

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

Earthmovers Unlimited, Inc.
Plaintiff

*

*

Vs.

*

Docket No. *05-397-CD*

*

Cloe Mining Co., Inc., a corporation,
and Robert G. Spencer, an
individual

*

Defendants

Type of Pleading:
COMPLAINT

Filed on Behalf of:
Plaintiff:
Earthmovers Unlimited, Inc.

Counsel of Record for
This Party:

LAW OFFICES OF
DWIGHT L. KOERBER, JR.

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

110 North Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

03:04 PM

MAR 21 2005

William A. Shaw
Prothonotary/Clerk of Courts

(K)

4cc Atty Koerber

Atty pd. 85.00

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

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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 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 within twenty (20) days. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any relief claimed in the complaint by the plaintiff.

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.

DAVID S. MEHOLICK, COURT ADMINISTRATOR
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

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

COMES NOW, Earthmovers Unlimited, Inc., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Complaint against Defendants Cloe Mining Co., Inc. and Robert G. Spencer.

1. Plaintiff is Earthmovers Unlimited, Inc., which is a Pennsylvania Corporation with its headquarters and principle place of business at P.O. Box 187, Kylertown, Clearfield County, Pennsylvania, 16847.
2. Defendant Cloe Mining Co., Inc. is a Pennsylvania Corporation with a mailing address of P.O. Box J, Grampian, Clearfield County, Pennsylvania, 16838, as well as an office address at Hepburnia Coal Company, R.D. 1, Penn Twp., Grampian, Pennsylvania, 16838.
3. Defendant Robert G. Spencer is an individual who is now an incapacitated person, as shown by Order of the Court of Common Pleas of Clearfield County, Orphan's Court Division, on July 18, 2002.

4. Attached hereto as Appendix A is a true and correct copy of the Order of Court finding Robert G. Spencer an incapacitated person and appointing as his plenary guardians Timothy Morgan and Shad B. Spencer.

COUNT I
AGAINST DEFENDANT CLOE MINING CO., INC.

Paragraphs 1 through 4 of the Complaint are incorporated herein by reference as though set forth in full.

5. At the request of the duly authorized agents and representatives of Cloe Mining Co., Inc., Plaintiff undertook a certain project (Said Project) for Defendant at its job site referred to as Craft #2, located in Gaskill Township, Jefferson County, wherein Plaintiff provided certain services to treat and deal with impacted discharges from the said mine site so as to comply with directives issued by the Pennsylvania Department of Environmental Resources.

6. In doing the Said Project and providing services for Defendant Cloe Mining, Plaintiff was a contractor as defined under the provisions of the Contractor and Subcontractor's Payment Act, at 73 P.S. 501 et seq.

7. Attached hereto as Appendix B is a copy of the invoice covering the services which Plaintiff rendered to Defendant.

8. All of the services rendered by Plaintiff were in accordance with the specifications and requirements of Said Project that Plaintiff undertook for Defendant, and were satisfactory to obtain the desired results of the project.

9. Plaintiff has made demand of Defendant to make payment for the services that it had furnished, as described in Appendix B, attached hereto, and Defendant has failed and refused to make payment as required.

10. Plaintiff is a contractor, as defined under the Contractor and Subcontractor's Payment Act and as such the terms of that statute apply to the project for which Plaintiff seeks to recover payment in this proceeding.

11. Defendant has failed to make payment pursuant to the terms of the contract and as such is subject to the provisions of 43 P.S. 505 of the Contractor and Subcontractor's Payment Act which set forth an owner's payment obligations.

12. By failing to make payment as required, Defendant is obligated to pay Plaintiff an additional charge of interest, at the rate of 1% per month, on the unpaid balance which is due and owing to Plaintiff, beginning January 1, 2005.

13. At present, the unpaid balance due and owing to Plaintiff is \$41,208.20. Interest is hereby demanded and claimed on that sum of money at the rate of 1% per month, to wit 12% per year, APR, from January 1, 2005.

14. Pursuant to Section 512 of the Contractor and Subcontractor's Payment Act, the failure of Defendants to comply with the Act results in a penalty of 1% per month on the unpaid balance due and owing to Plaintiff. This penalty, in the amount of 1% per month, when added to the 1% of month of interest, amounts to a monthly charge of 2%, which is equal to 24% per year, APR, from January 1, 2005.

15. Pursuant to Section 512 of the Contractor and Subcontractor's Payment Act, Plaintiff seeks attorneys' fees as it has been necessary for Plaintiff to pursue litigation in order to receive payment.

16. Plaintiff hereby projects that its attorneys' fees will amount to the sum of \$3,000.00 for this litigation, and therefore seeks payment of that sum of money.

WHEREFORE, Plaintiff prays that it be awarded the sum of \$44,208.20, plus interest and penalties at the rate of 24% per annum, as allowed under the Contractor and Subcontractor's Payment Act.

WHEREFORE, Plaintiff prays that judgment be entered against Cloe Mining Co., Inc., in the amount of \$44,208.20, plus interest at the rate of 12% per year from January 1, 2005 and penalties at the rate of 12% per year from January 1, 2005, plus costs of suit.

**COUNT II
AGAINST DEFENDANT ROBERT G. SPENCER**

Paragraphs 1 through 15 of this Complaint are incorporated herein by reference as though set forth in full.

17. Defendant Robert G. Spencer is the sole owner of Defendant Cloe Mining Co., Inc.

18. At the time that he acquired his ownership interest in Cloe Mining Co., Inc., Defendant Spencer was the sole operating officer of the company and there were no other employees, agents or representatives other than himself to personally perform the work and activities of Cloe Mining Co., Inc.

19. In the performance of his duties of Cloe Mining Co., Inc., Defendant Robert G. Spencer intermixed his personal affairs with the affairs of the company, treating them as though they were all part of his personal responsibilities, activities and operations.

20. In conducting the operations and affairs of Cloe Mining Co., Inc., Defendant Spencer either through intentional actions or inadvertent negligent actions, caused the operating assets and cash of Cloe Mining Co., Inc. to be insufficient to meet the needs of that company and as such integrated the financial affairs of that company into his own personal financial affairs.

21. The essence of the operations of Cloe Mining Co., Inc., during the time that Mr. Spencer owned and operated the company, were such that they were essentially his alter ego and were treated the same as his own individual affairs.

22. In addition to the manner in which Defendant Spencer operated the affairs and activities of Cloe Mining Co., Inc., he also had assumed a contractual duty, when he acquired ownership of Cloe Mining Co., Inc., to oversee and assume the responsibility for the proper administration of its affairs and the proper handling of its environmental liabilities and obligations.

23. Included among the obligations which Defendant Spencer directly or impliedly assumed, in taking over the affairs and activities and ownership of Cloe Mining Co., Inc., was proper and adequate treatment of the discharge and environmental

problems at the job site referred to as Craft #2, located in Gaskill Township, Jefferson County.

24. When Defendant Spencer himself became personally incapacitated, his guardians assumed the same responsibilities and obligations of Defendant Spencer as he had theretofore incurred, and as such the guardians assumed on Defendant Spencer's personal behalf the obligation to meet the needs and obligations of Cloe Mining Co., Inc.

25. Defendant Spencer is liable to Plaintiff for all of the obligations set forth in Count I of this Complaint, to wit the sum of \$44,208.20 plus interest and penalties under the Contractor and Subcontractor's Payment Act.

WHEREFORE, Plaintiff prays that it be awarded the sum of \$44,208.20, plus interest and penalties at the rate of 24% per annum, as allowed under the Contractor and Subcontractor's Payment Act.

WHEREFORE, Plaintiff prays that judgment in its favor be entered against Defendant Robert G. Spencer in the amount of \$44,208.20, plus interest at the rate of 12% per year from January 1, 2005 and penalties at the rate of 12% per year from January 1, 2005, plus costs of suit.

COUNT III RESERVATION OF POTENTIAL CLAIM

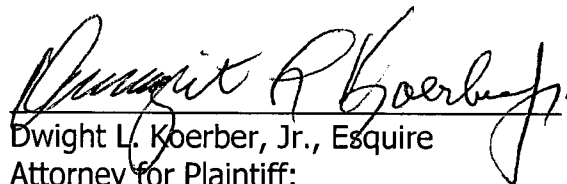
Paragraphs 1 through 24 of this Complaint are incorporated herein by reference as though set forth in full.

26. Plaintiff hereby reserves the right to set forth a separate count and to seek to amend the Complaint herein, so as to include a separate claim and a separate cause of action against Timothy Morgan and Shad B. Spencer, as plenary guardians of the estate of Robert G. Spencer.

27. The cause of action that Plaintiff reserves the right to pursue, if the proceeding set forth herein cannot be properly resolved, is the failure of plenary guardians to properly allocate the assets of Robert G. Spencer in a fashion so as to satisfy the debt which they knowingly incurred in authorizing and permitting the project to be undertaken by Plaintiff at the job site referred to as Craft #2, located in Gaskill Township, Jefferson County, as more fully identified in Count I of this Complaint.

WHEREFORE, Plaintiff hereby reserves the right to amend the Complaint herein so as to pursue a remedy against the aforesaid named guardians of Robert G. Spencer, individually.

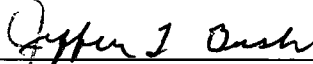
Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dwight L. Koerber, Jr.", is written over a horizontal line.

Dwight L. Koerber, Jr., Esquire
Attorney for Plaintiff:
Earthmovers Unlimited, Inc.

VERIFICATION

I verify that the statements made in this document 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.



Jeffrey L. Bush
DATE: March 19, 2005

APPENDIX A

Attached hereto as Appendix A is a true and correct copy of the Order of Court finding Robert G. Spencer an incapacitated person and appointing as his plenary guardians Timothy Morgan and Shad B. Spencer.

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA
(ORPHAN'S COURT DIVISION)

IN RE: ROBERT G. SPENCER, an
incapacitated person,

)
)
) No. 00- 425 -OC
)
)

FINDINGS OF FACT

AND NOW, this 18 day of July, 2002, the Court, following hearing and
testimony determines, in accordance with 20 Pa.C.S.A. 5512.1(a), et.seq., as follows:

- 1) That Robert G. Spencer suffers from dementia;
- 2) That said dementia is progressive such that it is not expected that he will recover;
- 3) That said dementia, at least in large part, was caused by the automobile accident of July 25, 2000, in which Mr. Spencer suffered a severe closed head injury;
- 4) That Mr. Spencer does not have the ability to make rationale decisions in that he is only oriented times one, as to person, but has no orientation as to time or place;
- 5) That Mr. Spencer is incapacitated, within the meaning of 20 Pa.C.S.A. 5501 and as therein defined, in that he is unable to manage his property and lacks sufficient capacity to make decisions;

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200211411

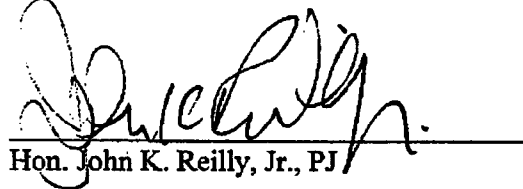
RECORDED ON
JUL 18, 2002
8:49:05 AM

FILE NUMBER
2000-425
Total Pages: 2

TOTAL \$0.00
CUSTOMER
HUBLE, TERRY

- 6) That Mr. Spencer needs 24 hour supervision and assistance which is currently being provided through a regimen on home health providers;
- 7) That Mr. Spencer is in need of plenary guardianship;
- 8) That such guardianship shall be permanent, unless otherwise ordered by this Court upon re-hearing pursuant to 20 Pa.C.S.A. 5517; and
- 9) That Timothy Morgan and Shad B. Spencer, given their relationship and familiarity with Robert G. Spencer, and his business interests, are appointed by this Court to serve as plenary Co-Guardians of the person and estate of Robert G. Spencer.

By The Court,



Hon. John K. Reilly, Jr., PJ

APPENDIX B

Attached hereto as Appendix B is a copy of the invoice covering the services which Plaintiff rendered to Defendant.

EARTHMOVERS UNLIMITED INC.P.O. BOX 187
KYLERTOWN, PA 16847(814) 345-6010
FAX (814) 345-6028

1348

TO Cbe Mining Co., Inc.
P.O. Box J
GRAMPAN, PA 16838DATE December 1, 2004
JOB NAME Craft # Z
JOB LOCATION Gaskill Township
Jefferson Co.

TERMS

	DESCRIPTION	PRICE	AMOUNT
	Treatment of Impacted Discharges for Craft # Z Operation SMP # 33793033 Gaskill Township, Jefferson Co. Final Invoice		
	Job Total		65,518.20
	+ P.V.C. Lines		+ 2,842.40
	- Invoice #1		- 20,310.00
	Amount Due		48,050.60

Thank You

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

EARTHMOVERS UNLIMITED, INC.
Plaintiff

vs.

CLOE MINING CO., a corporation,
and ROBERT G. SPENCER, an
individual
Defendants

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Docket No. 2005-397-CD

Type of Pleading:
PRAECIPE TO DISCONTINUE

Filed on Behalf of:
Plaintiff:
EARTHMOVERS UNLIMITED, INC

Counsel of Record for
This Party:

Dwight L. Koerber, Jr., Esquire
PA I.D. 16332

LAW OFFICES OF
DWIGHT L. KOERBER, JR.
110 N. Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

MAR 28 2005

0/3.10/05
William A. Shaw
Prothonotary/Clerk of Courts
3 CERT TO ATT
CERT. OF DISC. TO
ATTY + C/A

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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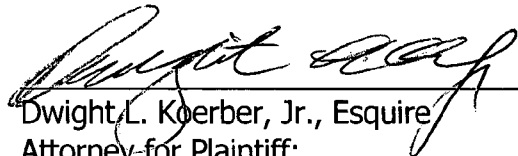
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Docket No. 2005-397-CD

PRAECIPE TO DISCONTINUE

Please mark the docket in this case to show the proceeding as withdrawn and
discontinued with prejudice.

Respectfully submitted,


Dwight L. Koerber, Jr., Esquire
Attorney for Plaintiff:
Earthmovers Unlimited, Inc.

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

CIVIL DIVISION

Earthmovers Unlimited, Inc.

Vs.

No. 2005-00397-CD

**Cloe Mining Co., Inc.
Robert G. Spencer**

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on March 28, 2005, marked:

Withdrawn and Discontinued with prejudice

Record costs in the sum of \$85.00 have been paid in full by Atty. Koerber.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 28th day of March A.D. 2005.

William A. Shaw, Prothonotary