEAL)  
George L. Prisk (the first party)

Donald G. Prisk (SEAL)  
Donald G. Prisk (the second party)

Kenneth B. Prisk (SEAL)  
Kenneth B. Prisk (the third party)

**FILED**

**DEC 20 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

— Fold Here —

CHRIS A. PENTZ  
ATTORNEY AT LAW  
207 East Market Street  
CLEARFIELD, PENNSYLVANIA 16830

(P)

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

**SCHEDULING ORDER**

AND NOW, this 21<sup>st</sup> day of December, 200<sup>5</sup>, upon consideration of the Plaintiff's Complaint's filed by Chris A. Pentz, attorney for Plaintiff, a hearing is hereby scheduled for the 7 day of February, 200<sup>5</sup>, at 7:00 A.M. in Court Room No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

*Judge J. C. Cummiskey*  
\_\_\_\_\_  
Judge

FILED  
0 12:00 PM 22 Oct 2004  
RECEIVED  
DEC 22 2004

William A. Shaw  
Prothonotary

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

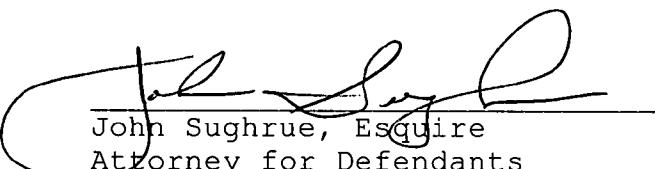
KENNETH B. PRISK, \*  
Plaintiff \*  
v. \* No. 04-2002-C.D.  
\*  
DONALD G. PRISK and \*  
GEORGE L. PRISK, \*  
Defendants \*  
\*  
\*

PRAECIPE FOR APPEARANCE

TO WILLIAM A. SHAW, PROTHONOTARY.

Kindly enter my appearance on behalf of DONALD G. PRISK and  
GEORGE L. PRISK, Defendants in the above-captioned matter. Direct  
all pleadings and matters concerning the foregoing to the under-  
signed.

Date: January 11, 2005

  
John Sughrue, Esquire  
Attorney for Defendants  
Attorney I. D. #01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

64 019:5084 300  
JAN 12 2005  
FILED  
Atty Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

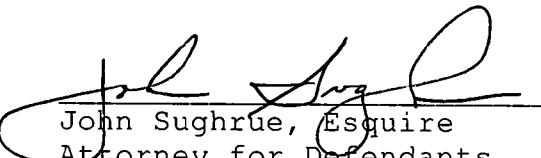
AND NOW, I do hereby certify that on January 18, 2005, I caused a true and correct copy of Defendant's Praeclipe for Appearance, to be served on the following and in the manner indicated below:

By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Chris A. Pentz, Esquire  
207 E. Market St.  
Clearfield, PA 16830

Dave Meholick, Court Admin.  
Clearfield County Courthouse  
1 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Date: January 18, 2005

  
John Sughrue, Esquire  
Attorney for Defendants

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

KENNETH B. PRISK,

Plaintiff

v.

\*

\*

No. 04-2002-C.D.

\*

\*

DONALD G. PRISK and  
GEORGE L. PRISK,

Defendants

\*

\*

\*

**ACCEPTANCE OF SERVICE**

We, DONALD G. PRISK and GEORGE L. PRISK, DEFENDANTS, in the  
above captioned matter hereby accept service of the Complaint,  
issued in the above-captioned matter.

Date: January 10, 2005

Donald G. Prisk  
Donald G. Prisk, Defendant

Date: January 10, 2005

George L. Prisk  
George L. Prisk, Defendant

**FILED** *acc*  
*6K 019500* *Atty Seighree*  
*JAN 12 2005*

William A. Shaw  
Prothonotary/Clerk of Courts

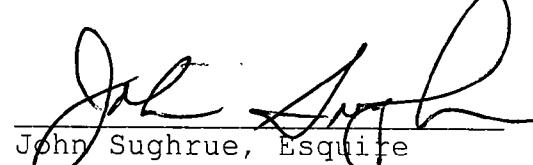
**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on January 12, 2005, I caused a true and correct copy of Defendants' Acceptance of Service, to be served on the following and in the manner indicated below:

By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Chris A. Pentz, Esquire  
207 E. Market St.  
Clearfield, PA 16830

Date: January 12, 2005



John Sughrue, Esquire  
Attorney for Defendants

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

KENNETH B. PRISK

Plaintiff

\*

\*

\*

vs.

\* No. 2004-2002-CD

\*

\*

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\*

\*

DONALD G. PRISK and  
GEORGE L. PRISK

Defendants

\*

\*

Type of Case: **Civil Action**

\*

\*

Type of Pleading: **Preliminary Objections**

\*

\*

Filed on Behalf of: **Both Defendants**

\*

\*

**Counsel of Record for this Party:**

\*

John Sughrue, Esq.

\*

Supreme Court No. 01037

\*

23 North Second Street

\*

Clearfield, PA 16830

\*

Phone: (814) 765-1704

\*

Fax: (814) 765-6959

\*

\*

\*

**Other Counsel of Record:**

\*

Chris A. Pentz Esquire

\*

Supreme Court No. 39232

\*

207 E. Market St.

\*

PO Box 552

\*

Clearfield, PA 16830

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Phone: (814) 765-4000

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**FILED**

03:51 on 2/2/2005

JAN 28 2005

William A. Shaw  
Prothonotary

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

KENNETH B. PRISK	*
Plaintiff	*
	*
	*
vs.	* No. 2004-2002-CD
	*
	*
	*
DONALD G. PRISK and	*
GEORGE L. PRISK	*
Defendants	*

**DEFENDANTS' PRELIMINARY  
OBJECTIONS TO COMPLAINT**

AND NOW comes Defendants, Donald G. Prisk and George L. Prisk, individually and d/b/a Prisk Dairy Farms, by their attorney, John Sughrue, pursuant to Pa.R.C.P. Rule 1028(a) and files Preliminary Objections to Plaintiff's Complaint as follows:

**I: FAILURE OF THE COMPLAINT TO CONFORM TO  
LAW OR RULE OF COURT PURSUANT TO RULE 1028(a) (2)**

1. The Complaint sets forth sixteen sequentially numbered paragraphs containing a variety of conclusions and factual averments.
2. The Complaint is not divided into individual counts for each cause of action plead and relief sought thereon.
3. In a single paragraph, the Plaintiff seeks a variety of relief, including equitable relief and unliquidated damages.
4. Defendant believes and therefore avers that the Complaint, as filed, attempts to set forth at least five causes of action and relief thereon, specifically to wit: accounting, conversion, fraud, punitive damages and unspecified equitable relief.

5. Pa.R.C.P. 1020 requires that each cause of action and any special damage related thereto be stated in a separate count containing a separate demand for relief.

6. In Paragraph 16, Plaintiff avers generally that, "Defendants have committed a fraud upon Plaintiff".

7. Rule 1019(b) requires that averments of fraud be averred with particularity.

8. The Complaint does not set forth the cause of action of fraud with particularity.

WHEREFORE, Defendants respectfully move the Honorable Court to dismiss the Complaint pursuant to Rule 1028 for failure to comply to the law and Rules of Court.

**II: INSUFFICIENT SPECIFICITY IN A  
PLEADING PURSUANT TO RULE 1028(a)(3)**

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

10. In Paragraphs 5 through 16, Plaintiff sets forth various general conclusions and bald allegations without setting forth material facts upon which the beliefs or allegations are based.

11. In particular, the Defendant fails to set forth the following specific information, which is needed to be properly informed and to prepare an answer to the Complaint:

A. In Paragraph 5, the Plaintiff fails to identify the third parties referenced and the equipment being utilized;

B. In Paragraph 5, the Plaintiff fails to set forth the evidentiary basis for the sum of \$523,475.93;

C. In Paragraphs 6 and 7, the Plaintiff fails to identify or define the word "profits" or at least identify what funds he is referring to in those paragraphs;

D. In Paragraph 8, the Plaintiff fails to specify the Partnership records, which are alleged to have been altered and a causal connection between such altering and the allegation that his basis in the partnership was depleted;

E. In Paragraphs 9, 10 and 11, the Plaintiff fails to identify the gas profits, coal profits and equipment being sold or to identify individuals, date time or place that such payments or profits were received or equipment sold by Defendants;

F. In Paragraph 14, the Plaintiff does not specify the special damages, which he claims or to which he may be entitled;

G. In Paragraph 15, the Plaintiff does not specify the fiduciary duties that are alleged to have been breached;

H. In Paragraph 16, the Plaintiff alleges a claim of fraud without pleading it with the particularity required under Pa.R.C.P. 1029(d);

I. In the Complaint, Plaintiff fails to set forth any alleged conduct by the Defendants, which would give rise to a claim for punitive damages.

WHEREFORE, Defendants request the Honorable Court to forthwith dismiss the Complaint in accordance with Pa.R.C.P. 1028(a)(4) for failure to comply with Pa.R.C.P. 1019 and 1020.

### **III: LEGAL INSUFFICIENCY OF A PLEADING**

12. Paragraphs 1 through 11 are incorporated herein by reference as though the same were set forth herein at length verbatim.

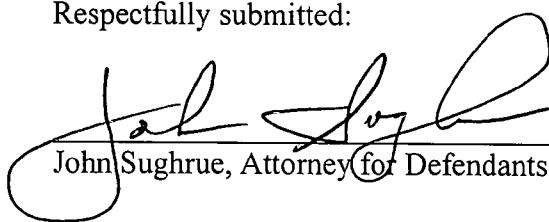
13. The Complaint fails to set forth a cause of action in fraud as a matter of law.

14. The Complaint fails to set forth a cause of action, which would support a claim for punitive damages.

15. The Complaint fails to set forth sufficient material facts to support a cause of action of conversion as a matter of law.

WHEREFORE, Defendants move the Honorable Court to dismiss the Complaint with respect to the causes of action of fraud, conversion and/or punitive damages.

Respectfully submitted:



John Sughrue, Attorney for Defendants

**CERTIFICATE OF SERVICE**

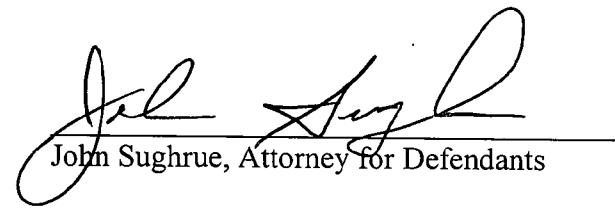
AND NOW, I do hereby certify that on January 28, 2005, I caused a true and correct copy of DEFENDANTS' PRELIMINARY OBJECTIONS TO COMPLAINT to be served on the following and in the manner indicated below:

By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Chris A. Pentz, Esquire  
PO Box 552  
Clearfield, PA 16830

Court Administrator  
Clearfield County Courthouse  
1 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Date: January 28, 2005



John Sughrue, Attorney for Defendants

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

KENNETH B. PRISK

Plaintiff

vs.

DONALD G. PRISK and  
GEORGE L. PRISK

Defendants

\*

\*

\*

\* No. 2004-2002-CD

\*

\*

\*

\* Type of Case: **Civil Action**  
\*

\* Type of Pleading: **Scheduling Motion**  
\*

\* Filed on Behalf of: **Both Defendants**  
\*

\* **Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

\*

\*

\*

\* **Other Counsel of Record:**  
Chris A. Pentz Esquire  
Supreme Court No. 39232  
207 E. Market St.  
PO Box 552  
Clearfield, PA 16830  
Phone: (814) 765-4000

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FILED *cc*

*03-3981 FEB 01 2005 Atty Sughrue*

William A. Shaw  
Prothonotary/Clerk of Courts

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

KENNETH B. PRISK

Plaintiff

\*

vs.

\*

\* No. 2004-2002-CD

\*

DONALD G. PRISK and  
GEORGE L. PRISK

\*

Defendants

\*

**SCHEDULING MOTION**

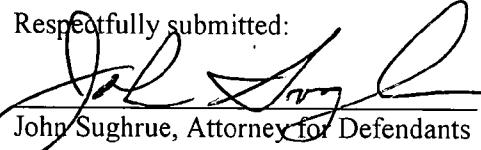
To the Honorable Judges of said Court:

AND NOW comes Donald G. Prisk and George L. Prisk, individually and t/a Prisk Dairy Farms, Defendants, by their counsel, John Sughrue, moves the Honorable Court to schedule for argument and adjudication, preliminary objections filed in the above captioned matter and in support thereof represents the following:

1. That the original Compliant was filed in this matter on or about December 20, 2004.
2. That both Defendants, represented by John Sughrue, Esquire, accepted service of the Complaint on January 10, 2005.
3. That Defendants filed Preliminary Objections to the Complaint on January 28, 2005 and duly served Plaintiff's counsel with the same.
4. That a correct copy of this Motion has been served on Plaintiff's counsel by mail on the same date that the Motion has been filed of record.
5. The issues raised in the Preliminary Objections are ripe for adjudication.
6. That the Preliminary Objections raise legal issues and do not plead any facts material to relief which are not of record.

WHEREFORE, Defendants respectfully move the Honorable Court to schedule Preliminary Objections for argument and/or briefing, as the Court determines.

Respectfully submitted:

  
John Sughrue, Attorney for Defendants

**CERTIFICATE OF SERVICE**

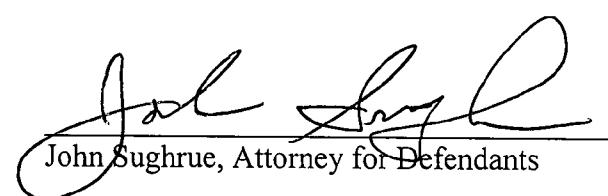
AND NOW, I do hereby certify that on February 1, 2005, I caused a true and correct copy of DEFENDANTS' SCHEDULING MOTION to be served on the following and in the manner indicated below:

By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Chris A. Pentz, Esquire  
PO Box 552  
Clearfield, PA 16830

Court Administrator  
Clearfield County Courthouse  
1 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Date: February 1, 2005



John Sughrue, Attorney for Defendants

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

KENNETH B. PRISK,  
Plaintiff

NO. 2004-2002 -CD

vs

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

- \* Type of Pleading: Petition to
- \* Allocate Coal Royalties

\* Filed on Behalf of: Plaintiff

\*  
\*  
\* Counsel of Record for this Party:  
\* CURTIS A. DENTZ, Esquire

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

★

FILED  
010-413A  
FEB 02 2005  
100-*Attys*

54 William A. Shaw  
Prothonotary

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

KENNETH B. PRISK,  
Plaintiff

\*

\*

vs \* No. 04-2002-CD

\*

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

\*

RULE TO SHOW CAUSE WHY PETITION TO ALLOCATE  
COAL ROYALTIES SHOULD NOT BE GRANTED

AND NOW this 4<sup>th</sup> day of February, 2005, upon  
consideration of the within PETITION filed by Chris A. Pentz,  
Esquire, Attorney for Petitioner, a Rule is hereby issued upon  
the Respondents to show cause why the Petition to Allocate Coal  
Royalties should not be granted.

Rule Returnable the 24 day of April, 2005, for filing  
a written response.

NOTICE

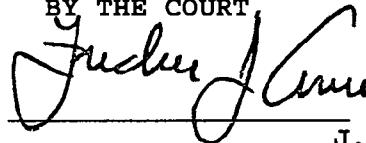
A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT.  
IF YOU WISH TO DEFEND AGAINST ANY CLAIMS SET FORTH IN THE  
FOLLOWING PETITION, YOU MUST TAKE ACTION BY ENTERING A WRITTEN  
APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH  
THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER 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.

Court Administrator  
Clearfield County Courthouse  
Clearfield PA 16830  
(814) 765-2641, Ext. 88-89

**FILED**  
01/30/05 ICC Atty Pentz  
FEB 04 2005

BY THE COURT

  
J. Zimmerman

William A. Shaw  
Prothonotary

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

KENNETH B. PRISK,

\*

vs

\*

No. 04-2002-CD

\*

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

\*

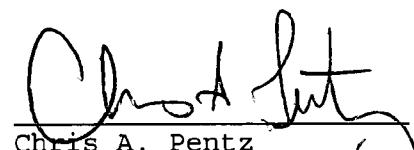
PETITION TO ALLOCATE COAL ROYALTIES OR IN THE  
ALTERNATIVE TO ESCROW COAL ROYALTIES

1. The Petitioner is Kenneth B. Prisk, the Plaintiff in the above captioned matter.
2. The Respondents are Donald G. Prisk and George L. Prisk, the Defendants in the above captioned matter.
3. On June 8, 2001 the parties to this action entered into an Agreement for the removal of coal from a parcel known as the Homestead tract. A copy of the Lease Agreement is attached hereto and marked Exhibit "A" and incorporated herein by reference as though set forth in full.
4. The Agreement provides that the coal royalties shall be paid in equal amounts directly to the individuals and not to the partnership. See also 2004 1099 Miscellaneous Income form, marked as Exhibit "B".
5. The Respondents have contacted Spencer Land and Leasing and directed that the payments be made directly to the Partnership.
6. The Petitioner believes and therefore avers that payments should be made directly to the individuals and not the partnership in

accordance with the lease Agreement.

WHEREFORE, Petitioner respectfully requests Your Honorable Court to direct that the royalty payments be made in equal amounts directly to the Petitioner and Respondents or in the alternative that all payments be escrowed pending resolution of the litigation.

Respectfully submitted this 2 day of Feb., 2005.

  
Chris A. Pentz  
Attorney for Plaintiff

## LEASE AGREEMENT

Made this 8<sup>th</sup> day of June, 2001 between  
Prisk Dairy Farms, of R. D. # 2, Box 282A, Curwensville, PA 16833, Lessor.  
Spencer Land Company, of P. O. Box I, Grampian, PA 16838, Lessee.

A  
N  
D

## W I T N E S S E T H

For in consideration of \$1.00 and other valuable consideration as hereinafter stated, Lessor hereby leases unto Lessee all the merchantable and mineable coal as hereinafter described.

Map #: 113-G-12-6  
44.68 acres as described in Deed Book 801 page 473

It is mutually agreed between both parties herein as follows:

1. Lessee may mine and market said coal using all available methods and technologies as the mining industry and market conditions permit.
2. Lessee agrees to abide by all local, county, state and federal laws and regulations of the bituminous coal industry during the permitting, mining and reclamation of Lessor property.
3. Lessee agrees to maintain all types and quantities of insurance necessary for the mining of Lessor property.
4. Lessee shall indemnify and hold Lessor harmless from all actions of Lessee or their invitees arising out of the coal mining operations on Lessor property.
5. Lessee shall notify Lessor sixty (60) days prior to commencement of mining operations so that Lessor may remove their timber.
6. This lease term shall be for a period of three (3) years from

this date unless Lessee is maintaining active mining operations on Lessor property.

7. Lessee shall pay Lessor royalty for each and every ton of coal mined and marketed from Lessor property at a rate of ten (10%) percent of the selling price of the coal in the pit or for a minimum of three (\$3.00) dollars per ton, payable to Lessor as stated herein.
8. Royalty is payable to Lessor on the twenty-fifth (25th) day of the month for all coal mined and marketed the previous month.
9. All coal shall be sold to customers with approved scales.
10. Lessor gives Lessee the right to transport coal across their property from properties inclusive to the permit for the sum of two (2%) percent of the heretofore quoted royalty rates.
11. Lessee shall keep accurate records and accounting of all coal mined and marketed and have available these records for Lessor or their invitees.
12. Lessor agrees to execute those documents necessary for the Lessee to secure the surface mining permit and bonds.
13. Once mining is completed, Lessee shall have three (3) months in which to remove their equipment unless reclamation procedures are required, by the "D.E.P. Supplemental 'C'".
14. ~~This agreement shall become null and void of no further consequence to either party, if Lessee willfully neglects to abide by the terms and conditions of this agreement, with the exception of paragraph 16, 16A & 16B~~
15. This agreement shall be binding upon and inure to the benefit of both parties, their successors, heirs or assigns.
16. See attached page for additional terms and conditions.  
In Witness Whereof, by their signature hereto, both parties agree to the heretofore stated terms and conditions.

Witness:

Tom Morgan  
Tom Morgan  
Tom Morgan

Tom Morgan  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LESSOR:

George Rush  
Daryl G. Rush  
Kenneth B. Rush

Lessee:

Darrell G. Spencer  
Darrell G. Spencer, Mgr. Partner

## Prisk Dairy Farms lease terms and conditions continued...

16A. Leasee agrees to save all top soil, shale and fine dirt and place it in piles away from the stripping area. At no time will it be covered up or buried before it is placed back on the surface during reclamation.

16B. Any dirt, fine shale or top soil uncovered during mining operations will be placed on piles and put back on the surface when backfilling is completed as approved by Prisk Dairy Farms.

*✓ P.P.*

*APR 16  
DBR*

*Apply 2 Ton Lime + Alfalfa + Grass mix per Acre*

*KOP  
RJD  
08/00*

MAKE CHECKS PAYABLE TO:  
1/3 EACH

*Kenneth B Prisk  
RD#2 Box 278  
Curwensville Pa 16833  
SS 166-40-0266*

*Donald G. Prisk  
RD#2 Box 282  
Curwensville Pa  
16833  
SS 173-34-4595*

*George L. Prisk  
RD#2 Box 198  
Curwensville Pa  
16833  
SS# 173-34-4596*

ER-MR-10: Rev. 2/84  
"Supplemental C"COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL RESOURCES

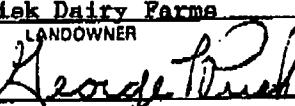
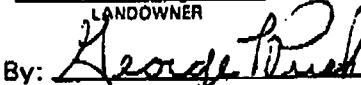
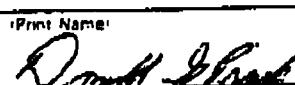
APPL. NO. (Department Use Only)

## CONTRACTUAL CONSENT OF LANDOWNER

(I) (We), the undersigned, being the owner(s) of 44.68 acres of land located in Clearfield County, as  
(Township, Borough, City) Ferguson Township,described in the deed(s) recorded in the Recorder of Deeds Office Book(s) and page(s) Book 801 page 473 and shown by crosshatched lines on the map attached hereto which is signed in the original by the landowner upon which Hepburnia Coal Company proposes to engage in surface(Name of Mining Operator)  
mining activities for which application for permit will be made to the Department of Environmental Resources and of which application this consent will be made a part, **DO HEREBY ACKNOWLEDGE THAT THE MINING OPERATOR HAS THE RIGHT TO ENTER UPON AND USE THE LAND FOR THE PURPOSES OF CONDUCTING SURFACE MINING ACTIVITIES.** Furthermore, (I) (We), the undersigned, do hereby irrevocably grant to the Mining Operator and the Commonwealth of Pennsylvania, the right to enter upon the aforesaid land before beginning the mining activity(ies), during the mining activity(ies) and for a period of five (5) years after the completion or abandonment of the mining activity(ies) for the purposes of inspecting, studying, backfilling, planting and reclaiming the land and abating pollution in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, The Clean Streams Law, and The Coal Refuse Disposal Act, as amended, rules and regulations promulgated thereunder, and the provisions of permit(s) issued to the Mining Operator. (I) (We) do hereby grant in addition to the Commonwealth, for the aforesaid period of time, a right of entry across any adjoining or contiguous lands owned by (us) (me) in order to have access to the land described herein. It is specifically agreed and understood that this contractual consent gives the Commonwealth the right to enter, inspect, study, backfill, plant and reclaim the land and abate pollution therefrom as a matter within the police power but does not obligate the Commonwealth to do so, and does not constitute any ownership interest by the Commonwealth in the aforesaid land.

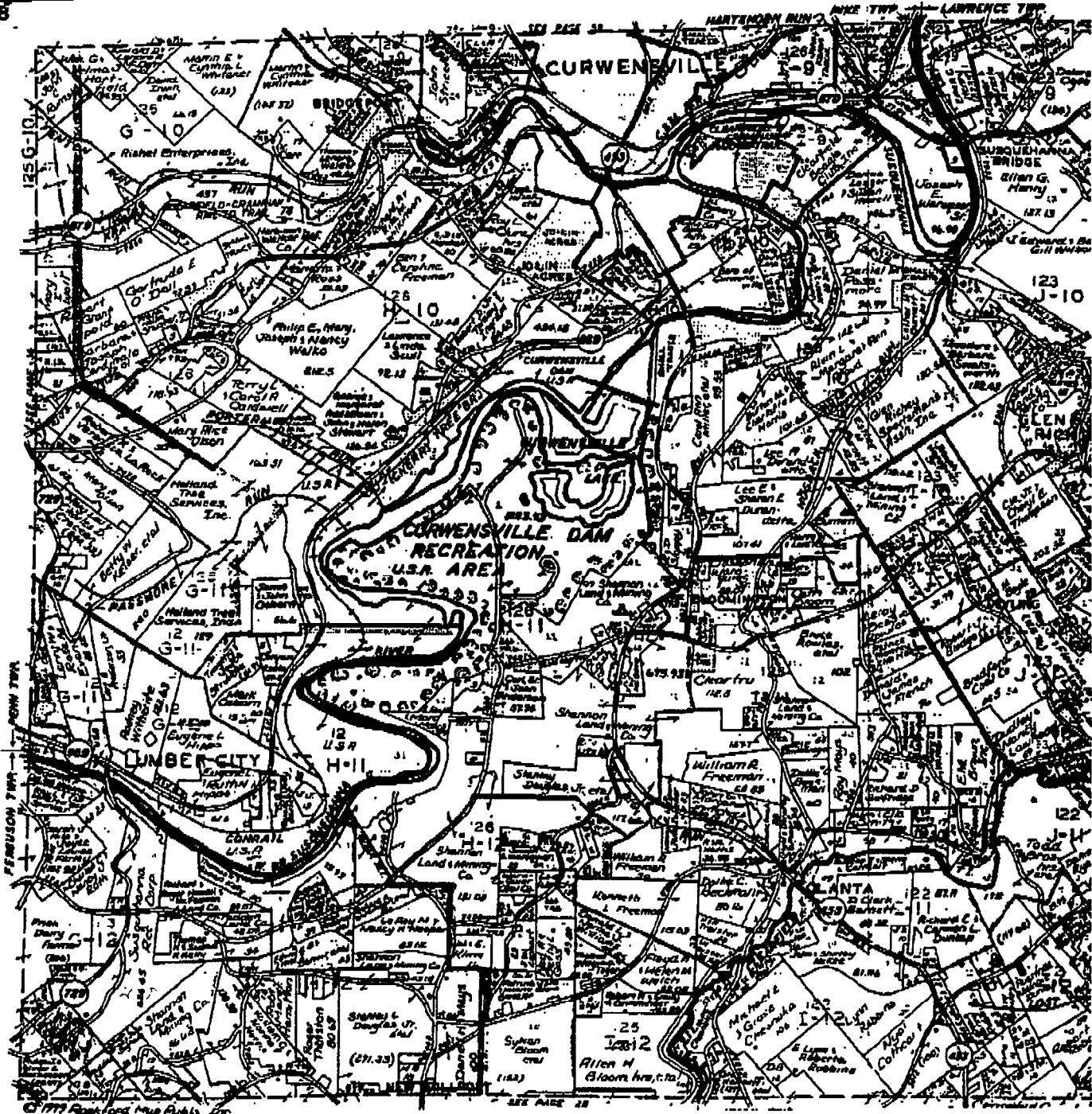
This Consent shall not be construed to impair any contractual agreement between the Mine Operator and the landowner.

(INSERT ADDITIONAL PROVISIONS OR CROSS OUT)

In witness whereof and intending to legally bind (myself) (ourselves), (my) (our) heirs, successors and assigns. (I) (we) have hereunto set (my) (our) hand(s) and seal this 8 day of June, 2001.Kenneth B. PriskKENNETH B. PRISKPriek Dairy Farms  
LANDOWNER   
Print Name: \_\_\_\_\_By:   
(Signature) \_\_\_\_\_  
George Prisk, Partner  
(Seal) \_\_\_\_\_Print Name: \_\_\_\_\_  
By:   
(Signature) \_\_\_\_\_  
Donald Prisk, Partner  
(Seal) \_\_\_\_\_

Print Name: \_\_\_\_\_

38



**Landowner signatures**

**George Prisk, Partner**

**PRISK DAIRY FARMS**

Donald J. Prisk  
Donald Prisk, Partner

1000 *Am. J. Phys. Anthro.*

Kenneth B. Frisch  
KENNETH B. FRISCH PARTNER

## **ACKNOWLEDGEMENT OF INDIVIDUALS OR PARTNERS**

**LAND OWNER**

STATE OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

On June 8, 2001, before me, the undersigned Notary, personally appeared  
KEWENITH B. PRISK, George Prisk and Donald Prisk, Partners T/A Prisk Dairy Farms  
(Names)  
known to me (or satisfactorily proven) to be the person whose name is subscribed to this instrument, and who acknowledged that they (he, she or they) executed the same and desires it to be recorded.

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

(SEAL) Tim Morgan My Commission Expires: JAN MORGAN, Notary Public  
Notary Public 14th Township, Chester Co., PA  
My Commission Expires April 24, 2005

## **ACKNOWLEDGEMENT OF CORPORATIONS**

**LAND OWNER**

STATE OF 58  
COUNTY OF

On \_\_\_\_\_, before me, the undersigned Notary, personally appeared \_\_\_\_\_,  
who acknowledged (herself) (himself) to be the \_\_\_\_\_ of \_\_\_\_\_  
(Title of Person)

corporation, and the (s)he, as such officer, being authorized to do so, executed the foregoing instrument on behalf of the said corporation and desires that this instrument be recorded.

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

(SEAL) \_\_\_\_\_ My Commission Expires: \_\_\_\_\_  
Notary Public \_\_\_\_\_ (Date) \_\_\_\_\_

This instrument has been recorded in \_\_\_\_\_  
County, Pennsylvania, this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, at Book \_\_\_\_\_, Page (s) \_\_\_\_\_.

**(Signed) • (Print Name)**

(Sealed)

1099

Spencer Land Co.

 CORRECTED (if checked)

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Rents \$	OMB No. 1545-0115
Darrell, Robert & Ray Spencer PTR PO Box I Route 729 Grampian, PA 16838-0001		2 Royalties 17835.69 \$	2004 Form 1099-MISC
		3 Other income \$	4 Federal income tax withheld \$
PAYER'S Federal identification number 25-6122781	RECIPIENT'S identification number 166-40-0266	5 Fishing boat proceeds \$	6 Medical and health care payments \$
RECIPIENT'S name Kenneth B. Prisk		7 Nonemployee compensation \$	8 Substitute payments in lieu of dividends or interest \$
Street address (including apt. no.) 2205 Watts Road		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale ► <input type="checkbox"/>	10 Crop insurance proceeds \$
City, state, and ZIP code Curwensville PA 16833		11	12
Account number (optional)		13 Excans golden parachute payments \$	14 Gross proceeds paid to an attorney \$
15		16 State tax withheld \$	17 State/Payer's state no. 18 State income \$

Miscellaneous Income

Copy B  
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

**VERIFICATION**

I, **KENNETH B. PRISK**, verify that the statements made in this Petition 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.

2-02-05  
Date

  
Kenneth B. Prisk

— Fold Here —

CHRIS A. PENTZ  
ATTORNEY AT LAW  
207 East Market Street  
CLEARFIELD, PENNSYLVANIA 16830

68

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

KENNETH B. PRISK,  
Plaintiff

NO. 2004 - 2002 -CD

VS

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

\* **Type of Pleading:** Notice of  
\* Intent to File Judgment  
\*  
\*  
\*  
\* **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** GK  
10-39 158 *select other*  
FEB 02 2005

William A. Shaw  
Prothonotary

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

\*

KENNETH B. PRISK,  
Plaintiff

\*

vs

No. 04-2002 -C.D.

\*

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

\*

\*

PRAECIPE TO ENTER JUDGMENT BY DEFAULT

TO THE PROTHONOTARY:

Please enter judgment in favor of the Plaintiff, KENNETH B. PRISK and against the Defendants, DONALD G. PRISK and GEORGE L. PRISK, for failure to file after Rule and Notice of Default.

Respectfully submitted this 2 day of Feb., 2005.

  
\_\_\_\_\_  
Chris A. Rentz  
Attorney for Plaintiff

— Fold Here —

CHRIS A. PENTZ  
ATTORNEY AT LAW  
207 East Market Street  
CLEARFIELD, PENNSYLVANIA 16830

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

KENNETH B. PRISK

Plaintiff

\*

\*

\*

vs.

\* No. 2004-2002-CD

\*

\*

\*

DONALD G. PRISK and  
GEORGE L. PRISK

Defendants

\*

SCHEDULING ORDER

AND NOW, this 16<sup>th</sup> day of February, 2005, on Motion of Defendants, Argument on Preliminary Objections filed by Defendants shall be heard on the 9 day of March, 2005 at 3:00 o'clock P.m. in Court Room No. 1, Clearfield County Courthouse, 1 North 2<sup>nd</sup> Street, Clearfield, PA 16830.

By the Court:

  
\_\_\_\_\_  
Judge

FILED 400  
6K 09:05 AM FEB 17 2005 Atty Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

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

KENNETH B. PRISK,  
Plaintiff

No. 2004 -2002-CD

vs

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendant

\* **Type of Pleading:** 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

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013:45 PM  
FEB 18 2005 CC

William A. Shaw  
Prothonotary/Clerk of Courts

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

KENNETH B. PRISK,  
Plaintiff

\*

\*

\*

vs

\* No. 2004-2002-C.D.

\*

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

\*

\*

\*

**CERTIFICATE OF SERVICE**

This is to certify that on the 11th day of February  
2005, the undersigned served a certified copy of the Petition to  
Allocate Coal Royalties Inventory and upon counsel for the  
Defendants. Such documents were personally served upon:

Attorney John Sughrue  
23 North Second Street  
Clearfield PA 16830

  
\_\_\_\_\_  
Chris A. Pentz, Esquire  
Attorney for Plaintiff

— Fold Here —

CHRIS A. PENTZ  
ATTORNEY AT LAW

207 East Market Street P. O. Box 552  
CLEARFIELD, PENNSYLVANIA 16830

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

KENNETH B. PRISK

:

VS.

: NO. 04-2002-CD

DONALD G. PRISK and

:

GEORGE L. PRISK

:

O R D E R

NOW, this 9th day of March, 2005, this being the date set for argument on the Preliminary Objections filed on behalf of both Defendants; upon agreement of the parties, it is the ORDER of this Court as follows:

1. Preliminary Objection I is hereby granted. The Plaintiff shall have no more than twenty (20) days from this date within which to file an Amended Complaint setting forth separate counts as to the various allegations being made;

2. Preliminary Objection II is hereby granted. The Plaintiff shall have no more than twenty (20) days from this date in which to file an Amended Complaint which will provide more specificity in regard to the allegations of material fact;

3. Preliminary Objection III is hereby dismissed, without prejudice, to be refiled to the Amended Complaint if either or both Defendants would deem the same to be appropriate.

BY THE COURT:

  
\_\_\_\_\_  
President Judge

FILED  
02/09/05 1CC  
MAR 11 2005  
Atlys Sughrue  
Pertz  
6K  
PROSECUTORIAL/COURT REPORTS

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

KENNETH B. PRISK,  
Plaintiff

\*  
\*  
\*  
\* No. 04-2002-CD

VS

\*  
\* Type of Pleading: First  
\* Amended Complaint

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

\* 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

MAR 28 2005

07 3:10 AM

William A. Shaw (6K)

Prothonotary/Clerk of Courts

2 CEM to ATL

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

**KENNETH B. PRISK,**  
**Plaintiff**

**Plaintiff**

vs

## BBTSK and

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendant

**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 within twenty days after this Complaint is served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for the money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

Office of Court Administrator  
Clearfield County Courthouse  
Second Street  
Clearfield PA 16830  
814 765-2641

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

**Kenneth B. Prisk,**  
Plaintiff

\*

\*

\*

\*

VS

\*

No. 04-2002-CD

\*

\*

**Donald G. Prisk and**  
**George L. Prisk,**  
Defendants

\*

\*

**FIRST AMENDED COMPLAINT**

1. Plaintiff Kenneth B. Prisk is an adult individual who resides at 2205 Watts Road, Curwensville, Pennsylvania.
2. Defendant Donald G. Prisk is an adult individual who resides at 248 Hollow View Road, Curwensville, Pennsylvania.
3. Defendant George L. Prisk is an adult individual who resides at 316 Prisk Road, Curwensville, Pennsylvania.
4. Plaintiff and defendants at all relevant times were and/or are equal partners in Prisk Dairy Farms, a Pennsylvania general partnership with offices at 248 Hollow View Road, Curwensville, Pennsylvania. A copy of the Partnership Agreements are attached and incorporated herein.
5. At all relevant times the Defendants were the controlling majority.
6. At all relevant times the Defendants controlled the Partnership books and records.

**Count I - Theft of Timber Operations Money**

7. Paragraphs 1 through 6 above are incorporated herein by reference.

8. On or about 1996 to present, defendants began timbering operations on partnership property and third parties' property with partnership equipment generating sums in excess of \$581,966.47 from the following operations:

- a. Harry-William Rodgers beginning 1996 and ending 2001 in the amount of \$90,004.12.
- b. David Barrett beginning and ending 1997 in the amount of \$1025.30.
- c. Philip Aschendorf beginning 1997 and ending 1999 in the amount of \$7112.05
- d. Spencer Land Co. beginning and ending 2001 in the amount of \$5934.75
- e. Dorothy Read beginning 2001 and ending 2002 in the amount of \$30,421.14.
- d. Prisk Farm Lands beginning 1995 and ending 2005 in the amount of \$435,432.86.
- f. Robert Spencer beginning and ending 2001 in the amount of \$1310.21.
- g. Sylvia Read beginning and ending 1999 in the amount of \$792.40.
- h. Richard Read beginning 1999 and ending 2001 in the amount of \$9930.64.

9. The Partnership assets used were:

- a. Two (2) New Holland 553 Skid Steers.
- b. Franklin Skidder
- c. 1989 Ford Diesel Dump Truck.
- d. 1976 Ford Dump Truck.
- e. 1989 Dodge Diesel Pickup Truck.
- f. Chain saws.

10. Plaintiff believes and therefore avers that the defendants kept some or all of the timbering profits for their personal gains to the exclusion of the partnership and /or the Plaintiff.

WHEREFORE, plaintiff requests the following relief:

- (a) that defendants provide an accounting of all monies,

properties, or other assets taken and/or wrongfully converted by them;

- (b) that judgment be entered against defendants for compensatory damages in excess of \$25,000;
- (c) that punitive damages be entered against defendants;
- (d) such other relief as the Court deems just and proper;
- (e) jury trial demanded.

**Count II - Theft of Partnership Operating Profits**

11. Paragraphs 1 through 6 above are incorporated herein by reference.

12. On or about August 2002 to present, defendants began retaining all partnership operating profits to the exclusion of plaintiff.

WHEREFORE, plaintiff requests the following relief:

- (a) that defendants provide an accounting of all monies, properties, or other assets taken and/or wrongfully converted by them;
- (b) that judgment be entered against defendants for compensatory damages in excess of \$25,000;
- (c) that punitive damages be entered against defendants;
- (d) such other relief as the Court deems just and proper;
- (e) jury trial demanded.

**Count III - Theft of Partnership Basis**

13. Paragraphs 1 through 6 above are incorporated herein by reference.

14. On or about 1992 to Present, defendants began altering the partnership records so as not to allocate any income to plaintiff's 1/3 interest in the partnership resulting in a depletion of plaintiff's basis in the partnership.

WHEREFORE, plaintiff requests the following relief:

- (a) that defendants provide an accounting of all monies, properties, or other assets taken and/or wrongfully converted by them;
- (b) that judgment be entered against defendants for compensatory damages in excess of \$25,000;
- (c) that punitive damages be entered against defendants;
- (d) such other relief as the Court deems just and proper;
- (e) jury trial demanded.
- (f) indemnify for tax liability for correction of basis.

Count IV - Theft of Gas Royalties

15. Paragraphs 1 through 6 above are incorporated herein by reference.

16. On or about 1992 to present, defendants began retaining the partnership gas profits to the exclusion of plaintiff.

17. The amounts are as follows:

- a. 1992 to 2002 CNG Transmissions Corp. \$11,008.69.
- b. 1997 to 2002 Petroleum Development Corp.  
\$42,216.12.
- c. 1992 and 1993 Phillips Production Co. \$295.00.
- d. 1994 to 1996 Shawmut Development Corp. \$3660.81.
- e. 1996 to 1998 Shawmut Production Corp. \$3118.74.
- f. 1998 to 2002 Power Gas \$2637.66.
- g. 1992 to 1997 J.C. Enterprises \$39427.16.
- h. 1998 to 2003 J.R. Resources \$24377.04.
- i. 1992 to 2002 Kriebel Minerals & Co. \$2492.99.
- j. 2002 to present Kriebel Minerals & Co. \$unknowm.
- k. 1997 and 2001 Kriebel Minerals & Co. \$unknowm.
- l. 2003 and 2004 Power Gas \$unknowm.
- m. 1998 to present Shawmut Production Corp. \$unknowm.
- n. 2001, 2003, and 2004 Petroleum Development Corp  
\$unknowm.
- o. 2001, 2003 and 2004 CNG Transmissions Corp.  
\$unknowm

18 Plaintiff believes and therefore avers that the defendants kept some or all of the gas profits for their personal gains to the exclusion of the partnership and/or the plaintiff.

WHEREFORE, plaintiff requests the following relief:

- (a) that defendants provide an accounting of all monies, properties, or other assets taken and/or wrongfully converted by them;
- (b) that judgment be entered against defendants for compensatory damages in excess of \$25,000;
- (c) that punitive damages be entered against defendants;
- (d) such other relief as the Court deems just and proper;
- (e) jury trial demanded.

Count V - Theft of Coal Royalties

19. Paragraphs 1 through 6 above are incorporated herein by reference.

20. On or about 1990 to 2000, defendants began retaining partnership coal profits to the exclusion of plaintiff.

21. The amounts are as follows:

- a. 1990 to 1993 Cherry Corner Property \$unknowm.
- b. 1996 to 1997 Dairy Barn Property \$87,870.83.
- c. 2003 to present Homestead Property \$80,085.13.

22. Plaintiff believes and therefore avers that the defendants kept some or all of the coal royalties for their personal gains to the exclusion of the partnership and/or the plaintiff.

WHEREFORE, plaintiff requests the following relief:

- (a) that defendants provide an accounting of all monies, properties, or other assets taken and/or wrongfully converted by them;

- (b) that judgment be entered against defendants for compensatory damages in excess of \$25,000;
- (c) that punitive damages be entered against defendants;
- (d) such other relief as the Court deems just and proper;
- (e) jury trial demanded.

**Count VI - Theft of Partnership Assets**

- 23. Paragraphs 1 through 6 above are incorporated herein by reference.
- 24. On or about 1992, defendants began selling partnership assets and received partial cash payments to the exclusion of plaintiff and his 1/3 partnership interest.
- 25. The amounts are as follows:
  - a. February 1997 sale of Haybine \$15,500.00 with \$5000.00 being cash.
  - b. June 2000 sale of Silo \$7500.00 with \$1000.00 being cash.
  - c. May 1996 sale of cows \$66,000.00 with \$15,000.00 being cash.
- 26. On or about 1995, defendants began selling partnership assets and received payments to the exclusion of the partnership and/or the plaintiff.
- 27. The amounts are as follows:
  - a. November 1995, check # 2413 in the amount of \$374.00 from Kitko Lumber Co.
  - b. July 2001, check # 5592 in the amount of \$565.00 from Kitko Lumber Co.
  - c. September 2001, check # 6536 in the amount of \$260.00 from Kitko Lumber Co.
  - d. June 2001, check # 5340 in the amount of \$1562.00 from Kitko Lumber Co.
  - e. August 1997, sale of unknown item \$1750.00.
  - f. June 1999, sale of wagon \$1000.00.
  - g. December 1999, sale of drinking station \$525.00.
  - h. March 2000, sale of tanker truck \$3000.00.
  - i. March 2000, sale of free stalls \$425.00.

j. February 2000, sale of cattle trailer \$2000.00.

WHEREFORE, plaintiff requests the following relief:

- (a) that defendants provide an accounting of all monies, properties, or other assets taken and/or wrongfully converted by them;
- (b) that judgment be entered against defendants for compensatory damages in excess of \$25,000;
- (c) that punitive damages be entered against defendants;
- (d) such other relief as the Court deems just and proper;
- (e) jury trial demanded.

**Count VII - Misuse of Partnership Funds**

28. Paragraphs 1 through 6 above are incorporated herein by reference.

29. On or about 1998 to present, defendants began paying partnership funds for Carla J. Prisk's income tax liability when she was not an employee of the partnership.

30. Checks were written from the partnership to Defendant Donald G. Prisk as follows:

- a. 3/5/98 check # 1112 in the amount \$8000.00.
- b. 6/16/98 check # 1195 in the amount \$2000.00.
- c. 3/17/99 check # 1459 in the amount \$11,551.37.
- d. 9/3/99 check # 1558 in the amount \$3000.00.
- e. 6/20/98 check # 1198 in the amount \$221.47.
- f. 9/19/97 check # 8777 in the amount \$85.00.
- g. 6/17/98 check # 1376 in the amount includes \$100.00 petty cash.
- h. 6/30/99 check # 1387 in the amount includes \$120.00 petty cash.
- i. 7/29/99 check # 1528 in the amount includes \$100.00 petty cash
- j. 9/18/99 check # 1564 in the amount includes \$100.00 petty cash.
- k. 10/7/99 check # 1575 in the amount includes \$100.00 petty cash.

- l. 11/15/99 check # 1607 in the amount includes \$80.00 petty cash.
- m. 12/4/99 check # 1613 in the amount includes \$242.00 cash.
- n. 12/22/99 check # 1635 in the amount includes \$101.44 misc.
- o. 3/22/99 check # 1708 in the amount includes \$300.00. gas-misc.

31. Checks were written from the partnership to Defendant George L. Prisk as follows:

- a. 2/5/98 check # 111 in the amount \$5000.00.
- b. 3/17/99 check # 1451 in the amount \$5500.00.
- c. 9/23/99 check # 1566 in the amount includes \$100.00 petty cash.
- d. 9/21/99 check # 1586 in the amount includes \$200.00 petty cash.
- e. 3/29/99 check # 1707 in the amount includes \$100.00 misc.

32. Plaintiffs received \$170,328.22 in federal farm subsidies from 1992 to 2002 with the amounts for 2003 and 2004 being unknown.

33. Plaintiffs received \$415,315.58 from the sale of cows from 1991 to 1999 with the amounts for 2000 to present unknown.

34. Plaintiffs received \$136,868.33 from the sale of crops from 1996 to 2000 with the amounts for 1991 to 1995 and 2001 to present being unknown.

35. Plaintiffs received \$12,000.00 from rental of the Straw Property from 2001 to 2005.

36. Plaintiffs received \$15,970.00 in crop damage insurance proceeds from 1998 to 2002.

37. Plaintiff believes and therefore avers that the Defendants misused the above amounts for other than authorized partnership purposes or disbursements.

WHEREFORE, plaintiff requests the following relief:

(a) that defendants provide an accounting of all monies, properties, or other assets taken and/or wrongfully

converted by them;

- (b) that judgment be entered against defendants for compensatory damages in excess of \$25,000;
- (c) that punitive damages be entered against defendants;
- (d) such other relief as the Court deems just and proper;
- (e) jury trial demanded.

**Count VIII - Breach of Fiduciary Duty**

38. Paragraphs 1 through 37 above are incorporated herein by reference.

39. Defendants improper and illegal actions may ruin the aforementioned business entity, thereby destroying not only the entity, but also the personal reputations and credit of the above-mentioned plaintiff who is also signator and co-guarantor of the various loans.

40. Defendants have appropriated and converted to their own use sums in excess of \$25,000.00.

41. Defendants have breached their various fiduciary duties as set forth in above allegations.

WHEREFORE, plaintiff requests the following relief:

- (a) that defendants provide an accounting of all monies, properties, or other assets taken and/or wrongfully converted by them;
- (b) that judgment be entered against defendants for compensatory damages in excess of \$25,000;
- (c) that punitive damages be entered against defendants;
- (d) such other relief as the Court deems just and proper;
- (e) jury trial demanded.

**Count IX - Fraud**

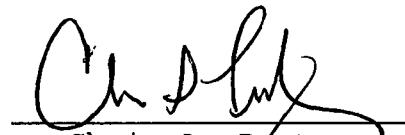
42. Paragraphs 1 through 41 above are incorporated herein by reference.

43. Defendants have committed a fraud upon plaintiff as set forth in above allegations.

WHEREFORE, plaintiff requests the following relief:

- (a) that defendants provide an accounting of all monies, properties, or other assets taken and/or wrongfully converted by them;
- (b) that judgment be entered against defendants for compensatory damages in excess of \$25,000;
- (c) that punitive damages be entered against defendants;
- (d) such other relief as the Court deems just and proper;
- (e) jury trial demanded.

Respectfully submitted this 28 day of March, 2005.

  
Chris A. Pentz  
Attorney for Plaintiff  
I.D. # 39232  
207 East Locust Street  
Clearfield, PA 16830

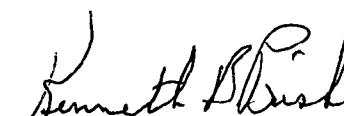
814 765 4000

VERIFICATION

I, Kenneth B. Prisk, 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.

MAR. 28, 2005

Date

  
Kenneth B. Prisk

Kenneth B. Prisk

Prothonotary/Clerk of Courts  
William A. Shaw

MAR 28 2005

FILED

— Fold Here —

CHRIS A. PENTZ  
ATTORNEY AT LAW

CLEARFIELD, PENNSYLVANIA 16830

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

**KENNETH B. PRISK,**  
Plaintiff

\* No. 04-2002 - CD

vs

\* **Type of Pleading:** Certificate  
\* of Service

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

\* 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  
11:00 AM  
APR 08 2005  
no cc  
(60)

William A. Shaw  
Prothonotary/Clerk of Courts

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

KENNETH B. PRISK,  
Plaintiff

\*

\*

\*

vs

\* No. 2004-2002-C.D.

\*

\*

\*

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

\*

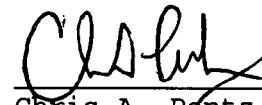
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**CERTIFICATE OF SERVICE**

This is to certify that on the 29th day of March  
2005, the undersigned served two (2) certified copies of the  
First Amended Complaint upon counsel for the Defendants. Such  
documents were personally served upon:

Attorney John Sughrue  
23 North Second Street  
Clearfield PA 16830

  
\_\_\_\_\_  
Chris A. Pentz, Esquire  
Attorney for Plaintiff

**FILED**

**APR 08 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

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**CHRIS A. PENTZ**  
ATTORNEY AT LAW  
207 East Market Street  
CLEARFIELD, PENNSYLVANIA 16830

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

KENNETH B. PRISK

Plaintiff

\*

\*

\*

vs.

\* No. 2004-2002-CD

\*

DONALD G. PRISK and

GEORGE L. PRISK

Defendants

\*

\*

\*

Type of Case: **Civil Action**

\*

\*

\*

Type of Pleading: **Answer & New Matter to  
Petition to Allocate Coal Royalties**

\*

\*

\*

Filed on Behalf of: **Both Defendants**

\*

\*

**Counsel of Record for this Party:**

\*

John Sughrue, Esq.

\*

Supreme Court No. 01037

\*

23 North Second Street

\*

Clearfield, PA 16830

\*

Phone: (814) 765-1704

\*

Fax: (814) 765-6959

\*

\*

\*

\*

**Other Counsel of Record:**

\*

Chris A. Pentz Esquire

\*

Supreme Court No. 39232

\*

207 E. Market St.

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PO Box 552

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Clearfield, PA 16830

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Phone: (814) 765-4000

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FILED <sup>100</sup>  
APR 22 2005 <sup>300</sup>  
Atty Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

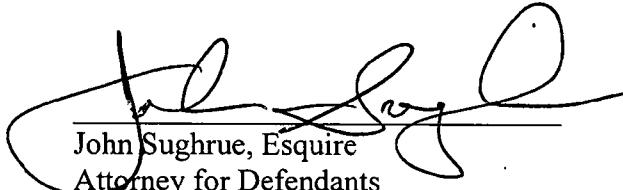
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW

KENNETH B. PRISK	*
Plaintiff	*
	*
vs.	*
	No. 2004-2002-CD
	*
DONALD G. PRISK and	*
GEORGE L. PRISK	*
Defendants	*

**NOTICE**

**TO: Kenneth R. Prisk:**

**YOU ARE HEREBY NOTIFIED to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.**

  
John Sughrue, Esquire  
Attorney for Defendants

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

KENNETH B. PRISK  
Plaintiff

vs. \* No. 2004-2002-CD

DONALD G. PRISK and  
GEORGE L. PRISK  
Defendants \*

**DEFENDANTS' ANSWER TO  
PETITION TO ALLOCATE COAL ROYALTIES**

AND NOW, comes the Defendants, Donald G. Prisk and George L. Prisk, individually and t/a Prisk Dairy Farms, a Partnership, and responds to the Petition filed by Plaintiff to allocate coal royalties as follows:

1. Admitted.
2. Admitted. Further, Defendants respond both individually and as general partners of Prisk Dairy Farms, a Pennsylvania Partnership (hereafter, "Partnership").
3. Denied. On the contrary, Prisk Dairy Farms, a Partnership organized and operating under agreement among the general partners and under the laws of the Commonwealth of Pennsylvania entered into said lease.
4. Denied. The lease in paragraph 8 directs that the royalty is payable to lessor which is the Partnership. Further, subsequent to the lease being executed, the Partnership informally directed that the Partnership royalties be paid to each of the three general partners equally, specifically Plaintiff and Defendants. The Partnership was not required to do so and such direction was not permanent and did not divest the Partnership of control of said royalties.

5. Denied as stated. On the contrary, the Partnership on or about October 22, 2004, by letter directed to lessee directed the payments to be paid to the Partnership. A copy of said letter is attached hereto as **Exhibit 1**.

6. Denied. Petitioner may believe that the payments are payable directly to the individual and not the Partnership but such is not the case. On the contrary, the homestead tract is owned by the Partnership, and as such owner and lessor, the Partnership has the right and power under the lease to require lessee to make payments to the lessor, Partnership.

**NEW MATTER**

**Jurisdiction Issue**

7. The Court does not have the jurisdiction, generally, or the power, specifically over said coal royalties, including the power to appropriate them, direct that they be paid to partners or escrowed.

**Factual Averments**

8. The said homestead tract and the coal thereon is owned by the Partnership.

9. Said coal lease constitutes an asset of the Partnership.

10. The royalties received from the coal lease constitute an asset of the Partnership.

11. The assets of the Partnership, including royalty payments, are available to be used for the payment of Partnership debt.

12. The pertinent Partnership Agreement dated October 1, 1972, copy attached as **Exhibit 2**, provides in paragraph 5 that the conduct of the Partnership business and all decisions shall be by a majority vote of the Partners and each partner is entitled to one vote.

13. That the Defendants, Donald G. Prisk and George L. Prisk, as partners, made the decision and directed Spencer Land Company to pay the royalties to the Partnership in the course of the operation of the Partnership business.

14. That the Defendants, at the time of making such decision, constituted a majority vote of all the partners in the Partnership.

15. That the Defendants actions were authorized by paragraph 5 of said Partnership Agreement.

16. That during 2004 and for a period of time prior thereto and thereafter, the Partnership determined that it was necessary to sell certain capital assets, including timber and coal for the purpose of meeting the debts and obligations of the Partnership.

17. That the said coal royalties were required by the Partnership to meet and pay in a timely manner, the expenses, debts and other liabilities of the Partnership.

18. That the Plaintiff, by letter from his authorized attorney, Chris A. Pentz, dated July 23, 2004, and received by attorney for Defendants on July 26, 2004, copy attached as Exhibit 3, withdrew from the Partnership pursuant to paragraph 8 of the aforesaid Partnership Agreement.

19. That the Defendants, by their authorized attorney, John Sughrue, by letter dated August 6, 2004, copy attached as Exhibit 4 acknowledged Plaintiff's withdrawal from the Partnership.

20. As a partner and certainly as a withdrawn partner, the Plaintiff does not have any individual right to receive said coal royalties.

21. Under paragraph 5 of the aforesaid Partnership Agreement, the Plaintiff does not have the power to require that Partnership assets be paid to him or to any other person..

22. That during 2004, a Partnership obligation payable to the United State Department of Agriculture became due in the amount of slightly less than \$25,000.00. The Plaintiff refused, in a timely manner, to participate in refinancing said obligation, all of which resulted in the Partnership defaulting on said obligation. This conduct constituted a breach of his fiduciary duty to the Defendants and the Partnership, (hereafter referred to as "defaulted obligation").

23. Thereafter, in 2004, Defendants arranged for a private loan at a favorable interest rate and terms, to refinance the defaulted obligation and the Plaintiff refused to authorize such refinancing loan, all of which constituted a breach of his fiduciary duty to the Defendants and the Partnership.

24. As a result of Plaintiff's breach of his fiduciary duty as aforesaid, it was necessary for the Defendants to contribute additional equity to the Partnership on or about September 2004 in order to satisfy the defaulted obligation.

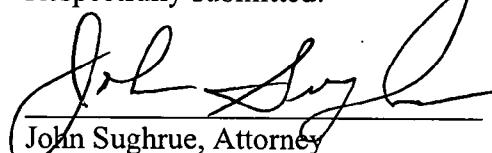
25. As a result of the defaulted obligation, and declining Partnership revenues, it was necessary, reasonable and responsible for the Defendants to require coal royalties to be paid to the Partnership, where they would be available to meet and satisfy the obligations and liabilities of the Partnership prior to being consumed by the individual partners.

26. All of the material facts alleged in this Answer and New Matter were known to the Plaintiff and his attorney prior to the filing of Plaintiff's Petition.

27. As a result of the foregoing, the allegations in the Petition have no evidentiary support and are not likely to have evidentiary support after discovery, at law or in equity, to reasonably justify the filing and prosecution of this petition.

WHEREFORE, Defendants respectfully move the Honorable Court to enter an order denying the prayer of said petition, taxing costs to the Plaintiff and awarding reasonable attorney's fees to the Defendants as a sanction against Plaintiff for bringing and prosecuting the meritless proceeding.

Respectfully submitted:



John Sughrue, Attorney  
for Defendants

JOHN SUGHRUE  
Attorney at Law

Phone (814) 765-1704

23 North Second Street  
Clearfield, PA 16830

Fax (814) 765-6959

11:06 a.m.

October 22, 2004

VIA FACSIMILE 236-1624,  
US FIRST CLASS MAIL &  
CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED

Spencer Land Co.  
PO Box I  
Grampian, PA 16838

RE: Prisk Dairy Farms, a Partnership  
Lease Agreement dated June 8, 2001 between Prisk Dairy Farms and  
Spencer Land Company for 44.68 acres

Dear Sir,

Please be advised and note on your records that I have been retained by George Prisk and Donald Prisk, general partners of Prisk Dairy Farms, to represent them in various matters. The above referenced agreement is between you and Prisk Dairy Farms, a partnership. However, you have, in the past, paid royalties, rentals and other sums due the partnership in equal checks to the three individual partners.

The purpose of this letter is to update you with respect to certain changes that have occurred in the partnership and to change the instructions with respect to payment of royalties, rental and the like.

Kenneth B. Prisk has withdrawn from the partnership and is no longer a partner. His withdrawal was effective July 26, 2004. As a result of that change, you are advised and asked to note your records as follows:

1. Kenneth B. Prisk is not a partner in the Prisk Dairy Farms partnership and has no apparent or actual authority to act on behalf of the partnership or on behalf of George Prisk and Donald Prisk, the remaining general partners;
2. The partnership continues as a legal entity and the sole general partners are George L. Prisk and Donald G. Prisk;
3. Effective immediately and upon your receipt of this letter, you are directed to make all payments due under this lease to the order of Prisk Dairy Farms, a partnership, and mail it to the address indicated in the Lease Agreement, which is the partnership's address;

Exhibit 1

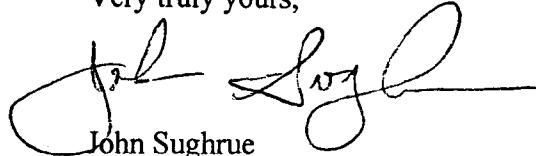
4. Do not make any payments to any individuals, since to do so could result in your company not receiving credit for your payment on the books of Prisk Dairy Farms.

As a result of Kenneth Prisk's withdrawal, certain provisions of the Partnership Agreement have taken effect. The purpose of this letter is to avoid entangling your company in the partnership's affairs. Please recall that the property being mined is deeded in the name of the partnership and your agreement is with the partnership and was signed by all three partners on behalf of the partnership. The partnership has a Tax Identification Number, which I assume is the number that you have been using for IRS reporting. If you do not have it, kindly advise and I will provide you with a W-9.

Please accept this letter as my certification to you that Mr. Kenneth Prisk, by his attorney, Chris Pentz, delivered to my office, and I am in possession of his Notice of Withdrawal from the partnership dated July 24, 2004, received by me July 26, 2004 and acknowledged and accepted by the remaining partners under letter dated August 6, 2004.

It is anticipated that you will receive this letter in time to pay royalties due on October 25, 2004 in accordance with the within instructions. At the very least, I would expect you to hold that royalty if you have any questions or concerns regarding the matter. To authenticate my authority, this letter has been countersigned below by my clients. Thank you for your attention to this matter.

Very truly yours,



John Sughrue

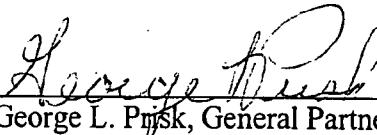
JS/kg

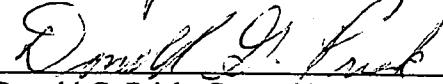
cc: Donald G. Prisk  
George L. Prisk

Prisk Dairy Farms, a partnership, hereby confirms the authority of its attorney, John Sughrue, as indicated above, and joins in the foregoing letter.

Dated: October 22, 2004

PRISK DAIRY FARMS, a PARTNERSHIP

By:   
George L. Prisk, General Partner

By:   
Donald G. Prisk, General Partner

*Final 2nd draft*

## PARTNERSHIP AGREEMENT

This Partnership Agreement made and entered into as of October 1, 1972 by and among LYNN H. PRISK, first party, GEORGE L. PRISK, second party, DONALD G. PRISK, third party, and KENNETH B. PRISK, fourth party, all of R. D. #2, Curwensville, Pennsylvania.

### WITNESSETH:

WHEREAS, for more than five (5) years prior to the date of this Partnership Agreement, the parties have engaged in the dairy and farming business under a parol agreement and now by this written agreement hereby reduces to writing the terms of the said Partnership Agreement.

NOW THEREFORE in consideration of the mutual promises herein contained and with the intent to be legally bound hereby, the parties hereby agree as follows:

1. Business Name: The name of the partnership shall be Prisk Dairy Farms.

2. Place of Business: The principal place of business shall be in Ferguson and Greenwood Township, Clearfield County, Pennsylvania, R. D. #2 Curwensville, Pennsylvania, and such other places agreed upon by the parties.

3. Purpose: The partnership shall engage in the business of dairy farming, producing and selling milk, milk products, and other farm products and any other businesses as agreed upon by the partners.

4. Capital: The partnership capital consists of livestock, machinery, equipment, feed, farm products and cash, which capital has been contributed equally by all the partners. Individual capital accounts shall

Exhibit 2

be maintained for each partner. A partner may draw on and reduce his capital account only with the written consent of all other partners. It is agreed that the value of the partnership capital, as of the date of this agreement is \$80,000 and hereafter on or before the fifteenth of January of each succeeding year the partners shall determine and enter in the partnership records the value of the partnership capital as of the first day of January of that year. Should a partner withdraw or die, the partnership capital valuation which is then entered in the partnership records, as of the date of withdrawal or death, shall be used in determining the value due the withdrawing partner or the estate of a deceased partner. If at any time the partners fail to annually determine the partnership capital valuation the prior determination shall continue until the subsequent determination is made.

5. Management: Each partner shall have equal voice in the management and conduct of the partnership business and all decisions shall be by a majority vote and each partner shall be entitled to one vote. The second, third and fourth parties should devote their full time and attention to the partnership business, while the first party shall devote only the time and attention which he desires to devote to the business.

6. Profit and Loss: The net profit and loss of the partnership shall be distributed or chargeable, as the case may be, to each partner in equal proportions. An individual income account shall be maintained for each partner and there shall be a monthly drawing from the income account of \$150.00 for each partner. Notwithstanding any other provisions in this agreement, if in any month there is not sufficient income to provide the \$150.00 drawings they shall be credited against the capital account.

Annually, as soon as possible after the close of the calender year the partners shall calculate the net profit, and after crediting the distributions made on the drawings, setting aside an agreed amount for additional capital, shall distribute the residue equally among the partners.

7. Insurance: Lifeinsurance policies of equal amounts have been obtained for each of the insurable partners, the premium of which have been and shall be paid from the partnership funds. The beneficiary in each policy shall be the wife of the insured partner. One partner, Lynn H. Prisk, is not presently insurable and in the event of his death the partnership shall pay, in lieu of insurance, the sum of One Hundred Fifty (\$150.00) Dollars per month to Arlene I. Prisk, his surviving widow, so long as she lives, subject to the provisions hereafter stated relating to dissolution.

8. Withdrawal of a Partner: The withdrawal of a partner shall not dissolve the partnership. Should a partner desire to withdraw he shall give the remaining partners sixty (60) days written notice of his intention to withdraw. Within said period the value of the withdrawn partner's share shall be calculated by dividing the partnership capital valuation in effect at the time when the withdrawn partner's notice is received by the number of partners, including the withdrawing partner. The partnership shall then distribute to the withdrawn partner share in sixty (60) equal monthly payments with the first payment to be made on the ninetieth (90) day after the withdrawal is received and monthly thereafter, until the withdrawn partner's share is paid in full together with four (4%) per cent interest on the unpaid amount.

The remaining partners, at their option, may distribute to the withdrawing partner greater amounts, at more frequent intervals, or by a lump sum.

The cash surrender value of the life insurance policy on the  
Should there not be sufficient assets to pay all the debts and  
withdrawn partner's life, paid is from partnership funds, shall be credited  
obligation of the partnership the said debts and obligations shall be paid  
against the amount due the withdrawing partner.  
equally by all the partners.

The withdrawn partner shall have no voice in the partnership.

In the event Lynn H. Prisk is not living at the time the partner-

9. Death of a Partner: Upon the death of a partner the  
ship is dissolved, the difference between Twenty Thousand (\$20,000) Dollars,  
deceased partner's share shall be calculated by dividing the partnership's  
which is the agreed present value of the Lynn H. Prisk share of the partner-  
capital value in effect at the time of the deceased partner's death by the  
ship, and the total amount of \$150.00 monthly payments paid to Arlene I.  
number of partners, including the deceased partner. In the event the amount  
Prisk, his surviving widow, shall be an obligation of the partnership to be  
of life insurance payable to the widow of the deceased partner is less than the  
paid to said widow prior to the distribution of the proceeds of liquidation to  
deceased partner's share, as calculated above, the partnership shall pay the  
the surviving partners. In the event the \$150.00 monthly payments are  
widow of the deceased partner an amount sufficient which when added to the  
equal to or exceed the \$20,000 there is no amount due from the partnership  
insurance payment shall equal the deceased partner's share. In the event the  
to Arlene I. Prisk.

insurance payment received by the widow of the deceased partner is equal to

10. Powers and Limitations: The partnership shall maintain a  
or greater than the deceased partner's share the partnership shall make no  
bank account or bank accounts as may be agreed upon by the partners and  
further payment to the said widow.  
all checks shall be signed by Lynn H. Prisk or George L. Prisk.

11. In the event of the death of Lynn H. Prisk, the partnership agrees  
No. partner may without consent of the other partners withdraw  
to pay to Arlene I. Prisk, so long as she shall live the sum of One Hundred  
money, pledge any property, lease or sell any property of the partnership  
Fifty (\$150.00) Dollars per month.  
without the written consent or partner of other partners.

Both of the foregoing provisions are subject to the provisions here-  
12. Books and Records: The partnership shall keep proper and  
after stated relating to dissolution.  
complete books and accounts which may be examined by any of the partners

13. Dissolution: Notwithstanding the provision that the withdrawal  
of the accredited representative at any reasonable business hours.

of a partner shall not dissolve the partnership, in the event all of the partners

14. Notices: All notices provide for under this agreement shall  
desire to dissolve the partnership, the same can be done at anytime, before  
be in writing and when sent by registered or certified mail to the last known  
or after the withdrawal of death of a partner. In the event a dissolution takes  
address of the party to whom it is addressed shall be considered received  
place the net proceeds from the dissolution shall be divided equally among  
one (1) day after mailing. Written notices may also be delivered in person  
the partners after paying all of the debts and obligations of the partnership  
or otherwise.

including any amounts due the widows of any deceased partners. Said amounts  
due a widow shall be an obligation of the partnership and shall be paid before  
any distribution is made to the partners.

Should there not be sufficient assets to pay all the debts and  
obligation of the partnership the said debts and obligations shall be paid  
and ~~equal~~ <sup>(S-1)</sup> by all the partners first above mentioned.

In the event Lynn H. Prisk is not living at the time the partnership  
~~(S-2)~~ is dissolved, the difference between Twenty Thousand (\$20,000) Dollars,  
which is the agreed present value of the Lynn H. Prisk share of the partnership  
~~(S-3)~~, and the total amount of \$150.00 monthly payments paid to Arlene I.  
Prisk, his surviving widow, shall be an obligation of the partnership to be  
~~(S-4)~~ paid to said widow prior to the distribution of the proceeds of liquidation to  
the surviving partners. In the event the \$150.00 monthly payments are  
~~(S-5)~~ equal to or exceed the \$20,000 there is no amount due from the partnership  
to Arlene I. Prisk.

11. Powers and Limitations: The partnership shall maintain a  
~~(S-6)~~ bank account or bank accounts as may be agreed upon by the partners and  
~~(S-7)~~ all checks shall be signed by Lynn H. Prisk or George L. Prisk.  
~~(S-8)~~ No partner may without consent of the other partners borrow  
~~(S-9)~~ money, pledge any property, lease or sell any property of the partnership,  
without the written consent or joinder of other partners. ~~(S-10)~~

12. Books and Records: The partnership shall keep proper and  
complete books and accounts which may be examined by any of the partners  
or the accredited representative at any reasonable business hours.

13. Notices: All notices provide for under this agreement shall  
be in writing and when sent by registered or certified mail to the last known  
address of the party to whom it is addressed shall be considered received  
one (1) day after mailing. Written notices may also be delivered in person  
or otherwise.

IN WITNESS WHEREOF the parties hereto have set their hands  
and seals the day and year first above written.

(Seal)

Lynn H. Prisk

(Seal)

George L. Prisk

(Seal)

Donald G. Prisk

(Seal)

Kenneth B. Prisk

**Consent of Partners' Wives**

We, the undersigned wives of the above partners, with the intent  
to be legally bound, hereby approve and consent to the foregoing partner-  
ship agreement.

(Seal)

Wife of

(Seal)

Wife of

(Seal)

Wife of

(Seal)

Wife of

CHRIS A. PENTZ  
Attorney at Law  
207 East Market Street  
P. O. Box 552  
CLEARFIELD PENNSYLVANIA 16830  
Telephone 814 765-4000 FAX 814 765-8142

July 23, 2004

Attorney John Sughrue  
23 North Second Street  
Clearfield PA 16830  
**HAND DELIVER**

RECEIVED  
BY

In Re: Prisk Dairy Farms

Dear Attorney Sughrue:

Please be advised that I have been retained by Mr. Kenneth B. Prisk in reference to the above matter. My client has authorized me to present the following Counter-proposal to your letter of June 14, 2004 to my client. My client has authorized the following Counter-proposal. My client, in return for waiving any claims he may have in the partnership assets pursuant to the Partnership Agreement of October 1, 1972, would receive the following:

A. Watts property (both upper and lower) including the gas and mineral rights. (My client would agree to a continuation of the present lease until its expiration.)

B. One/third of the machinery as previously agreed by the partners.

C. My client would pay one/third of the outstanding debt with Clearfield Bank & Trust Company, approximately \$35,000.00, and with the USDA, approximately \$24,000.00. My client's basis would be re-established pursuant to Paragraph 4 of the Partnership Agreement in the amount of \$80,000.00.

D. My client would receive one/third of the profit from the timbering activities which are occurring on the Watts property.

Exhibit 3

Attorney Sughrue  
July 23, 2004  
Page Two

E. Timbering on the Watts property would cease immediately.

I am also providing you with the sixty (60) day written Notice of Intention of my client to withdraw pursuant to Paragraph 8 of the Partnership Agreement. Please advise if you are not authorized to accept the Notice of Intention to Withdraw on behalf of your clients.

Sincerely,

CAP/jms

---

Chris A. Pentz  
I. D. # 39232  
207 East Market Street  
Clearfield PA 16830  
814 765-4000

cc: Mr. Kenneth B. Prisk

**JOHN SUGHRUE  
Attorney at Law**

Phone (814) 765-1704

23 North Second Street  
Clearfield, PA 16830

Fax (814) 765-6959

August 6, 2004

VIA HAND DELIVERY

Chris A. Pentz, Esquire  
207 E. Market St.  
Clearfield, PA 16830

RE: Prisk Dairy Farms, a Partnership  
Your client: Kenneth B. Prisk  
My clients: George Prisk & Donald Prisk  
Your client's notice of intention to withdraw from partnership

Dear Mr. Pentz,

This will acknowledge receipt on July 26, 2004 of your letter dated July 23, 2004 with respect to the above referenced matter. That letter contained two items, specifically, a counter proposal and secondly, notice of intention of your client to withdraw from the partnership pursuant to paragraph 8 of the partnership agreement.

With respect to the notice of intention to withdraw, kindly be advised that my clients have authorized me to receive that notice of intention to withdraw on their behalf and this letter will serve to acknowledge receipt of that notice on behalf of George and Don Prisk as of July 26, 2004, the day the letter was hand delivered to my office.

It is my intention to address your counter proposal by separate letter. As I dictate this letter, I have tried to reach you by phone regarding this case and have been advised that you are on vacation. Please call me as soon as you are in a position to do so.

Thank you for your consideration of these matters.

Very truly yours,

John Sughrue

JS/kg

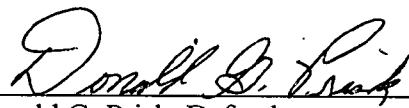
cc: Donald G. Prisk  
George L. Prisk

Exhibit 4

**VERIFICATION**

We, Donald G. Prisk and George L. Prisk, Defendants, individually and t/a Prisk Dairy Farms, verify that the statements made in this ANSWER AND NEW MATTER are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Date: April 22, 2005

  
\_\_\_\_\_  
Donald G. Prisk, Defendant

Date: April 22, 2005

  
\_\_\_\_\_  
George L. Prisk, Defendant

**CERTIFICATE OF SERVICE**

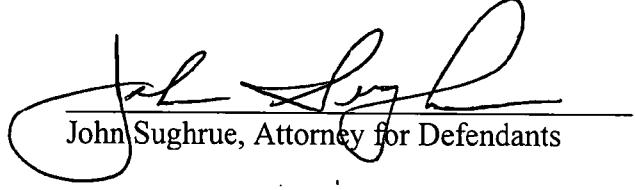
AND NOW, I do hereby certify that on April 22, 2005, I caused a true and correct copy of ANSWER & NEW MATTER to be served on the following and in the manner indicated below:

By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Chris A. Pentz, Esquire  
PO Box 552  
Clearfield, PA 16830

Court Administrator  
Clearfield County Courthouse  
1 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Date: April 22, 2005

  
John Sughrue, Attorney for Defendants

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

KENNETH B. PRISK  
Plaintiff

vs.

DONALD G. PRISK and  
GEORGE L. PRISK  
Defendants

\*  
\*  
\*  
\* No. 2004-2002-CD  
\*  
\*  
\* Type of Case: **Civil Action**  
\*  
\*  
\* Type of Pleading: **Answer & New Matter to  
First Amended Complaint**  
\*  
\*  
\* Filed on Behalf of: **Both Defendants**  
\*

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Chris A. Pentz Esquire  
Supreme Court No. 39232  
207 E. Market St.  
PO Box 552  
Clearfield, PA 16830  
Phone: (814) 765-4000

**FILED**

O 11:25a.m 64

APR 26 2005

5cc To Atty Sughrue

William A. Shaw  
Prothonotary

BLUE

PRINTS

PRINTS

William A. Goya  
Photographer

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

KENNETH B. PRISK	*
Plaintiff	*
	*
vs.	* No. 2004-2002-CD
	*
DONALD G. PRISK and	*
GEORGE L. PRISK	*
Defendants	*

**NOTICE**

**TO: Kenneth R. Prisk:**

**YOU ARE HEREBY NOTIFIED to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.**

---

John Sughrue, Esquire  
Attorney for Defendants

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

KENNETH B. PRISK  
Plaintiff

vs. \* No. 2004-2002-CD

DONALD G. PRISK and  
GEORGE L. PRISK  
Defendants \*

**ANSWER AND NEW MATTER**

AND NOW, comes Donald G. Prisk and George L. Prisk, above named Defendants, by their attorney, John Sughrue and responds to the **First Amended Complaint** filed in the above captioned matter as follows:

**ANSWER TO FIRST AMENDED COMPLAINT**

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied in part. Plaintiff was an equal partner until he voluntarily withdrew by Notice of Withdrawal dated July 23, 2004 received July 26, 2004. A copy of said Notice of Withdrawal is attached hereto as Exhibit 1. Said Notice was acknowledged by Defendants by letter dated August 6, 2004, a copy of which is attached hereto as Exhibit 2. Plaintiff has not been a partner in said partnership since that time. Copies of Partnership Agreements referenced are not attached to the Complaint that was served but are assumed to be the same as attached to the original Complaint.
5. Denied. On the contrary, the Partnership Agreement provided that the partners were equal and that the partnership would be managed by the majority vote of all partners. As a

result, any two partners at any given time could constitute a majority, including Plaintiff, who in fact voted as a part of the majority on various matters.

6. Denied. On the contrary, the partnership records were maintained at the partnership office and fully accessible at all relevant times to all partners, including the Plaintiff. The Plaintiff in fact had access to the books and records of the partnership, possessed them on occasion, reviewed them on occasion and presently has control of various partnership books and records, including relevant checkbook stubs, canceled checks, bank records and receipts.

**Count I – Theft of Timber Operations Money**

7. On the contrary, facts and matters are as set forth in the answer to paragraphs 1 through 6 set forth above, all of which are incorporated herein by reference as though the same were set forth herein verbatim.

8. On the contrary, if the amount indicated is intended to be the total amount of revenues received for the sale of timber, including timber cut and sold by the Defendants to sawmills as well as standing timber sold to third parties, then the amount from 1996 to March 2005 is approximately \$553,385.00. Further, with respect to timber cut, transported and sold by the Defendants, the Defendants were, at all times, entitled to be compensated for labor performed in a reasonable amount. Included in total revenues is \$119,056.00 paid to the partnership for partnership timber sold to and cut by third parties.

- a. On the contrary, the amount paid to said individual was \$73,816.00.
- b. On the contrary, said figure is the amount paid to said individual.
- c. On the contrary, said figure is the amount paid to said individual.
- d. On the contrary, said figure is the amount paid to said company.
- e. On the contrary, the amount paid to said individual was \$24,407.00.

d. On the contrary, the gross revenue received from 1996 through March 2005 for standing timber located on Prisk Dairy Farms property sold to third parties was \$95,350.00 sold to Brownlee Lumber Co. and \$23,741.00 sold to Robbins Lumber. After reasonable investigation, the Defendants are without knowledge sufficient to determine what additional amounts of timber were cut from Prisk Dairy Farms property and sold beginning 1995 and ending 2005, for the reason that the records of Prisk Dairy Farms that would reflect that amount are in the possession of Plaintiff and unavailable to the Defendants. In any event, from present knowledge, the Defendants know that the amount of \$435,432.86 set forth in the Complaint is incorrect.

f. On the contrary, \$1,139.00 was paid to County National Bank as Guardian/Trustee for said individual.

g. On the contrary, said figure is the amount paid to said individual.

h. On the contrary, the amount paid to said individual was approximately \$9,901.00.

Further, during the same period, approximately \$2,426.00 was paid to John Westover, approximately \$1,512.00 to Shoff-Read Farms and approximately \$237.00 was paid to Dan Michaels.

9. Further, said assets were used by the Defendants as partners of the partnership and for the benefit of the partnership including farm work. Those assets were:

- a. Admitted.
- b. The Franklin Skidder was not acquired until 1997.
- c. Admitted.
- d. On the contrary, it was a 1975 Ford dump truck.
- e. Admitted.
- f. Admitted.

10. Denied. On the contrary, all timber belonging to the partnership, Prisk Dairy Farms, was sold by the partnership for the benefit of the partnership, or in the alternative, was actually

timbered by the Defendants as partners of the partnership for the benefit of the partnership. Sale proceeds of partnership timber were paid to or expended for the benefit of the partnership. Timber revenues for/from third party land, timbered by the Defendants, individually, was not a partnership asset and the Defendants had no obligation to pay such timber revenues to the partnership. However, most timber revenues from such land, exclusive of costs and reasonable compensation for labor, were in fact deposited to the partnership or expended for its benefit. Further, with respect to all timber revenue, any amount received or retained by the Defendants individually, was proper compensation to them for services rendered and work performed. All action taken by the Defendants with respect to the partnership and its property were properly authorized by the partnership. Further, the facts and matters are as set forth under New Matter, all of which is incorporated herein by reference.

WHEREFORE, Defendants request the Honorable Court to forthwith enter judgment in their favor and against the Plaintiff, with costs of this action taxed to the Plaintiff.

**Count II – Theft of Operating Profits**

11. Denied. On the contrary, facts and matters are as set forth in paragraphs 1 through 6 of this answer, above, all of which is incorporated herein by reference as though the same was set forth herein at length verbatim.

12. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to understand the definition of the phrase "partnership operating profits" as used in the Complaint, and strict proof of the same, if relevant, is demanded at the trial of this action. Further, Defendants did not retain any profits of the partnership for their own benefit to the exclusion of the Plaintiff, except as set forth on the tax returns of the partnership, all of which was within the knowledge of all partners at the time it occurred and was done with the consent of all partners. Any sums paid to the Defendants or retained by them, if any, constituted

reimbursements of costs or reasonable compensation for labor and services performed to the partnership and was received and/or expended with the proper authorization of the partnership. Further, facts and matters are as set forth under New Matter, all of which is incorporated herein by reference as though the same were set forth herein at length verbatim.

WHEREFORE, Defendants request the Honorable Court to forthwith enter judgment in their favor and against the Plaintiff, with costs of this action taxed to the Plaintiff.

**Count III – Theft of Partnership Basis**

13. Denied. On the contrary, facts and matters are as set forth in paragraphs 1 through 6 of this answer, above, all of which is incorporated herein by reference as though the same were set forth herein at length verbatim.

14. Denied. The Defendants did not improperly alter the partnership records. Income was not misallocated in any manner, which improperly or incorrectly caused a depletion of the Plaintiff's basis in the partnership. On the contrary, Plaintiff was paid various amounts of money from the partnership from 1992 to August 2002 at his request and without regard to whether or not the partnership realized a profit in any given year. As a result, in years when Plaintiff's withdrawals exceeded his share of profits, if any, such draws were properly charged against his capital account and resulted in the reduction of his income tax basis on the partnership records. Partnership returns were prepared by a competent certified public accountant, received, reviewed and approved by Plaintiff every year until recently. Further, with respect to any other allegations contained in the phrase "altering the partnership records", Defendants, after reasonable investigation, are without knowledge or information sufficient to form a belief as to any specific allegation and strict proof of the same, if relevant, is demanded at the trial of this action. Further, facts and matters are as set forth hereafter in New Matter, all of which is incorporated herein by reference.

WHEREFORE, Defendants request the Honorable Court to forthwith enter judgment in their favor and against the Plaintiff, with costs of this action taxed to the Plaintiff.

**Count IV – Theft of Gas Royalties**

15. Denied. On the contrary, facts and matters are as set forth in paragraphs 1 through 6 of this answer, above, all of which are incorporated herein by reference as though the same were set forth herein at length verbatim.

16. Denied. On the contrary, gas well revenues were paid to or expended for the benefit of the Prisk Dairy Farms, a partnership, and the entity, which owned the gas. Defendants did not retain any gas profit to the exclusion of the Plaintiff. Further, all monies received or expended and action taken by the Defendants were properly authorized by the partnership. Further, facts and matters as set forth under New Matter, all of which is incorporated herein by reference.

17. Denied. It is admitted that certain amounts were paid by said companies for gas removed and/or transportation and related rights from 1992 through the present. The actual amounts were reported by said companies to the Internal Revenue Service via form 1099 and all such amounts were reported by the partnership as revenues. Further, all amounts received for gas and related revenues were payable to Prisk Dairy Farms, the partnership, and were paid to or expended for the benefit of such partnership. The information set forth on said 1099s is incorporated herein by reference. Further, after reasonable investigation, the Defendants do not have knowledge sufficient to form a belief as to the truth of the specific amounts alleged for the reason that the partnership records were removed by Plaintiff from the partnership office and are presently in his possession, including the gas slips indicating payments and the checkbook indicating deposits that were received and made. However, according to the farm account book (hereafter, "blue book") maintained by the partnership from 1991 to 2004, gas royalties were received in the amount of \$168,636.00.

18. Denied. Defendants did not keep some or all of the gas profits for their personal gain to the exclusion of the partnership or the Plaintiff. On the contrary, all such funds were received and/or expended for the benefit of the partnership and with proper partnership authorization. Further, the facts and matters are as set forth under New Matter, all of which is incorporated herein by reference.

WHEREFORE, Defendants request the Honorable Court to forthwith enter judgment in their favor and against the Plaintiff, with costs of this action taxed to the Plaintiff.

**Count V – Theft of Coal Royalties**

19. Denied. On the contrary, facts and matters are as set forth in paragraphs 1 through 6 of this answer, above, all of which is incorporated herein by reference.

20. Denied. Defendants did not retain partnership coal profits to the exclusion of the Plaintiff during said period. After reasonable investigation, Defendants are without information or knowledge sufficient to form a belief as to the meaning of the phrase "partnership coal profits" and strict proof of the same, if relevant, is demanded at the trial of this action. On the contrary, the partnership, Prisk Dairy Farms, owns the real estate on which the partnership operates, including the coal. The partnership leased the coal and the revenue from said leases was at all times paid to or expended for the benefit of the partnership and all such expenditures were properly authorized by the partnership, including authorization by the Plaintiff.

21. Denied. The following amounts are revenues, not profits:

a. Denied. Coal revenues from the Cherry Corner property were paid directly to CSB Bank, a creditor of said partnership. Of the amounts paid, CSB applied 75% to partnership debt and held 25% for payment of income taxes attributable to said coal revenue. The partnership debt was also the personal debt of the Plaintiff and Defendants and for their benefit.

b and c. Said sums were paid by the lessee to or for the benefit of the partnership. \$20,222.00 was paid to the partnership and the balance was for a period of time paid equally to the Plaintiff and the Defendants. Coal revenues are a partnership asset and are presently being paid to the partnership. All payments and methods of payment, from time to time, were properly authorized by the partnership, the owner of the coal and including, on occasion, the Plaintiff.

22. Denied. It is denied that the Defendants kept some or all of the coal royalties for their personal gain to the exclusion of the partnership and/or the Plaintiff. After reasonable investigation, Defendants are without knowledge sufficient to form a belief as to the basis for such allegation and strict proof of the same, if relevant, is demanded at the trial of this action. On the contrary, all sums were received and expended for legitimate purposes and with proper partnership authorization.

WHEREFORE, Defendants request the Honorable Court to forthwith enter judgment in their favor and against the Plaintiff, with costs of this action taxed to the Plaintiff.

#### **Count VI – Theft of Partnership Assets**

23. Denied. On the contrary, facts and matters are as set forth in paragraphs 1 through 6 of this answer, above, all of which is incorporated herein by reference.

24. Denied. On the contrary, the partnership, from time to time, sold partnership assets and received payment therefore. Such payments were paid to or expended for the benefit of the partnership and were at all times properly authorized by the partnership. Such action was not taken to the detriment or exclusion of the Plaintiff. On the contrary, Plaintiff knew and approved of the sale of the various assets.

25. Denied in part and admitted in part:

a. The haybine was sold. Partnership records (blue book) indicate that \$10,500.00 was paid with a check and deposited in the partnership account. Defendants have no present recollection of any additional monies received and after reasonable investigation of records available to them, have not been able to secure knowledge or information sufficient to form a belief as to the truthfulness of the allegation of \$5,000.00 in cash and strict proof of the same, if relevant, is demanded at the trial of this action. In any event, any funds paid were received and/or expended for the benefit of the partnership and were properly authorized by the partnership.

b. Denied. The silo was sold for \$7,500.00 and three payments, all checks, in the amount of \$1,000.00, \$1,000.00 and \$5,500.00 were received and expended for the benefit of the partnership, pursuant to partnership authorization.

c. No cows were sold in May. Beef cows were sold April 1996. Partnership records available indicate they were sold for \$53,201.00. The total received by the partnership for cows sold in 1996 was \$68,828.00. Additional cash received, if any, was received and/or expended for the benefit of the partnership pursuant to proper partnership authorization. After reviewing records available to them, Defendants are without knowledge sufficient to form a belief as to the truthfulness of said allegation with respect to cash and strict proof of the same, if relevant, is demanded at the trial of this action, except that Defendant, George Prisk, presently recalls that \$15,000.00 cash was received by the partnership and is believed to have been used to pay partnership expenses and the partners, including the Plaintiff.

26. Denied. The partnership sold assets from time to time and received payment. All such payments were received by or expended for the benefit of the partnership. No payments

were received or applied to the exclusion of the partnership or the Plaintiff. On the contrary, Plaintiff knew of the sale of all such assets and either knew or had access to records with respect to the receipt and application of payment. On the contrary, facts and matters are as set forth under New Matter, all of which is incorporated herein by reference.

27. With respect to the amounts, Defendants respond as follows:

a. – d. These amounts are believed to have been received and were deposited to either petty cash or the checking account of the partnership or otherwise expended for the benefit of the partnership;

e. A stainless steel tank on truck chassis was sold;

f. Believed to have been deposited in the partnership checking account.

g. Believed to have been deposited to the partnership checking account.

h. Believed to be deposited to the partnership checking account in the form of two checks. Each for \$1,500.00 received June and July 2001.

i. Believed to have been deposited to the partnership checking account.

j. On the contrary, Freyer Dairy Farm paid \$2,000.00 to the partnership. \$1,000.00 was the balance due on a dump wagon purchased and \$1,000.00 was for a cattle trailer purchased. The sale proceeds were received and believed to be deposited to the partnership checking account.

After reasonable investigation, Defendants cannot be more specific with respect to such deposits for the reason that Plaintiff has appropriated the partnership checkbook stubs, canceled checks and deposit slips for the period in question. Strict proof of the same, if relevant, is demanded at the trial of this action.

WHEREFORE, Defendants request the Honorable Court to forthwith enter judgment in their favor and against the Plaintiff, with costs of this action taxed to the Plaintiff.

### **Count VII – Misuse of Partnership Funds**

28. Denied. On the contrary, facts and matters are as set forth in paragraphs 1 through 6 of this answer, above, all of which is incorporated herein by reference.

29. Further, as a general rule, partnership funds were generally used to pay the income tax liability of working partners, including their spouse if the said partner was filing jointly with his spouse. All such payments/or withdrawals were recorded on the partnership books and were duly authorized by the partnership. Further, the accountant, in the preparation of tax returns, made the appropriate adjustments to the income accounts and capital accounts with respect to any such payments. This practice included the payment of Plaintiff's income taxes on occasions.

30. All such checks were authorized, paid and received for proper purposes and were at all times, duly authorized by the partnership in the ordinary operation of its business. Further, check Nos. 1376, 1528, 1575, 1613 and 1635 constituted payment for labor of a working partner and a total of \$2,000.00 of said money was paid to Plaintiff. Check No. 1708 included \$350.00 cash paid to Plaintiff. Check No. 1564 was paid to Defendant, Donald Prisk, to reimburse him for the amount he personally paid to Nationwide on behalf of the farm for the partnership's farm insurance premium. In any event, no money from these checks was deposited to petty cash.

31. All such checks were authorized, paid and received for proper purposes and were at all times, duly authorized by the partnership in the ordinary operation of its business. Check Nos. 1566 and 1586 included \$400.00 each in cash that was paid to Plaintiff. In any event, no money from those checks was deposited to petty cash.

32. Denied. On the contrary, all such farm subsidies were paid to the partnership, Prisk Dairy Farms, in the ordinary course of business. For the period 1992 through 2002 it is believed that \$150,325.00 was received. For the years 2003 and 2004, the total sum of \$7,524.00 was received.

33. Denied. On the contrary, all cows sold from 1991 to 1999 were sold by the partnership, Prisk Dairy Farms, for the benefit for Prisk Dairy Farms and all amounts received were received and/or expended for the benefit of the partnership. All such sales were properly authorized by the partnership including the knowledge and consent of the Plaintiff. According to records available to Defendants, it appears that from 1991 to 1999 the amount received was \$454,967.00. For the years 2000 through March 2005 \$29,961.00 was received.

34. Denied. On the contrary, the sale of crops from 1991 to the present were sold by the partnership, Prisk Dairy Farms, for the benefit of Prisk Dairy Farms and all amounts received were received and/or expended for the benefit of the partnership. All such sales were properly authorized by the partnership including the knowledge and consent of the Plaintiff. According to records available to Defendants, it appears that \$151,786.00 was received from the sale of crops for the period 1996 through 2000. For the years 1991 through 1995, zero (\$0.00) amount was received. For the years 2001 through the present, the amount received was \$26,070.00.

35. Denied as stated. It is admitted that the partnership rented a house on the Straw property and that the rent received was approximately \$12,000.00. Further, said rents were paid to, received by and/or expended for the benefit of the partnership and were at all times properly authorized by the partnership.

36. Denied. On the contrary, the sum of \$17,446.00 was received by the partnership and/or expended for the benefit of the partnership, all pursuant to proper partnership authorization.

37. Denied. Defendants did not misuse the above amounts. All funds were received and/or expended for the benefits of the partnership and were properly authorized at all times by the partnership in the ordinary course of business. Further, the facts are as set forth hereafter under New Matter, all of which is incorporated herein by reference.

WHEREFORE, Defendants request the Honorable Court to forthwith enter judgment in their favor and against the Plaintiff, with costs of this action taxed to the Plaintiff.

**Count VIII – Breach of Fiduciary Duty**

38. Denied. On the contrary, facts and matters are as set forth in paragraphs 1 through 37 of this answer, above, all of which are incorporated herein by reference.

39. Denied. Defendants' actions were not improper and illegal and will not ruin the aforementioned business entity. Defendants have not taken any action reasonably designed to destroy the entity or the personal reputations and credit of the above-mentioned Plaintiff. On the contrary, Defendants have at all times substantially acted for the benefit of the partnership, its assets, its solvency and its well being, in accordance with their obligations and often to the detriment of their personal well being. On the contrary, the Plaintiff, individually, may have adversely impacted his reputation and/or credit by virtue of his own conduct, including failure or refusal to participate in the debt restructuring for the partnership, failure or refusal to agree to a refinancing despite the fact that a balloon payment on a loan was due, failure or refusal to meet debt obligations, failure or refusal to contribute equity to satisfy past due debts and other intentional and negligent conduct detrimental to the operation of Prisk Dairy Farms and its reputation.

40. Denied. Defendants have not appropriated and converted to their own use, any sum. After reasonable investigation, Defendants are without knowledge as to the underlying basis for these allegations and strict proof of the same, if relevant, is demanded at the trial of this action.

41. Denied. Defendants have not breached any fiduciary duties that they may have to the Plaintiff, if any, for the reasons set forth above. On the contrary, facts and matters are as set forth under New Matter, all of which is incorporated herein by reference.

WHEREFORE, Defendants request the Honorable Court to forthwith enter judgment in their favor and against the Plaintiff, with costs of this action taxed to the Plaintiff.

**Count IX – Fraud**

42. Denied. On the contrary, facts and matters are as set forth in paragraphs 1 through 41 of this answer, above, all of which are incorporated herein by reference.

43. Denied. Defendants have not committed a fraud upon Plaintiff for the reasons set forth above. On the contrary, facts and matters are as set forth in paragraphs 1 through 42 of this answer and hereafter set forth under New Matter, all of which is incorporated herein by reference.

WHEREFORE, Defendants request the Honorable Court to forthwith enter judgment in their favor and against the Plaintiff, with costs of this action taxed to the Plaintiff.

**NEW MATTER**

44. Prisk Dairy Farms is a general partnership (hereafter "partnership") that was formed more than five years prior to October 1, 1972 by the parties to this action and their father, Lynn H. Prisk.

45. The partnership was formed to engage in the business of dairy farming, producing and selling milk, milk products and other farm products and any other business as agreed upon by the partners. See Partnership Agreement dated October 1, 1972, attached as Exhibit 3. Later the Partnership Agreement was amended to provide for the partnership business to include selling other products and engaging in any other business as agreed upon by the partners, including the purchase and sale of real estate for partnership purposes. See Partnership Agreement dated April 19, 1979 attached hereto as Exhibit 4. Said partnership activity being hereinafter referred to collectively as "partnership business".

46. The partnership business is conducted on real property located in Ferguson and Greenwood Townships, Clearfield County, Pennsylvania. (hereafter referred to as "partnership property").

47. At all times relevant hereto, Plaintiff resided in a house located on partnership property at 2205 Watts Road.

48. At all times relevant hereto, partnership records were maintained in a building located on partnership property at 248 Hollow View Road, formerly Box 282A, Curwensville, PA.

49. In the ordinary course of business, the partnership maintained appropriate records of revenues and disbursements. The primary partnership records consist of accounts of deposits at banks, deposit slips, cash box, safe holding, IRS forms 1099, bank check books, receipts, checks, bank statement and records, farm account book and federal and PA income tax returns. (Said records are hereinafter referred individually and collectively as "partnership records").

50. At all times relevant hereto, the partnership, in the ordinary course of business, caused to be prepared and maintained on a form recommended by the farming industry a special ledger or book of original entry setting forth the individual revenues, disbursements and other significant transactions related to the partnership business. (Said farm ledger is hereinafter referred to as the "farm account book" or "blue book", as a result of its color.) The substance of said blue books are incorporated herein by reference. Said books are too large and voluminous to be attached to this complaint and are available to Plaintiff for inspection.

51. At all times relevant hereto and in the ordinary course of business, the partnership caused to be prepared and maintained, a document summarizing the partnership's business transactions for each calendar year. (Said summaries are hereinafter referred to as "annual

summary sheets"). The annual summary sheets are too large and voluminous to be attached to this complaint and are available to Plaintiff for inspection.

52. At all times relevant hereto and on a daily basis, Plaintiff, as a general partner, had possession of the partnership records along with the Defendants, had full access to the partnership records and the opportunity to review, audit and inspect partnership records at any time, including the farm account books and annual summary sheets.

53. At all times relevant hereto and in the ordinary course of business, the Plaintiff in fact participated in the conduct of the partnership business and its decisions.

54. At all times relevant hereto and in the ordinary course of business, the Plaintiff in fact examined partnership records.

55. At all times relevant hereto and in the ordinary course of business, the Plaintiff in fact participated in the preparation of the partnership's annual income tax returns as well as the preparation of his own income tax return and each year received a copy of the partnership income tax returns.

56. The time Plaintiff commenced to complain of the conduct of the partnership business and accuse Defendants of unfair or inappropriate conduct, was approximately the same time Plaintiff engaged in negotiations with the Defendants to secure the voluntary or involuntary dissolution of the partnership and the distribution of partnership assets to himself.

57. At all times relevant hereto, Defendant, George L. Prisk, by designation of the other partners, acted as general manager of the partnership and as such was authorized to make day to day operational decisions and execute partnership income tax returns.

58. From the time the partnership was formed on or about 1967 through July 2004 and at all times relevant to this action, Plaintiff, by his words and/or his conduct from time to time, consented to and approved the accounting records of the partnership.

59. At all times relevant hereto, Plaintiff did not make any complaints about or object to any partnership transactions, partnership records systems or the substantial accuracy of the partnership records until on or about August 2002.

60. In the month following each calendar year, the parties hereto, as partners in the partnership, both formally and informally, reviewed, discussed, adjusted, approved and settled by consensus or compromise and for the benefit of all partners, the prior years partnership business accounts.

61. Plaintiff sustained total physical disability on or about October 15, 1991.

62. As a result of said physical disability, Plaintiff was unable to perform the work and labor required of a partner of Prisk Dairy Farms, including all of the ordinary and customary tasks related to the partnership business.

63. As a result of said physical disability, Plaintiff was determined by the Social Security Administration to be permanently disabled and to qualify for monthly Social Security Disability Benefits.

64. As a result of said disability, the Plaintiff began to receive Social Security Disability benefits for total disability on or about April 15, 1992 and has continued to receive the same through the filing of this response.

65. The Plaintiff has been totally physically disabled continuously from on or about October 15, 1991 through the filing of this response.

66. The Plaintiff is obligated by paragraph 5 of the original Partnership Agreement dated October 1, 1972 to devote his full time and attention to the partnership business. See copy of said Agreement attached hereto as Exhibit 3.

67. That the Plaintiff, on or about October 15, 1991, ceased to labor or perform work or any other function on behalf the partnership and has failed or refused to do so from that time through the filing of this response.

68. Notwithstanding the foregoing, Plaintiff continued to draw money and benefits from the partnership continuously from October 15, 1991 through the date of the filing of this response.

69. At Plaintiff's request and in order to permit him to secure the aforesaid Social Security Benefits, the Partnership Agreement was amended on or about April 1993 and backdated to January 1, 1991. A copy of said amendment is attached hereto as Exhibit 5.

70. The Plaintiff, by letter dated July 23, 2004, written by his authorized attorney, Chris Pentz, withdrew as a partner of the partnership. A copy of said letter, hereafter, "withdrawal letter" is attached hereto as Exhibit 1 and incorporated herein by reference.

71. That the withdrawal letter was received by Defendants' attorney, John Sughrue, on July 26, 2004.

72. Defendants, by a letter dated August 6, 2004, written by their authorized attorney, John Sughrue, acknowledged receipt of the withdrawal letter and Plaintiff's withdrawal from the partnership. A copy of said letter, hereafter, "acknowledgement letter" is attached hereto as Exhibit 2 and incorporated herein by reference.

73. On or about January 1991, partnership debt equaled approximately \$610,000.00.

74. On or about July 2004, partnership debt equaled slightly less than \$60,000.00.

75. That the said partnership debt was reduced from 1991 to 2004 solely as a result of Defendants labor and the sale of partnership assets.

76. That from 1991 through December 31, 2003, the Defendants, by their labor, planning and management of the partnership, generated total receipts, including loans, to the partnership

in the amount of approximately \$3,810,283.00 to support disbursement of approximately \$3,812,969.00.

77. From on or about October 15, 1991 through December 2004, the partnership provided to the Plaintiff, a rent free home, free natural gas and water and paid for his benefit, his electric bill, fuel oil and the real estate taxes and property insurance required for the residence.

**Defense of Laches**

78. Defendants' admissions of the facts contained in the Complaint and the facts and averments set forth in paragraphs 1 through 77 above are incorporated herein by reference as though the same were set forth herein at length verbatim.

79. Plaintiff failed to exercise due diligence in prosecuting the alleged claims set forth in the Complaint.

80. The facts upon which Plaintiff's claims are alleged to be based were in fact known to him or reasonably should have been known to him from the information and partnership records that were within his knowledge and/or within his reach for many years prior to the institution of this action.

81. As a result of such unreasonable delay, the Defendants have been prejudiced generally, and in the following particulars:

- A. Memory and recollection of material events and facts have faded and may be permanently gone;
- B. Important and material documents and writings are no longer available;
- C. Material witnesses either are or may be unavailable;
- D. Plaintiffs inaction, silence, delay and representations in the past caused Defendants to rely upon the same and repeat such conduct thereafter;
- E. To litigate facts and matters that occurred ten to 15 years ago is unduly burdensome and expensive;
- F. Defendants relied upon the Plaintiffs prior acquiescence, representations, silence and conduct in making subsequent decisions with respect to the conduct of the partnership's business;
- G. Otherwise, under the facts and circumstances of this case as will be developed through discovery and at trial.

WHEREFORE, Defendants move the honorable Court to enter an order barring Defendants' equitable claims in whole or in part on the basis of the equitable doctrine of laches with costs of this action taxed to the Plaintiff.

**Defense of Estoppel and Unclean Hands**

82. Defendants' admissions of the facts contained in the Complaint and the facts and averments set forth in paragraphs 1 through 81 above are incorporated herein by reference as though the same were set forth herein at length verbatim.

83. From the time the partnership was formed through the filing of this lawsuit, Plaintiff, by his conduct, including acts of commission and omission or representations, silence, failure to object, acquiescence and consent, induced the Defendants to believe certain facts and matters as more specifically hereinafter set forth and to rely upon the same as more specifically hereinafter set forth in making various decisions and engaging in various conduct with respect to the partnership's business.

84. The facts which Plaintiff induced Defendants to believe and upon which they relied included the following:

- A. All of the facts averred above;
- B. That Plaintiff approved of the decisions made by the partnership during such period;
- C. That Plaintiff agreed and was satisfied to have the partnership's business conducted by a majority vote of the partners;
- D. That Plaintiff reviewed the partnership's transactions and business affairs routinely and particularly annually at the conclusion of each year;
- E. That Plaintiff, sometimes with compromises, approved, assented to or ratified the acts of the various partners with respect to the partnership business;
- F. That each year's business transactions and affairs of the partnership were settled finally to the satisfaction of each of the partners, either voluntarily or by acceptance of the will of the majority;
- G. That Plaintiff agreed to the sale of partnership assets and the application or use of the sale receipts;
- H. That Plaintiff agreed to and joined in the incurring of debt as a general obligation of the partnership;

- I. That Plaintiff agreed and approved of the use of partnership assets by the Defendants to conduct timber operations off of the partnership property to the partial or full benefit of the partnership;
- J. That Plaintiff approved the work and labor performed by the Defendants for the benefit of the partnership;
- K. That Plaintiff desired to have partnership debt eliminated and the partnership property preserved;
- L. That Plaintiff desired to receive money and benefits from the partnership notwithstanding his disability, whether the payment of such was from partnership income or capital;
- M. That Plaintiff agreed to the payment of partners' income taxes from the farm account as part of the partners' compensation and benefits;
- N. That Plaintiff not only approved of the maintenance of a cash account on the farm but insisted that certain payments be made either to his wife (although there is no legal obligation to pay her) or to him in cash in order to circumvent the requirements of Social Security Administration and to assure his continued receipt of disability payments;
- O. Other facts that will be developed through discovery and trial of this matter.

85. The Defendants reasonably believed the facts and representations set forth by the Plaintiff, as aforesaid.

86. The Defendants relied upon the facts and representations set forth by the Plaintiff, as aforesaid, and acted upon them generally and including the following particulars:

- A. Defendants continued to operate the partnership business in the future as they had in the past;
- B. Defendants continued to perform work and labor for the benefit of the partnership in the future as they had in the past;
- C. The partners continued to utilize partnership equipment for activities engaged off of partnership property;
- D. Defendants continued to maintain partnership records in the future as they had in the past;
- E. Defendant, George L. Prisk, continued to serve as General Manager;
- F. Defendants continued to sell and develop partnership assets for the purpose of paying the general operational expenses of the partnership and reducing partnership debt;
- G. Defendants accepted that partnership affairs and accounts for each calendar year had been reconciled and settled to the satisfaction of all partners;
- H. Defendants continued to labor for the benefit of the partnership without reasonable compensation and to their own individual detriment until 2004 when working partners were paid reasonable compensation for work performed.
- I. As otherwise indicated by the facts that will be developed by discovery and trial of this action.

87. Because Plaintiff was receiving Social Security Disability payments, Defendants believe and therefore aver that there were certain limitations on the work Plaintiff could perform and the income, or other money or benefits that he could receive from the partnership.

88. In order to continue to receive Social Security Benefits or, in the alternative, to avoid disclosure of money to the Social Security Administration, Plaintiff directed, from time to time, that money paid to him by the partnership or due him from the partnership be indicated as disability payments (even though the partnership did not have a disability payment policy for a relevant period of time), that his money be paid to his wife, (even though the wife had no right to the same) and for a period of time required that money be paid to him in cash and recorded on the records of the partnership otherwise.

89. As a result of Plaintiff's conduct as aforesaid, Plaintiff comes before this Court with unclean hands and under the law should be denied, in whole or in part, the relief he seeks.

WHEREFORE, Defendants move the Honorable Court to enter an order barring in whole or in part, the relief sought by Plaintiff on the doctrine of estoppel, and/or unclean hands with costs of this action taxed to the Plaintiff.

#### Statue of Limitations

90. Defendants' admissions of the facts contained in the Complaint and the facts and averments set forth in paragraphs 1 through 89 above are incorporated herein by reference as though the same were set forth herein at length verbatim.

91. That the various causes of action in law averred in the Plaintiff's Complaint are barred in whole or in part by the laws of the Commonwealth of Pennsylvania relating to limitations on

actions and more fully set forth at 42 Pa.C.S.A. §5501 et seq. generally and including the following specifics:

- A. Plaintiff's actions for taking, detaining, using or injuring personal property and waste of real property, including allegations of theft or conversion of real or personal property is barred since such alleged acts occurred more than two years prior to the date this action was filed. See 42 Pa.C.S.A. §5524.
- B. Causes of action based on the partnership contract must be brought within four years of the date the cause of action accrues. See 42 Pa.C.S.A. §5524; and
- C. Any cause of action set forth in the Complaint which is not otherwise barred by a shorter period, must be commenced within six years of the date such cause of action accrues. See 42 Pa.C.S.A. §5527.

WHEREFORE, Defendants move the Honorable Court to enter judgment in their favor and against the Plaintiff on all causes of action barred by the statute of limitations, with costs of this action taxed to the Plaintiff.

**Adequate Remedy at law**

92. Defendants' admissions of the facts contained in the Complaint and the facts and averments set forth in paragraphs 1 through 91 above are incorporated herein by reference as though the same were set forth herein at length verbatim.

93. Plaintiff is not entitled to an equitable accounting for the reason that he has an adequate remedy at law.

94. That any information that the Plaintiff needs and does not presently have may be secured through appropriate pretrial discovery in an action at law.

WHEREFORE, Defendants move the Honorable Court to enter judgment in their favor and against the Plaintiff on the claim for an equitable accounting.

**Consent, Ratification and Settlement**

95. Defendants' admissions of the facts contained in the Complaint and the facts and averments set forth in paragraphs 1 through 94 above are incorporated herein by reference as though the same were set forth herein at length verbatim.

96. Plaintiff was informed and knowledgeable at all relevant times of the facts and matters of which he complains in his Complaint and set forth above in this Answer and New

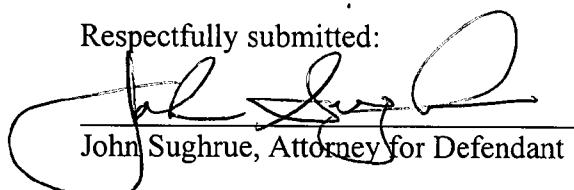
Matter. 97. At the conclusion of each calendar year, partnership records evidencing partnership business decisions and partnership transactions were prepared and/or completed for the prior calendar year and reviewed by the partners individually and collectively.

98. Within a few months after the conclusion of the prior business calendar year, the partners, including Plaintiff, ratified any partnership action or transactions to which he had not previously consented, or if opposed by one partner, accepted the majority decision of the other partners, settled mutual partnership accounts, withdrawals, expenses and disbursements and ratified the same.

99. As a result of the foregoing, Plaintiff ratified and/or settled all mutual partnership accounts, partnership business and partnership transactions each year, as the events occurred, by his expressed or implied consents, review and settlement of matters, ratification, silence, failure to object, by continuing to accept the benefits of the partnership and acquiescing in the manner in which the partnership was operating.

WHEREFORE, Defendants move the Honorable Court to enter judgment in their favor and against the Plaintiff on all causes of action set forth in the Plaintiff's Complaint with costs of this action taxed to the Plaintiff.

Respectfully submitted:

  
John Sughrue, Attorney for Defendant

CHRIS A. PENTZ  
Attorney at Law  
207 East Market Street  
P. O. Box 552  
CLEARFIELD PENNSYLVANIA 16830  
Telephone 814 765-4000 FAX 814 765-8142

July 23, 2004

Attorney John Sughrue  
23 North Second Street  
Clearfield PA 16830  
**HAND DELIVER**

**RECEIVED**  
By: \_\_\_\_\_

In Re: Prisk Dairy Farms

Dear Attorney Sughrue:

Please be advised that I have been retained by Mr. Kenneth B. Prisk in reference to the above matter. My client has authorized me to present the following Counter-proposal to your letter of June 14, 2004 to my client. My client has authorized the following Counter-proposal. My client, in return for waiving any claims he may have in the partnership assets pursuant to the Partnership Agreement of October 1, 1972, would receive the following:

A. Watts property (both upper and lower) including the gas and mineral rights. (My client would agree to a continuation of the present lease until its expiration.)

B. One/third of the machinery as previously agreed by the partners.

C. My client would pay one/third of the outstanding debt with Clearfield Bank & Trust Company, approximately \$35,000.00, and with the USDA, approximately \$24,000.00. My client's basis would be re-established pursuant to Paragraph 4 of the Partnership Agreement in the amount of \$80,000.00.

D. My client would receive one/third of the profit from the timbering activities which are occurring on the Watts property.

*Exhibit 1*

Attorney Sughrue  
July 23, 2004  
Page Two

E. Timbering on the Watts property would cease immediately.

I am also providing you with the sixty (60) day written Notice of Intention of my client to withdraw pursuant to Paragraph 8 of the Partnership Agreement. Please advise if you are not authorized to accept the Notice of Intention to Withdraw on behalf of your clients.

Sincerely,

CAP/jms

---

Chris A. Pentz  
I. D. # 39232  
207 East Market Street  
Clearfield PA 16830  
814 765-4000

cc: Mr. Kenneth B. Prisk

**JOHN SUGHRUE  
Attorney at Law**

23 North Second Street

Clearfield, PA 16830

Phone (814) 765-1704

Fax (814) 765-6959

August 6, 2004

VIA HAND DELIVERY

Chris A. Pentz, Esquire  
207 E. Market St.  
Clearfield, PA 16830

RE: Prisk Dairy Farms, a Partnership  
Your client: Kenneth B. Prisk  
My clients: George Prisk & Donald Prisk  
Your client's notice of intention to withdraw from partnership

Dear Mr. Pentz,

This will acknowledge receipt on July 26, 2004 of your letter dated July 23, 2004 with respect to the above referenced matter. That letter contained two items, specifically, a counter proposal and secondly, notice of intention of your client to withdraw from the partnership pursuant to paragraph 8 of the partnership agreement.

With respect to the notice of intention to withdraw, kindly be advised that my clients have authorized me to receive that notice of intention to withdraw on their behalf and this letter will serve to acknowledge receipt of that notice on behalf of George and Don Prisk as of July 26, 2004, the day the letter was hand delivered to my office.

It is my intention to address your counter proposal by separate letter. As I dictate this letter, I have tried to reach you by phone regarding this case and have been advised that you are on vacation. Please call me as soon as you are in a position to do so.

Thank you for your consideration of these matters.

Very truly yours,

John Sughrue

JS/kg

cc: Donald G. Prisk  
George L. Prisk

Exhibit 2

PARTNERSHIP AGREEMENT

This Partnership Agreement made and entered into as of October 1, 1972 by and among LYNN H. PRISK, first party, GEORGE L. PRISK, second party, DONALD G. PRISK, third party, and KENNETH B. PRISK, fourth party, all of R. D. #2, Curwensville, Pennsylvania.

WITNESSETH:

WHEREAS, for more than five (5) years prior to the date of this Partnership Agreement, the parties have engaged in the dairy and farming business under a parol agreement and now by this written agreement hereby reduces to writing the terms of the said Partnership Agreement.

NOW THEREFORE in consideration of the mutual promises herein contained and with the intent to be legally bound hereby, the parties hereby agree as follows:

1. Business Name: The name of the partnership shall be Prisk Dairy Farms.
2. Place of Business: The principal place of business shall be Ferguson and Greenwood Township, Clearfield County, Pennsylvania, R. D. Curwensville, Pennsylvania, and such other places agreed upon by the parties.
3. Purpose: The partnership shall engage in the business of dairy farming, producing and selling milk, milk products, and other farm products and any other businesses as agreed upon by the partners.
4. Capital: The partnership capital consists of livestock, machinery, equipment, feed, farm products and cash, which capital has been contributed equally by all the partners. Individual capital accounts shall

Exhibit 3

be maintained for each partner. A partner may draw on and reduce his capital account only with the written consent of all other partners. It is agreed that the value of the partnership capital, as of the date of this agreement is \$80,000 and hereafter on or before the fifteenth of January of each succeeding year the partners shall determine and enter in the partnership records the value of the partnership capital as of the first day of January of that year. Should a partner withdraw or die, the partnership capital valuation which is then entered in the partnership records, as of the date of withdrawal or death, shall be used in determining the value due the withdrawing partner or the estate of a deceased partner. If at any time the partners fail to annually determine the partnership capital valuation the prior determination shall continue until the subsequent determination is made.

5. Management: Each partner shall have equal voice in the management and conduct of the partnership business and all decisions shall be by a majority vote and each partner shall be entitled to one vote. The second, third and fourth parties should devote their full time and attention to the partnership business, while the first party shall devote only the time and attention which he desires to devote to the business.

6. Profit and Loss: The net profit and loss of the partnership shall be distributed or chargeable, as the case may be, to each partner in equal proportions. An individual income account shall be maintained for each partner and there shall be a monthly drawing from the income account of \$150.00 for each partner. Notwithstanding any other provisions in this agreement, if in any month there is not sufficient income to provide the \$150.00 drawings they shall be credited against the capital account.

Annually, as soon as possible after the close of the calendar year the partners shall calculate the net profit, and after crediting the distributions made on the drawings, setting aside an agreed amount for additional capital, shall distribute the residue equally among the partners.

7. Insurance: Lifeinsurance policies of equal amounts have been obtained for each of the insurable partners, the premium of which have been and shall be paid from the partnership funds. The beneficiary in each policy shall be the wife of the insured partner. One partner, Lynn H. Prisk, is not presently insurable and in the event of his death the partnership shall pay, in lieu of insurance, the sum of One Hundred Fifty (\$150.00) Dollars per month to Arlene I. Prisk, his surviving widow, so long as she lives, subject to the provisions hereafter stated relating to dissolution.

8. Withdrawal of a Partner: The withdrawal of a partner shall not dissolve the partnership. Should a partner desire to withdraw he shall give the remaining partners sixty (60) days written notice of his intention to withdraw. Within said period the value of the withdrawn partner's share shall be calculated by dividing the partnership capital valuation in effect at the time when the withdrawn partner's notice is received by the number of partners, including the withdrawing partner. The partnership shall then distribute to the withdrawn partner share in sixty (60) equal monthly payments with the first payment to be made on the ninetieth (90) day after the withdrawal is received and monthly thereafter, until the withdrawn partner share is paid in full together with four (4%) per cent interest on the unpaid amount.

The remaining partners, at their option, may distribute to the withdrawing partner greater amounts, at more frequent intervals, or by a lump sum.

The cash surrender value of the life insurance policy on the withdrawn partner's life, paid is from partnership funds, shall be credited against the amount due the withdrawing partner.

The withdrawn partner shall have not voice in the partnership.

9. Death of a Partner: Upon the death of a partner the

deceased partner's share shall be calculated by dividing the partnership's capital value in effect at the time of the deceased partner's death by the number of partners, including the deceased partner. In the event the amount of life insurance payable to the widow of the deceased partner is less than the deceased partner's share, as calculated above, the partnership shall pay the widow of the deceased partner an amount sufficient which when added to the insurance payment shall equal the deceased partner's share. In the event the insurance payment received by the widow of the deceased partner is equal to or greater than the deceased partner's share the partnership shall make no further payment to the said widow.

In the event of the death of Lynn H. Prisk, the partnership agrees to pay to Arlene I. Prisk, so long as she shall live the sum of One Hundred Fifty (\$150.00) Dollars per month.

Both of the foregoing provisions are subject to the provisions hereinafter stated relating to dissolution.

10. Dissolution: Notwithstanding the provision that the withdrawal of a partner shall not dissolve the partnership, in the event all of the partners desire to dissolve the partnership, the same can be done at anytime, before or after the withdrawal or death of a partner. In the event a dissolution takes place the net proceeds from the dissolution shall be divided equally among the partners after paying all of the debts and obligations of the partnership including any amounts due the widows of any deceased partners. Said amount due a widow shall be an obligation of the partnership and shall be paid before any distribution is made to the partners.

Should there not be sufficient assets to pay all the debts and obligation of the partnership the said debts and obligations shall be paid equally by all the partners.

In the event Lynn H. Prisk is not living at the time the partnership is dissolved, the difference between Twenty Thousand (\$20,000) Dollar which is the agreed present value of the Lynn H. Prisk share of the partnership, and the total amount of \$150.00 monthly payments paid to Arlene I. Prisk, his surviving widow, shall be an obligation of the partnership to be paid to said widow prior to the distribution of the proceeds of liquidation to the surviving partners. In the event the \$150.00 monthly payments are equal to or exceed the \$20,000 there is no amount due from the partnership to Arlene I. Prisk.

11. Powers and Limitations: The partnership shall maintain a bank account or bank accounts as may be agreed upon by the partners and all checks shall be signed by Lynn H. Prisk or George L. Prisk.

No partner may without consent of the other partners borrow money, pledge any property, lease or sell any property of the partnership without the written consent or joinder of other partners.

12. Books and Records: The partnership shall keep proper a complete books and accounts which may be examined by any of the partners or the accredited representative at any reasonable business hours.

13. Notices: All notices provide for under this agreement shall be in writing and when sent by registered or certified mail to the last known address of the party to whom it is addressed shall be considered received one (1) day after mailing. Written notices may also be delivered in person or otherwise.

IN WITNESS WHEREOF the parties hereto have set their hands  
and seals the day and year first above written.

Lynn H. Prisk (Seal)  
Lynn H. Prisk

George L. Prisk (Seal)  
George L. Prisk

Donald G. Prisk (Seal)  
Donald G. Prisk

Kenneth B. Prisk (Seal)  
Kenneth B. Prisk

Consent of Partners' Wives

We, the undersigned wives of the above partners, with the intent  
to be legally bound, hereby approve and consent to the foregoing partner-  
ship agreement.

Wife of (Seal)  
Wife of

ARTICLES OF AMENDMENT  
TO PARTNERSHIP AGREEMENT

Articles of Amendment to Partnership Agreement made and entered into this 19<sup>th</sup> day of April, 1979 by and between LYNN H. PRISK, first party, GEORGE L. PRISK, second party, DONALD G. PRISK, third party, and KENNETH B. PRISK, fourth party, all of R. D. # 2, Curwensville, Pennsylvania.

W I T N E S S E T H :

WHEREAS, the parties hereto have entered into a Partnership Agreement dated October 1, 1972, and

WHEREAS, the parties hereto desire to amend the Partnership Agreement dated October 1, 1972 as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises herein contained and with the intent to be legally bound hereby, the parties hereby agree as follows:

1. That the following paragraph:

"3. Purpose: The partnership shall engage in the business of dairy farming, producing and selling milk, milk products, and other farm products and any other businesses as agreed upon by the partners."

shall be amended to read as follows:

"3. Purpose: The partnership shall engage in the business of dairy farming, producing and selling milk,

Exhibit 4

milk products, and other products and any other business as agreed upon by the partners, including the purchase and sale of real estate for partnership purposes."

2. The parties hereto agree that all other covenants and agreements as set forth therein shall remain the same.

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

Lynn H. Prisk (SEAL)  
Lynn H. Prisk

George L. Prisk (SEAL)  
George L. Prisk

Donald G. Prisk (SEAL)  
Donald G. Prisk

Kenneth B. Prisk (SEAL)  
Kenneth B. Prisk

AMENDMENT TO PARTNERSHIP AGREEMENT  
DATED OCTOBER 1, 1972

THIS AMENDMENT to the aforementioned Partnership Agreement is entered into this 1st day of January, 1991 by the remaining partners of the entity trading and doing business as PRISK DAIRY FARMS, namely: GEORGE L. PRISK, the first party, DONALD G. PRISK, the second party, and KENNETH B. PRISK, the third party.

W I T N E S S E T H :

WHEREAS the parties hereto entered into an written Partnership Agreement dated October 1, 1972 and since that time have operated the entity known as PRISK DAIRY FARMS in accordance with said Agreement; and

WHEREAS, the Partnership Agreement of October 1, 1972 contained no contingency provision should any partner become disabled so as not to be able to attend to the affairs of the partnership; and

WHEREAS, all parties hereto agree that such a provision would be in the best interest of all parties and therefore should be incorporated into the existing Partnership Agreement for the entity trading and doing business as PRISK DAIRY FARMS.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and with the intent to the legally bound hereby, the parties hereby agree as follows:

1. The following provision shall be incorporated into and

Exhibit 5

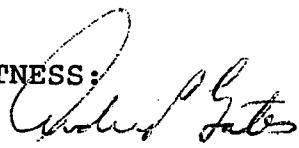
shall become part of the PRISK DAIRY FARM Partnership Agreement dated October 1, 1972:

"DISABILITY. In the event that any partner shall become disabled so as to be unable to attend to the affairs of the partnership, as is determined by a majority of the partners, said disabled partner shall be entitled to receive disability payments from the profits of the partnership, on a monthly basis, in an amount and for such a period of time as can be agreed upon by the partners. Likewise, nothing set forth in this paragraph shall be construed to in any way limit the disabled partner's right to withdraw funds from his capital account up to the balance remaining in said account.".

2. Except as set forth herein, GEORGE L. PRISK, DONALD G. PRISK and KENNETH B. PRISK, the first, second and third named parties herein, and as the sole remaining co-partners in the partnership known as PRISK DAIRY FARMS, hereby ratify and affirm all the other terms, covenants and conditions as set forth in the written Partnership Agreement dated October 1, 1972 and any other written amendments thereto.

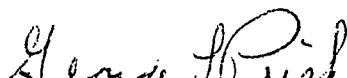
IN WITNESS WHEREOF, the parties hereto have executed the within Amendment the day and year first above written.

WITNESS:

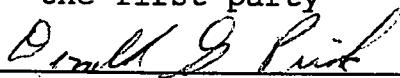


as to

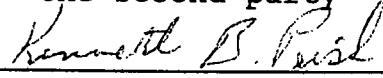
all parties



George L. Prisk,  
the first party



Donald G. Prisk,  
the second party



Kenneth B. Prisk,  
the third party

(SEAL)

(SEAL)

(SEAL)

**VERIFICATION**

We, Donald G. Prisk and George L. Prisk, Defendants, individually and t/a Prisk Dairy Farms, verify that the statements made in this ANSWER AND NEW MATTER are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Date: April 25, 2005

Donald G. Prisk  
Donald G. Prisk, Defendant

Date: April 25, 2005

George Prisk  
George L. Prisk, Defendant

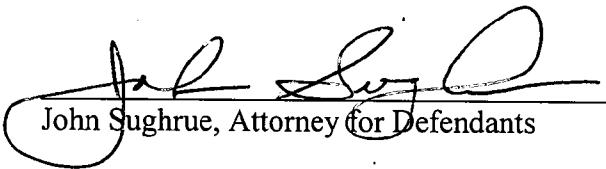
**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on April 26, 2005, I caused a true and correct copy of ANSWER AND NEW MATTER to be served on the following and in the manner indicated below:

By Personal Delivery to the Following at the location specified

Chris A. Pentz, Esquire  
207 E. Market St.  
Clearfield, PA 16830

Date: April 26, 2005

  
John Sughrue, Attorney for Defendants

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

KENNETH PRISK

vs.

: No. 04-2002-CD

DONALD G. PRISK and  
GEORGE L. PRISK

ORDER

AND NOW, this 3<sup>rd</sup> day of June, 2005, it is the ORDER of the Court that hearing on Plaintiff's Petition to Allocate Coal Royalties in the above-captioned matter has been scheduled for Friday, July 8, 2005 at 9:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA. Three (3) hours have been allotted for this matter.

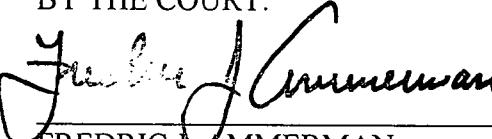
FILED <sup>100</sup>

012:58 AM  
JUN 06 2005

Atts: Pertz  
Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

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

KENNETH B. PRISK,  
Plaintiff

\*  
\*  
\*  
\*  
\*  
\* 2004-2002 - CP

VS

\* Type of Pleading: Reply to New  
\* Matter

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

★  
★  
★

\* 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**

JUN 27 2005  
O 31367  
William A. Shaw  
Prothonotary/Clerk of Courts  
no 45

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

\*

KENNETH B. PRISK,

\*

vs

\* No. 04-2002-CD

\*

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

\*

REPLY TO NEW MATTER

44. Paragraph 44 is admitted.

45. Paragraph 45 is admitted.

46. Paragraph 46 is admitted.

47. Paragraph 47 is admitted.

48. Paragraph 48 is denied. After reasonable investigation, the Plaintiff is without sufficient knowledge or information to form a belief as to the averment. The Plaintiff was not responsible for maintaining the partnership records.

49. Paragraph 49 is denied. The answer set forth in Paragraph 48 above is incorporated herein by reference as though set forth in full.

50. Paragraph 50 is denied. The answer set forth in Paragraph 48 above is incorporated herein by reference as though set forth in full.

51. Paragraph 51 is denied. After reasonable investigation, the Plaintiff is without sufficient knowledge or information to form a belief as to the averment. The Plaintiff was never aware of any annual summary sheets.

52. Paragraph 52 is admitted in part and denied in part.

Plaintiff did have access to the expense receipts of the partnership. All other records were kept locked with Plaintiff not having access to the records for the years subsequent to 1998. For the years prior to 1998, the Plaintiff did have access to the partnership records.

53. Paragraph 53 is admitted in part and denied in part.

Plaintiff did participate in the hands on aspect of the partnership business but was limited by the Defendants in his participation of the financial side of the partnership business and decisions.

54. Paragraph 54 is admitted in part and denied in part. The answer set forth in Paragraph 52 above is incorporated herein by reference as though set forth in full. By way of further answer, the Plaintiff for the years 1998 and prior did not examine the partnership records and relied upon the Defendants who generated and controlled the financial records and aspects of the partnership.

55. Paragraph 55 is admitted in part and denied in part. The Plaintiff's participation in the preparation of the partnership's annual income tax return was after the returns were already prepared. Plaintiff does admit to participating in the preparation of his own tax return. It is denied that Plaintiff received a copy of the partnership income tax returns for 1991 amended; 1992 amended; 1993 amended; 1997; 1998 and 1999 amended, returns.

56. Paragraph 56 is denied. The Plaintiff began voicing his concerns about inappropriate conduct on behalf of the other partners beginning in the year 1993.

57. Paragraph 57 is denied. Plaintiff is unaware of any designation of Defendant, George L. Prisk, as the general manager.

58. Paragraph 58 is a conclusion of law to which no answer is required. To the extent that an answer is required, Plaintiff was unaware of the inappropriate conduct of the Defendants due to the actions of the Defendants in isolating the Plaintiff from access to all partnership documents.

59. Paragraph 59 is denied. The answer set forth in Paragraphs 56 and 58 are incorporated herein by reference as though set forth in full.

60. Paragraph 60 is denied. The Plaintiff is unaware of any review and adjustment proceedings being held by the partners.

61. Paragraph 61 is admitted to the extent that October 15, 1991 is the date that Plaintiff was determined to be disabled for purposes of Social Security.

62. Paragraph 62 is admitted in part and denied in part. It is admitted that the Plaintiff was unable to perform all of the labor requirements of the partnership but it is denied to the extent that the Plaintiff was unable to perform any of the labor requirements of the partnership.

63. Paragraph 63 is admitted in part and denied in part. The paragraph is denied in that Plaintiff was determined to be disabled for purposes of qualifying for monthly Social Security Disability benefits. It is denied that there was ever a determination that the disability was permanent.

64. Paragraph 64 is admitted in part and denied in part. The Paragraph is denied as to the date which Plaintiff believes to be April 1, 1992 with all other averments of Paragraph 64 admitted.

65. Paragraph 65 is admitted in part and denied in part.

Paragraph 65 fails to indicate that the Plaintiff is totally physically disabled for purposes of Social Security disability benefits.

66. Paragraph 66 is admitted.

67. Paragraph 67 is admitted in part and denied in part. It is denied to the extent that the Plaintiff devoted his full time and attention to the Partnership Business (to the extent that his physical disabilities permitted) from 1993 to 2003. Subsequent to 2003, the Defendants through their control of the Partnership prevented Plaintiff from participating in the business of the Partnership.

68. Paragraph 68 is admitted in part and denied in part.

Paragraph 68 is denied as to the conclusion (notwithstanding the foregoing) for reasons set forth in Paragraph 67 above, but it is admitted as to the remainder of the averment.

69. Paragraph 69 is denied. Plaintiff believes and therefore avers that the request to amend the Partnership was made through at the request of Robert Mitchell, CPA, with Walter Hopkins & Company, the Partnership accountant. The Plaintiff is also unaware as to whether the amendment was necessary for him to receive Social Security benefits.

70. Paragraph 70 is denied. The letter of July 23, 2004 sets forth only a Notice of Intention and not an actual withdrawal.

71. Paragraph 71 is denied. The Plaintiff is unaware of any withdrawal letter.

72. Paragraph 72 is denied. The Plaintiff is unaware of any withdrawal letter and the answer set forth in Paragraph 70 above is incorporated herein by reference as though set forth in full.

73. Paragraph 73 is denied. After reasonable investigation the Plaintiff is without sufficient knowledge or information to form a belief as to the averment.

74. Paragraph 74 is admitted.

75. Paragraph 75 is denied. The answer set forth in Paragraph 67 is incorporated herein by reference as though set forth in full. It is further admitted that over two million dollars in the sale of partnership assets occurred during the time period in reference.

76. Paragraph 76 is denied. The Plaintiff is without sufficient knowledge or information to form a belief as to the averment.

77. Paragraph 77 is admitted in that all partners received the benefits as set forth in Paragraph 77.

#### Defense of Laches

78. Paragraphs 1 through 43 of the Complaint and Paragraphs 44 through 77 of the Reply to New Matter of the Plaintiff are incorporated herein by reference as though set forth in full.

79. Paragraph 79 is a conclusion of law to which no response is required. To the extent that an answer is required, Paragraph 78 above is incorporated herein by reference as though set forth in full.

80. Paragraph 80, the answers set forth in Paragraphs 44 through 77 of New Matter are incorporated herein by reference as though set forth in full.

81. Paragraph 81 is denied. The answers set forth in Paragraph 80 above are incorporated herein by reference as though set forth in full.

WHEREFORE, Plaintiff requests the relief sought in his Complaint.

Defense of Estoppel and Unclean hands

82. Paragraphs 1 through 43 of the Complaint and Paragraphs 44 through 81 of the Answer to New matter are incorporated herein by reference as though set forth in full.

83. Paragraph 83 is a conclusion of law to which no response is required.

84. Paragraph 84 (L) is specifically denied in that Plaintiff never at any time desired to have any monies withdrawn from his Capital Account.

Paragraph 84 (J) is specifically denied in that the Plaintiff never at any time approved of all of the work and labor performed by the Defendants thereby resulting in the present suit.

Paragraph 84 is denied. The Plaintiff is a minority and was subject to the control and direction of the majority Defendants who acted in concert to prevent Plaintiff from having access to various financial records and through their votes being isolated from the operation of the partnership. The answers set forth above and Reply to New matter are incorporated herein by reference as though set forth in full. Paragraph 84 N is specifically denied in that Plaintiff never at any time directed any cash payments to circumvent the requirements of the Social Security Administration.

85. Paragraph 85 is denied. The Plaintiff is without sufficient knowledge or information to form a belief as to the thoughts and understanding of the Defendants.

86. Paragraph 86 is denied. After reasonable investigation the Plaintiff is without sufficient knowledge and information to form a belief as to what facts if any the Defendants relied upon.

87. Paragraph 87 is admitted in part and denied in part. It is admitted that there were certain work limitations placed on the Plaintiff. The remainder of the averment in this paragraph is denied in that Plaintiff was unaware of any limitations on the amount of income money or benefits that he could receive from the partnership.

88. Paragraph 88 is denied. There were never any actions taken or directed by Plaintiff to hide funds from the Social Security Administration.

89. Paragraph 89 is a conclusion of law to which no relief is requested.

WHEREFORE, Plaintiff requests relief sought in his Complaint.

Statute of limitations

90. Paragraphs 1 through 43 of the Complaint and Paragraphs 44 through 89 of the Reply to New matter are incorporated herein by reference as though set forth in full.

91. Paragraph 91 is a conclusion of law to which no response is required.

WHEREFORE, Plaintiff respectfully requests Your Honorable Court to provide the relief requested in his Complaint.

Adequate Remedy at Law

92. Paragraphs 1 through 43 of the Complaint and Paragraphs 44 through 91 of the Reply to New matter are incorporated herein by reference as though set forth in full.

93. Paragraph 93 is a conclusion of law to which no response is required.

94. Paragraph 94 is not an averment of fact to which a response is required.

WHEREFORE, the Plaintiff requests the relief set forth in his Complaint.

Consent, Ratification and Settlement

95. Paragraphs 1 through 43 of the Complaint and Paragraphs 44 through 91 of the Reply to New Matter are incorporated herein by reference as though set forth in full.

96. Paragraph 96 is denied. The Plaintiff is unaware of any annual reconciliation consent, ratification and /or settlement proceedings.

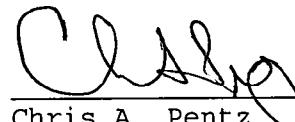
97. Paragraph 97 is denied. The Plaintiff is unaware of any partnership records which he was permitted to review which evinced the business decisions and partnership transactions for the prior calendar year.

98. Paragraph 98 is denied. The answer set forth in Paragraph 96 is incorporated herein by reference as though set forth in full.

99. Paragraph 99 is denied. The answer set forth in Paragraph 96 above is incorporated herein by reference as though set forth in full.

WHEREFORE, the Plaintiff requests the relief sought in his Complaint.

Respectfully submitted this 27<sup>th</sup> day of June, 2005.



Chris A. Pentz  
Attorney for Plaintiff  
I.D.# 39232  
207 East Market Street  
Clearfield PA 16830  
814 765-4000

VERIFICATION

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

6/24/05  
Date

Kenneth B. Prisk  
Kenneth B. Prisk

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

KENNETH B. PRISK,  
Plaintiff

\*  
\*  
\*  
\*  
\*      No. 2004- 2002 - CD

vs

\* Type of Pleading: Certificate of  
\* Service

DONALD G. PRISK and  
GEORGE L. PRISK,  
Defendants

\*\*\*

\* 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. 50

010:386A JUN 28 2005

William A. Shaw  
Prothonotary/Clerk of Courts

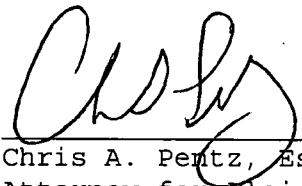
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

KENNETH B. PRISK, \*  
Plaintiffs \*  
\*  
vs \* No. 2004-2002-C.D.  
\*  
DONALD G. PRISK and \*  
GEORGE L. PRISK, \*  
Defendants \*

CERTIFICATE OF SERVICE

This is to certify that on the 27 day of June  
2005, the undersigned served a true and correct copy of Reply to  
New Matter upon counsel for the Defendants. Such documents were  
personally served upon:

John Sughrue, Esquire  
23 North Second Street  
Clearfield PA 16830



Chris A. Pentz, Esquire  
Attorney for Plaintiff  
I. D. # 39232  
207 East Market Street  
P. O. Box 552  
Clearfield PA 16830  
814 765- 4000

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

KENNETH B. PRISK

Plaintiff

vs.

DONALD G. PRISK and  
GEORGE L. PRISK

Defendants

\*

\*

\*

\* No. 2004-2002-CD

\*

\*

\* Type of Case: **Civil Action**

\*

\*

\* Type of Pleading: **Motion for Continuance**

\*

\*

\* Filed on Behalf of: **Both Defendants**

\*

**Counsel of Record for this Party:**

\* John Sughrue, Esq.

\* Supreme Court No. 01037

\* 23 North Second Street

\* Clearfield, PA 16830

\* Phone: (814) 765-1704

\* Fax: (814) 765-6959

\*

\*

\*

**Other Counsel of Record:**

\* Chris A. Pentz Esquire

\* Supreme Court No. 39232

\* 207 E. Market St.

\* PO Box 552

\* Clearfield, PA 16830

\* Phone: (814) 765-4000

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**FILED**

07/10/2005

JUL 07 2005 Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

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

KENNETH B. PRISK  
Plaintiff

vs. \* No. 2004-2002-CD

DONALD G. PRISK and  
GEORGE L. PRISK  
Defendants \*

**MOTION FOR CONTINUANCE**

AND NOW, comes the Defendants, by their attorney, John Sughrue, and requests a continuance of hearing scheduled on July 8, 2005 in the above captioned matter and in support thereof, represents the following:

1. That the above captioned matter involves generally a dispute arising out of a partnership.
2. The Plaintiff previously filed a Petition to Allocate certain coal royalties being received by the partnership and Defendants have filed an Answer thereto.
3. This Court has set Friday, July 8, 2005 at 9:00 a.m. as the time for a hearing on the Plaintiff's Petition and both parties were prepared to proceed at that time.
4. Defense Counsel's wife is presently hospitalized at Allegheny General Hospital in Pittsburgh, Pennsylvania and Defense Counsel was advised late on the afternoon of July 6, 2005 that surgery has been scheduled on the recommendation of her doctors for Friday, July 8, 2005 at either 8:00 a.m. or 10:00 a.m.
5. Defense counsel desires to be with his wife in Pittsburgh on July 8, 2005 when that surgery is conducted and should be there in view of the circumstances in order to confer as needed with his wife's doctors.

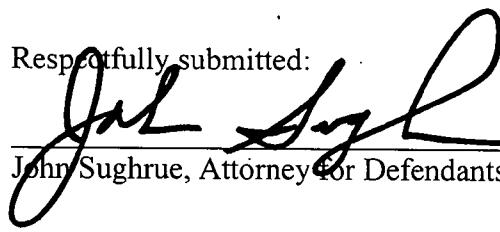
6. Due to said medical emergency, Defense Counsel respectfully requests a continuance of the above referenced hearing and encloses a proposed order.

7. At about 8:50 a.m. on July 7, 2005, Defense Counsel conferred personally with Plaintiff's Counsel, Chris Pentz, and attorney Pentz indicated that he understood the emergency nature of the request and did not oppose the request for continuance.

8. Defense Counsel is available for a rescheduled hearing at any time except July 21, 2005 through July 31, 2005 when he is scheduled for a prepaid vacation at the New Jersey Shore.

WHEREFORE, Defense Counsel requests the Court to forthwith enter an Order continuing the above referenced matter and to that end, attached is a proposed order.

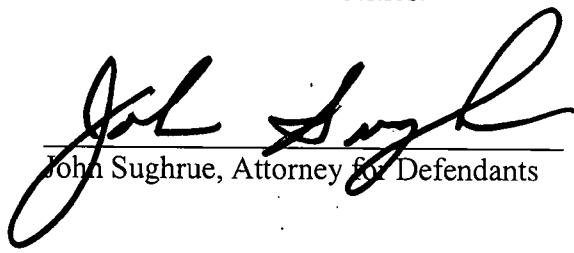
Respectfully submitted:

  
John Sughrue, Attorney for Defendants

VERIFICATION

I, John Sughrue, Attorney for Defendants, verify that the statements made in this MOTION FOR CONTINUANCE are based on information received and are true and correct to the best of my information, knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Date: July 7, 2005

  
John Sughrue, Attorney for Defendants

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on July 7, 2005, I caused a true and correct copy of Motion to Continue and Proposed Order to be served on the following and in the manner indicated below:

**By Personal Service to the following location:**

Chris A. Pentz, Esquire  
207 E. Market St.  
Clearfield, PA 16830

David S. Meholick, Court Administrator  
Clearfield County Courthouse  
1 N. 2<sup>nd</sup> Street  
Clearfield, PA 16830

Date: July 7, 2005

  
John Sughrue, Esquire  
Attorney for Defendants

(A)

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

KENNETH B. PRISK, :  
Plaintiff :  
vs. : NO. 2004-2002-CD  
DONALD G. PRISK and GEORGE L. PRISK, :  
Defendants :  
:

**ORDER**

NOW, this 7<sup>th</sup> day of July, 2005, upon consideration of Motion by Defense  
Counsel to continue hearing scheduled for July 8, 2005 in the above matter, after  
consideration and it appearing to the Court that Plaintiff's Counsel does not oppose said  
request under the circumstances, it is ORDERED that the hearing scheduled for July 8,  
2005 in the above captioned matter shall be re-scheduled to the 15<sup>th</sup> day of  
August, 2005 at 9:00A.m. in Courtroom No. 1 of the Clearfield County  
Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

  
\_\_\_\_\_  
FREDRIC J. AMMERMAN

President Judge

**FILED**

JUL 08 2005  
08:30 AM  
William A. Shaw  
Prothonotary/Clerk of Courts  
3 cent to ATT

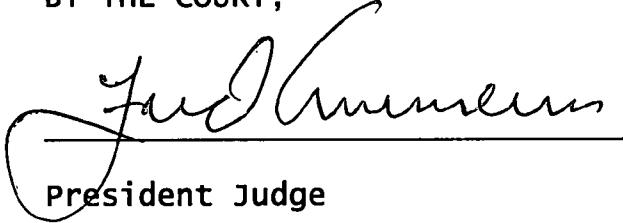
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

KENNETH PRISK :  
-vs- : No. 04-2002-CD  
DONALD G. PRISK and :  
GEORGE L. PRISK :  
CP

O R D E R

NOW, this 15th day of August, 2005, following taking of testimony relative the Petition to Allocate Coal Royalties filed on behalf of the Plaintiff, it is the ORDER of this Court that both parties submit appropriate letter brief to the Court within no more than twenty (20) days from this date.

BY THE COURT,

  
\_\_\_\_\_  
President Judge

FILED <sup>2cc</sup>  
08/15/2005 <sup>Attys: Pentz</sup>  
AUG 15 2005 <sup>Sughrae</sup>

William A. Shaw  
Prothonotary/Clerk of Courts

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

KENNETH B. PRISK, :  
Plaintiff, : No. 04-2002-CD  
v. :  
DONALD G. PRISK and :  
GEORGE L. PRISK, :  
Defendants. :  
:

ORDER

NOW this 15th day of December 2005, following a hearing and the submission of briefs relative the Plaintiff's Petition to Allocate Coal Royalties, it is the FINDING and ORDER of this Court as follows:

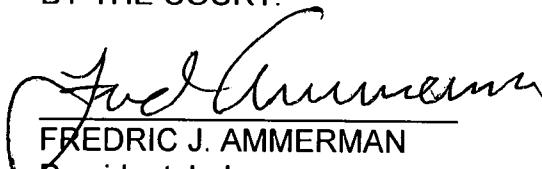
- 1) Plaintiff Kenneth Prisk exercised his right of withdrawal from the partnership by his counsel's submission of a letter dated July 23, 2004 noticing his withdrawal from the partnership. The withdrawal effectively caused the dissolution as permitted under paragraph eight (8) of the Partnership Agreement and the Uniform Partnership Act.
- 2) The subsequent decision by a majority of the remaining partners to redirect payment of coal royalties from the individual partners and to the benefit of the partnership was an objectively reasonable normal business decision.
- 3) The Court hereby DENIES Plaintiff's Petition requesting the allocation of coal royalties to the parties in their individual capacities.
- 4) The Court hereby DENIES Defendants' request for taxation of costs and reasonable attorney's fees.

BY THE COURT:

FILED  
03/21/06  
DEC 15 2005

*Fm*  
1cc Atty's: Lentz  
Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

  
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: 12/15/05

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

KENNETH PRISK,

CIVIL DIVISION

Plaintiff

No. 04-2002-C D

v.

DONALD G. PRISK and GEORGE L.  
PRISK,

**PRAECIPE FOR SUBSTITUTION OF  
COUNSEL**

Defendants

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Kevin P. Allen  
PA I.D. No. 76426

Jerri Ryan Kent  
PA I.D. No. 80039

THORP REED & ARMSTRONG, LLP  
Firm I.D. No. 282  
One Oxford Centre, 14<sup>th</sup> Floor  
301 Grant Street  
Pittsburgh, PA 15219  
412/394-2374

FILED

SEP 18 2006  
011:5510  
William A. Shaw  
Prothonotary/Clerk of Courts

3 CENTS TO ATTY

PENTZ

COPYS TO C/A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KENNETH PRISK, ) CIVIL DIVISION  
Plaintiff )  
v. ) No. 04-2002-CD  
DONALD G. PRISK and GEORGE L. )  
PRISK, )  
Defendants. )  
)

**PRAECIPE FOR SUBSTITUTION OF COUNSEL**

TO THE PROTHONOTARY:

Please enter the appearances of Kevin P. Allen, Jerri Ryan Kent, and Thorp Reed & Armstrong, LLP on behalf of Plaintiff Kenneth Prisk in the above matter.

Dated: September 15, 2006



Kevin P. Allen  
PA I.D. No. 76426

Jerri Ryan Kent  
PA I.D. No. 80039

THORP REED & ARMSTRONG, LLP  
One Oxford Centre, 14<sup>th</sup> Floor  
301 Grant Street  
Pittsburgh, PA 15219  
(412) 394-2374

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KENNETH PRISK, ) CIVIL DIVISION  
Plaintiff )  
v. ) No. 04-2002-CD  
DONALD G. PRISK and GEORGE L. )  
PRISK, )  
Defendants. )  
)

**WITHDRAWAL OF APPEARANCE**

TO THE PROTHONOTARY:

Please withdraw the appearance of Chris A. Pentz, Esquire on behalf of Plaintiff Kenneth Prisk in the above matter.

Dated: September 15, 2006



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Chris A. Pentz, Esq.  
PA I.D. No. 39232

207 East Market Street  
P.O. Box 552  
Clearfield, PA 16830  
814-765-4000

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
**PRAECIPE FOR SUBSTITUTION OF APPEARANCE** was served by U.S. First Class Mail,  
postage prepaid, this 18 day of September 2006, upon the following individuals:

Kevin P. Allen, Esquire  
Thorp Reed & Armstrong, LLP  
One Oxford Centre, 14<sup>th</sup> Floor  
301 Grant Street  
Pittsburgh, PA 15219

John Sughrue, Esquire  
23 North Second Street  
Clearfield, PA 16830



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**FILED**

APR 30 2008  
6/3/20/08

William A. Shaw  
Prothonotary/Clerk of Courts

2 CIVIL TO  
ATTY (6)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KENNETH PRISK,

CIVIL DIVISION

Plaintiff

No. 04-2002-C D

v.

DONALD G. PRISK and GEORGE L.  
PRISK,

**PRAECIPE TO SETTLE AND  
DISCONTINUE**

Defendants

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Kevin P. Allen  
PA I.D. No. 76426

Jerri Ryan Kent  
PA I.D. No. 80039

THORP REED & ARMSTRONG, LLP  
Firm I.D. No. 282  
One Oxford Centre, 14<sup>th</sup> Floor  
301 Grant Street  
Pittsburgh, PA 15219  
412/394-2374

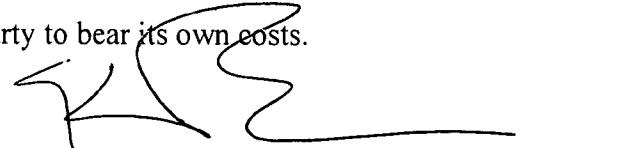
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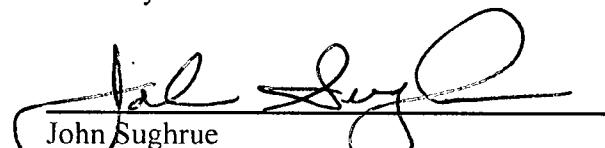
**PRAECIPE TO SETTLE AND DISCONTINUE**

To the Prothonotary:

KINDLY mark the docket in the above-captioned matter SETTLED AND  
DISCONTINUED with prejudice, with each party to bear its own costs.



Kevin P. Allen  
Pa. I.D. No. 76426  
THORP REED & ARMSTRONG, LLP  
Firm I.D. No. 282  
One Oxford Centre, 14<sup>th</sup> Floor  
301 Grant Street  
Pittsburgh, PA 15219  
(412) 394-2374  
Attorneys for Plaintiff



John Sughrue  
Pa. I.D. No. 01037  
23 North Second Street  
Clearfield, PA 16830  
(814) 765-1704  
Attorney for Defendants