05-1351-CD
Jan Lawrence vs Maravian Run

Jan Lawrence et al vs. Moravian Run et al
2005-1351-CD

Jan Lawrence, Chris Ilyes, Mary Ilyes, Jeff Cookerly, Scott Aldinger vs. Moravian Run Reclamation Co., Inc., Johnson Brothers Coal Company, Laurel Energy, LP

Civil Other

Date		Judge
8/31/2005	New Case Filed.	No Judge
	Filing: Complaint Paid by: Ging, Robert P. Jr. (attorney for Lawrence, Jan) Receipt number: 1907525 Dated: 08/31/2005 Amount: $85.00 (Check) 2CC Shff.	No Judge
10/17/2005	Answer and New Matter filed by s/ James A. Naddeo Esq. 1CC Atty Naddeo	No Judge
10/25/2005	Answer and New Matter filed by s/ James A. Naddeo Esq. 1CC Atty Naddeo	No Judge
10/31/2005	Praecipe For Writ, to join Laurel Energy, LP as an additional defendant in this action. Filed by s/ James A. Naddeo, Esquire. No CC, 1 Writ to Sheriff	No Judge
11/4/2005	Reply to the New Matter of Johnson Brothers Coal Company, filed by s/ Robert P. Ging, Jr., Esquire. No CC	No Judge
	Reply To The New Matter of Moravian Run Reclamation Co., Inc. Filed by s/ Robert P. Ging, Jr., Esquire. No CC	No Judge
12/28/2005	Sheriff Return, September 27, 2005 at 9:03 am served the within Complaint on Moravian Run Reclamation Co Inc. September 22, 2005 at 10:41 am served the within Complaint on Johnson Brothers Coal Company. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Ging $68.71	No Judge
1/20/2006	Praecipe For Issuance of a Rule to File a Complaint Against Additional Defendant Pursuant to PA.R.C.P. 2252(b)(1), filed by s/ Robert P. Ging, Jr., Esquire. 4 Rules to Atty. Ging	No Judge
1/30/2006	Praecipe For Entry of Appearance, filed by Atty. Lynn E. Bell on behalf of Laurel Energy, LP, Additional Defendants.	No Judge
	Praecipe For Rule, Please issue a Rule upon Defendants, Moravian Run Reclamation Co., Inc and Johnson Brothers Coal Company, to file their Complaint within 20 days. Filed by s/ Lynn E. Bell, Esquire. No CC, 2 Rules to Atty.	No Judge
2/2/2006	Complaint of Original Defendant Moravian Run Reclamation Co., Inc. against Additional Defendant Laurel Energy, LP., filed by s/ James A. Naddeo Esq. 2 CC Atty Naddeo.	No Judge
2/7/2006	Complaint of Original defendant Johnson Brothers Coal Company against additional Defendant Laurel Energy, LP filed by s/ James A. Naddeo Esq. 2CC Naddeo.	No Judge
2/14/2006	Sheriff Return, November 8, 2005, Sheriff of Westmoreland County was deputized. November 17, 2005 at 8:54 served the within Writ to Join Additional Defendants. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Naddeo $40.00 Westmoreland Co. costs pd by Naddeo $36.20	No Judge
3/2/2006	Proof of Service on Return of Rule, filed. A Rule to file Complaint was served upon James A. Naddeo, Esquire on the 8th day of February 2006, filed by s/ Lynn E. Bell Esq. No CC.	No Judge
3/3/2006	Certificate of Service, filed. That a certified copy of the Notice of Intention to Enter Default on behalf of Johnson Brothers Coal Company Inc., was served on the 3rd day of March 2006 to Robert P. Ging Jr. Esq. and Lynn E. Bell Esq., filed by s/ James Naddeo Esq. 2CC atty Naddeo.	No Judge

Clearfield County Court of Common Pleas

ROA Report

Case: 2005-01351-CD

Current Judge: Fredric Joseph Ammerman

Jan Lawrence, Chris Ilyes, Mary Ilyes, Jeff Cookerly, Scott Aldinger vs. Moravian Run Reclamation Co., Inc., Johnson Brothers Coal Company, Laurel Energy, LP

Civil Other

Date		Judge
3/3/2006	Certificate of Service, filed. That a certified copy of the Notice of Intention to Enter Default on behalf of Moravian Run Reclaimation, Co. was served on the 3rd day of March 2006, to Robert P. Ging Jr. Esq. and Lynn E. Bell Esq., filed by s/ James A. Naddeo Esq. 2CC Atty Naddeo.	No Judge
4/21/2006	Answer and New Matter Pursuant to PA R.C.P. 2252 (d) to Complaint of original defendant Johnson Brothers Coal Company against Additional Defendant Laurel Energy, LP, filed by s/ Lynn E. Bell Esq. No CC.	No Judge
5/12/2006	Answer to Complaint of Original Defendant Moravian Run Reclamation Co. Inc., against additional Defendant Laurel Energy, LP, filed by s/ Lynn E. Bell Esq. No CC.	No Judge
6/7/2006	Answer to New Matter, filed by s/ James A. Naddeo Esq. 2 CC Atty Naddeo.	No Judge
4/30/2007	Motion For Close of Discovery, filed by s/ intelligible, Davies, McFarland & Carroll, P.C. No CC	No Judge
5/1/2007	Scheduling Order, this 1st day of May, 2007, the Defendant, Laurel Energy, L.P., having filed a Motion for Clsoe of Discovery, it is Ordered that oral argument will be heard by Judge Ammerman on said motion on May 30, 2007 at 2:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Ames	Fredric Joseph Ammerman
	~~Order, Cert. to Atty's Ging, Naddeo & L. Bell~~ NOW, this 30th day of May, 2007, ~~ORDERED~~ that Defendant's for Close of Discoveris ~~hereby granted. All~~ discovery shall be completed within thirty (30) ~~days from~~ the date of this Order.	Fredric Joseph Ammerman
5/14/2007	Response to Requests For Admission, filed by s/ Lynn E. Bell, Esquire. No CC	Fredric Joseph Ammerman
5/30/2007	Order, filed Cert. to Atty's Ging, Naddeo & L. Bell NOW this 30th day of May, 2007, ORDERED that Defendant's Close Discovery is hereby granted. All discovery shall be completed within thirty (30) days from date of this Order.	Fredric Joseph Ammerman
6/13/2007	Notice of Service, filed. That on the 11th day of June 2007, Interrogatories and Request for Production of Documents Directed to Plaintiffs on behalf of Defendant, Laurel Energy LP was served on Robert P. Ging Jr. Esq. and Parties of record, filed by s/ Lynn E. Bell Esq. No CC.	Fredric Joseph Ammerman
6/22/2007	Notice of Service, filed. That on the 20th day of June 2007, Answers to Interrogatories and Responses to Request for Production of Documents, were served upon Plaintiff's counsel, Robert P. Ging Jr. Esq., filed by Lauren R. Ames Esq.	Fredric Joseph Ammerman
9/27/2007	Motion for Status/Settlement Conference, filed by Atty. Bell no cert. copies.	Fredric Joseph Ammerman
10/2/2007	Order, this 28th day of Sept., 2007, the Court being in receipt of and having reviewed the Motion for Settlement Conference filed on behalf of Additional Defendant Laurel Energy, LP, it is Ordered that said Motion is denied. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Bell	Fredric Joseph Ammerman
10/24/2007	Motion to Compel Discovery, filed by s/ A. Michael Gianantonio, Esquire. No CC	Fredric Joseph Ammerman
10/26/2007	Order, this 25th day of Oct., 2007, it is Ordered that Additional Defendant's Motion to Compel Discovery is granted. Plaintiffs shall file full and complete Answers to Interrogatories and Responses to Requests for Production of Documents within 20 days. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 4CC Atty. Gianantonio	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

ROA Report

Case: 2005-01351-CD

Current Judge: Fredric Joseph Ammerman

Jan Lawrence, Chris Ilyes, Mary Ilyes, Jeff Cookerly, Scott Aldinger vs. Moravian Run Reclamation Co., Inc., Johnson Brothers Coal Company, Laurel Energy, LP

Civil Other

Date		Judge
1/4/2008	Notice of Service of Additional Defendant's Interrogatories and Requests for Production of Documents Directed (second set) to Plaintiffs, on the 3rd day of January 2008 to Robert P. Ging Jr. Esq., James A. Naddeo Esq., filed by s/ A. Michael Gianantonio Esq. No CC.	Fredric Joseph Ammerman
1/10/2008	Certificate of Readiness for Jury Trial, Praecipe For Trial, filed by s/ Lynn E. Bell, Esquire. No CC	Fredric Joseph Ammerman
1/15/2008	Order, this 15th day of Jan., 2008, pre-trial conference is scheduled for March 3, 2008 at 11:00 a.m. in Judges Chambers. Jury Selection is scheduled for April 4, 2008 at 9:00 a.m. in Courtroom 1. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: R. Ging, Naddeo, L. Bell	Fredric Joseph Ammerman
2/11/2008	Motion for Continuance of the Pre-Trial Conference, filed by s/Robert P. Ging, Jr., Esq. No CC	Fredric Joseph Ammerman
2/12/2008	Order, this 12th day of Feb., 2008, it is Ordered that the Pre-Trial Conference shall be continued from March 3, 2008 to March 27, 2008 at 10:00 in Judge's Chambers. counsel for the Plaintiffs shall serve a copy of this Order on all Defendants. by The Court, /s/ Fredric J. Ammerman, pres. Judge. 4CC Atty. Ging	Fredric Joseph Ammerman
3/28/2008	Order, this 27th day of March, 2008, following Pre-Trial Conference amoung Counsel and the Court it is Ordered: 1. Counsel for Plaintiffs shall have until no later than May 1, 2008 to file a motion for Partial Summary Judgment relating to the Court interpreting the contract in question as to the payment of royalties; 2. Defendant Laurel Energy, LP, shall have no later than May 15, 2008 to file an answer to the Plaintiff's Motion for Partial Summary Judgment. The Court will thereafter schedule the same for oral argument and establish a briefing schedule. 3. The above captioned matter shall proceed non-jury at the agreement of the parties. The case is continued until the Fall Term of Court, 2008. Following the Court's ruling on the Plaintiff's Motion for Partial Summary Judgment either party may request the Court Administrator to schedule the same for trial. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Naddeo, Ging and L. Bell	Fredric Joseph Ammerman
5/5/2008	Motion For Partial Summary Judgment, filed by s/ Robert P. Ging, Esquire. No CC	Fredric Joseph Ammerman
5/6/2008	Order, this 6th day of May, 2008, argument on Plaintffs' Motion for Partial Summary Judgment is scheduled for the 19th day of May, 2008 at 9:00 a.m. in Courtroom 1. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1Cc Attys; R. Ging, Naddeo, L. Bell	Fredric Joseph Ammerman
5/15/2008	Motion for Continuance, filed by Atty. Ging no cert. copies.	Fredric Joseph Ammerman
5/16/2008	Order, this 16th day of May, 2008, it is Ordered that the Motion for Continuance is Granted and that argument on the Plaintiffs' Motion for Summary Judgment is rescheduled from May 19, 2008 to June 3, 2008 at 3:00 p.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Ging, Naddeo, & L. Bell	Fredric Joseph Ammerman
5/27/2008	Certificate of Service, filed. That a true and correct copy of the foregoing Order was served on Lynn E. Bell Esq., and James A. Naddeo Esq., via first class mail, filed by s/ Robert P. Ging Jr Esq. No CC.	Fredric Joseph Ammerman

Jan Lawrence, Chris Ilyes, Mary Ilyes, Jeff Cookerly, Scott Aldinger vs. Moravian Run Reclamation Co., Inc., Johnson Brothers Coal Company, Laurel Energy, LP

Civil Other

Date		Judge
5/28/2008	Order, this 28th day of may, 2008, it is Ordered that due to a conflict with the Court schedule, argument on Plaintiffs' Motion for Partial Summary Judgment is rescheduled from June 3, 2008 to July 18, 2008 at 1:30 p.m. in Courtroom 1. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Bell, Ging, Naddeo	Fredric Joseph Ammerman
5/30/2008	Response to Motion for Partial Summary Judgment, filed by s/ James A. Naddeo Esq. 2CC Atty Naddeo.	Fredric Joseph Ammerman
	Petition to Withdraw as Counsel, filed by s/James A. Naddeo, Esq. Three CC Attorney Naddeo	Fredric Joseph Ammerman
6/4/2008	Order, this 3rd day of June, 2008, upon consideration of the forgoing Petition, it is Ordered that a rule is issued upon Respondent, Johnson Brothers Coal Company. The Respondent shall file an answer to the petition within 20 days of service upon the Respondent, and the notice of the entry of this Order shall be provided to all parties by the Petitioner. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Naddeo	Fredric Joseph Ammerman
	Additional Defendant's Motion For Partial Summary Judgment, filed by s/Jennings L. Hart, III, Esq. No CC	Fredric Joseph Ammerman
6/5/2008	Order, this 5th day of June, 2008, oral argument on Additional Defendant Laurel Energy, LP's Motion for Partial Summary Judgment is scheduled for the 18th day of July, 2008, at 1:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 6CC Atty. Hart	Fredric Joseph Ammerman
	Certificate of Service, filed. That a certified copy of Petition to Withdraw as Counsel was served on the 5th day of June 2008 by first class mail to Robert P. Ging Jr Esq., Lynn E. Bell Esq., Johnson Brothers Coal Company Inc., filed by s/ James A. Naddeo Esq. No CC.	Fredric Joseph Ammerman
6/13/2008	Response of Laurel Energy, LP, to James A. Naddeo, Esquire's Petition to Withdraw as Counsel For Johnson Brothers Coal Company, filed by s/ intelligible, Davies McFarland & Carroll, P.C. No CC	Fredric Joseph Ammerman
7/21/2008	Motion to Strike Additional Defendant's Motion For Partial Summary Judgment, and Response Thereto, filed by s/ Robert P. Ging, Jr., Esquire. No CC	Fredric Joseph Ammerman
7/22/2008	Order, filed cert. to Atty's Ging, Naddeo and Atty. L. Bell. NOW, this 18th day of July, 2008, upon agreement of counsel for all parties is is the ORDER of this Court that Atty. Naddeo be and is permitted to withdraw as counsel for Johnson Brothers Coal Co..	Fredric Joseph Ammerman
7/23/2008	Petition For Leave to File Motion For Summary Judgment, filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	Fredric Joseph Ammerman
7/24/2008	Rule, this 24th day of July, 2008, it is Ordered that a Rule be granted upon the Plaintiffs and Additional Defendant, to show cause why Petitioner's request for leave to file a motion for summary judgment should not be granted. Rule Returnable and argument thereon to be held the 8th of August, 2008, at 10:30 A.M. IN cOURTROOM 1. By the Court, /s/ Fredirc J. Ammerman, Pres. Judge. 2CC Atty. Naddeo	Fredric Joseph Ammerman
7/28/2008	Certificate of Service, filed. That certified copies of Rule and Petition for Leave to File Motion for Summary Judgment were served on the 23rd day of July 2008 by first class mail to Robert P. Ging Esq. and Lynn E. bell Esq., filed by s/ James A. Naddeo Esq. 2CC Atty Naddeo.	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

ROA Report

Case: 2005-01351-CD

Current Judge: Fredric Joseph Ammerman

Jan Lawrence, Chris Ilyes, Mary Ilyes, Jeff Cookerly, Scott Aldinger vs. Moravian Run Reclamation Co., Inc., Johnson Brothers Coal Company, Laurel Energy, LP

Civil Other

Date		Judge
8/11/2008	Order, this 8th day of August, 2008, this being the date set for argument on the Defendant Moravian Run Reclamation Company's Petition for Leave to File Motion for Summary Judgment; the Court noting that no one has appeared on behalf of Plaintiff or Defendant Laurel Energy, L.P. ; accordingly, it is Ordered that the said Defendant have no more than 15 days from this date in which to file a Motion for Summary Judgment. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Ging, L. Bell, Naddeo; 1 CC Def. Johnson Bros. Coal Co., RR1 Box 586, Mahaffey, PA 15757	Fredric Joseph Ammerman
8/25/2008	Motion For Partial Summary Judgment Against Additional Defendant, Laurel Energy, L.P., filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	Fredric Joseph Ammerman
	Motion For Summary Judgment Against Plaintiffs, filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	Fredric Joseph Ammerman
8/27/2008	Order, this 27th day of August, 2008, upon considreraion of the Motion for Partial Summary Judgment Against Additional Defendant, Laurel Energy, L.P. and the Motion for Summary Judgment Against Plaintiffs filed by James A. Naddeo, Esquire, it is Ordered that this case will be heard on the 26th day of Sept., 2008, at 9:00 a.m. Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Naddeo	Fredric Joseph Ammerman
8/29/2008	Opinion and Order, NOW, this 27th day of August, 2008, it is Ordered that Plaintiffs' Motion for Partial Summary Judgment is GRANTED. Defendant Laurel's Additional Defendant's Motion for Partial Summary Judgment is GRANTED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 5CC Atty. Ging; 1CC Atty. Naddeo 1CC Johnson Brothers Coal Co. - RR1 Box 586, Mahaffy, PA 15757 1CC Atty. L. Bell 1CC D. Mikesell, Esquire, and Law Library (without memos)	Fredric Joseph Ammerman

9-2-08 ✓ Certificate of Service

9-15-08 ✓ Response of Laurel Energy LP etal

9-15-08 ✓ Response of Laurel Energy LP etal

9-25-08 Affidavit of David M Curulla submitted in Support of defts Moravian Run's Motion for Summary Judgment

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	
vs.	CASE NO. 05-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	
	TYPE OF PLEADING: **COMPLAINT**
	FILED ON BEHALF OF: Plaintiffs
	COUNSEL OF RECORD: ROBERT P. GING, JR., ESQUIRE Pa. Id. No. 25459 2095 Humbert Road Confluence, PA 15424-2371 (814) 395-3661

FILED 2cc
m/11:27/01 Shff
AUG 31 2005 Atty pd. 85.00
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO.
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

NOTICE TO DEFEND

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MidPenn Legal Services
211 ½ E. Locust Street
Clearfield, PA 16830
(800) 326-9177

IN THE COURT OF COMMON PLEAS OF BLAIR COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO.
MORAVIAN RUN RECLAMATION CO, INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

COMPLAINT

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Complaint.

1. The Plaintiffs are adult citizens of Pennsylvania, who reside in the Commonwealth of Pennsylvania at the following addresses: Jan Lawrence and Scott Aldinger, 2178 Gleim Court, Enola, PA 17025; Chris and Mary Ilyes, 2160 Esbenshade Road, York, Pennsylvania 17404; and Jeff Cookerly, 152 Linda Drive, New Oxford, Pennsylvania 17350.

2. The Defendant, Moravian Run Reclamation Co., Inc. (hereinafter "Moravian") entered into a Memorandum of Lease with B & B Land Company of Clearfield, Pennsylvania, transferring all right, title and interest to a surface mine lease in Gulich Township, Clearfield County on October 17, 2000. The lease was for property now owned by the Plaintiffs. A copy of the lease is attached

hereto as Exhibit 1 and a copy of the Memorandum of Lease is attached as Exhibit 2.

3. At all times material hereto Johnson Brothers Coal Company (hereinafter "Johnson Brothers"), R.R. 1, Box 586, Mahaffey, Pennsylvania 15757 was the permittee and contract strip mine operator for Moravian which conducted mining operations pursuant to Permit No. 17970119 on the property owned by the Plaintiffs in Gulich Township, Clearfield County.

4. On February 27, 2002 Plaintiffs were the purchasers of a piece of property located in Beccari and Gulich Townships, Clearfield County, Pennsylvania as more fully set forth in the Deed attached hereto as Exhibit 3, being Instrument No. 200203112 dated February 27, 2002.

5. Subsequent to acquiring the property the Plaintiffs began building a cabin on the property in March of 2002. On August 23, 2002 Plaintiffs returned to the property from their primary residences which were not in Clearfield County to find that the property was being surface mined by Johnson Brothers Coal Company.

6. In October, 2002 a representative of Johnson Brothers Coal Company provided a copy of the lease to the Plaintiffs for the first time.

7. Mining was conducted on the property, without notice to the Plaintiffs, and the timber remaining on the property was also cut during the mining operation.

8. At no time did the Plaintiffs give permission to either of the Defendants or their predecessors or successors in interest to conduct surface mining operations on their property, nor did the Defendants make the Plaintiffs aware that they intended to conduct surface mining on their property

COUNT I - BREACH OF CONTRACT

9. The averments of Paragraphs 1 through 8 are incorporated herein by reference as if fully set forth.

10. At all times material hereto the Defendants have breached the surface mining contract as more fully set forth herein.

11. At the time of the mining conducted by the Defendants, the prior lessors did not own the surface rights of the premises.

12. Paragraph 3 of the original lease provided for a payment from the mining company to the property owners of $1.50 per net ton or 5% of the pit selling price per all merchantable and mineable coal whichever amount is greater for all coal mined and removed on the premises.

13. The Plaintiffs have made a request for payment of the royalties set forth in Paragraph 3, however the Defendants, and their successors in interest have refused and continue to refuse to make any royalty payments.

14. Paragraph 5 of the lease requires that the Defendants maintain certified truck scale weights for all coal mined and removed from the premises. The Plaintiffs have requested truck scale weights and other records through the Defendants or their successors in interest, however the Defendants and their successors in interest have refused and continue to refuse to comply with that provision of the original lease.

15. The original lease provided that lessors, their successors in interest would have access to the operation and scale records. Plaintiffs, or the current property owners have requested on numerous occasions that such records be provided, however the Defendants and their successors in interest have refused and continue to refuse to comply with the provision of the lease.

16. Paragraph 9 of the lease requires that prior to mining any paperwood or saw timber remaining on the leased premises would be cut and removed, and payment made to the Plaintiffs, as, successors in interest to the original lessors, pursuant to that paragraph. No such payments were made, nor was the timber on the property cut and removed by reliable people subject to the approval of the lessors. Defendants gave no notice to the Plaintiffs that they intended to mine Plaintiffs' property.

17. The lessee also failed to refrain from destroying pulpwood and saw timber in the progress of its mining operations and has failed to replant the premises in accordance wit the lease and its permits.

18. Paragraph 11 requires that lessee supply to lessors monthly tonnage reports, which the Defendants and their successors in interest have refused and continue to refuse to do.

19. Paragraph 6 of the lease required that lessee conduct all mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. The Defendants and their successors in interest failed to conduct mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry, have failed to adequately reclaim and re-vegetate the site, to implement sedimentation and erosion controls, and to assure that there was no mine drainage emanating from the mined area.

WHEREFORE Plaintiffs demand judgment in an amount in excess of arbitration limits of the Court of Common Pleas of Clearfield County.

COUNT II - TRESPASS

20. The averments of paragraphs 1 through 19 are incorporated herein by reference as if fully set forth.

21. At the time that mining was commenced the original lease agreement had expired, and the Memorandum of Lease, purportedly commencing June 2, 2000, occurred after the expiration of the original lease agreement.

22. No mining occurred prior to the expiration of the original coal lease.

23. In the alternative, if the lease was not in full force and affect at the time the mining was conducted, the Defendants, and their successors in interest and/or contractors converted timber present on the property to their own use, and converted the coal on the property to their own use and trespassed on Plaintiffs' property without Plaintiffs' consent and without the benefit of a lease.

WHEREFORE, Plaintiffs respectfully request judgment in excess of the arbitration limits of the Court of Common Pleas of Clearfield County.

Respectfully submitted,

Robert P. Ging, Jr., Esquire

EXHIBIT 1

Original Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 15th day of April, 1995 by and between R. Wesley Smith and Samantha Smith, his wife of R.D. 2, Box 39, Reynoldsville, Pennsylvania 15851 and Raymond A. Smith and Shirley B. Smith, his wife of R.D. 1, Box 211-A, Reynoldsville, Pennsylvania 15851, party of the first part, hereinafter referred to as "LESSORS";

A N D

B & B LAND COMPANY, of Clearfield, Pennsylvania, party of the second part, hereinafter referred to as "LESSEE".

W I T N E S S E T H:

THE LEASE

1. That for and in consideration of the sum of One Dollar ($1.00) paid by the LESSEE to the LESSORS, the receipt whereof is hereby acknowledged, the LESSORS do hereby let, lease and demise unto the LESSEE, its succesors and assigns, the right with such terms, covenants and conditions as hereinafter set forth, to mine and remove all the mineable and merchantable coal in, under and upon that certain tract in the Township of Beccaria and in the Township of Gulich title to which is vested in the LESSORS which tract of land is Parcel #1 - 290 acres in Gulich Township under Ray and Wesley Smith which is shown on Tax Map No. 118-K7-9 and Parcel #2 - 200 acres in Beccaria Township under Ray and Wesley Smith, which is shown on Tax Map No. 101-K17-8. Also, 110.56

110.56 acres in Beccaria Township under William O'Shall, Tax Map No. 101-K17-1.

The LESSORS covenant that they own either the coal or the surface (right of surface support) of the described premises, and do hereby grant and convey the full and complete rights for the mining and removing of the coal in, under and upon the above described premises by all modern mining methods, including but not limited to surface stripping, with the right of ingress, egress and regress, into, upon the under said lands for the purpose of examining, testing, mining, stripping and removing said coal, together with the right to locate and erect such chutes, tipples, buildings, pipe lines, pole lines and other structures as may be necessary for the use and working of mines or strippings, and with the right to deposit spoil therefrom upon the surface with the right to redeposit the same, and with all rights and privileges necessary and convenient in mining, digging, stripping, removing and transporting said coal without liability for any and all damage done to said lands or buildings or the water therein or thereon, caused by the mining, stripping and removal of all said coal, or the exercise of any or all of the mining rights aforesaid.

LESSORS hereby lease unto the LESSEE the right of ingress, egress and regress in and to the leased premises any time within five (5) years after the termination of this lease for the purpose of backfilling or planting trees or otherwise complying with the mining laws of the Commonwealth of Pennsylvania. But this right of re-entry for a period of five (5) years is for the

purpose alone and shall vest in LESSEE no rights whatsoever in the coal, in the mining of coal, or in the property. In addition, LESSORS agree to execute the required written consents on the form furnished by the Commonwealth of Pennsylvania concerning re-entry for backfilling, planting, reclamation and inspection.

2. Term and Effective Date: This lease shall become effective as of the 15th day of April, 1995, by the LESSEE and shall continue for a period of four (4) years with automatic extensions of one (1) year terms from year to year to exhaustion of the coal provided the premises are being actively mined at the end of the original term and each yearly extention thereof. Active mining shall be defined to mean mining operations upon the premises on a regular five (5) days per week.

3. Tonnage Royalty: LESSEE shall pay to LESSORS royalty at the rate of One Dollar and Fifty Cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton for all merchantable and mineable coal, whichever amount is greater, for all coal mined and removed from the premises. All payments of royalty shall be made on or before the 25th day of each calendar month for all coal mined and removed in the preceding calendar month and shall be accompanied by a statement showing the tonnage mined and royalty due. All payments are to be made to the LESSORS without demand or to any other party or parties LESSORS in writing designate as an agent for receiving payments.

All payments of royalty as herein provided are based on either one hundred percent (100%) ownership of surface (right of

surface support) coal or both surface and coal. In the event LESSORS should own less than one hundred percent (100%) of said surface and/or coal rights said sums shall be adjusted in accordance with the percentage of ownership.

4. Minimum Royalty: LESSEE shall pay to LESSORS the sum of Two Hundred Dollars ($200.00) per month as a minimum royalty for each month that the within lease is in full force and effect. All payments of minimum royalty shall be recoupable by the LESSEE as a credit against tonnage royalty from production as herein provided.

5. Tonnage Measurements: Royalty and other payments shall be based on certified truck scale weights or railroad weights, and all coal mined and removed from the premises shall be weighed on such scales. LESSEE hereby authorizes LESSORS or its agent, to examine any and all of the LESSEE'S records and to examine the records of any truck scale weights or railroad weights concerning the coal which was hauled or shipped from the described premises and the right to make copies of his findings.

6. Mining Methods: LESSEE agrees that all mining operations shall be conducted in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that LESSORS (at its own risk) shall have access to the operation and scale records of LESSEE at all times in person or by duly authorized agent.

7. Taxes: All taxes upon the premises herein demised shall be paid by LESSORS, and all taxes that may be levied, imposed, charged or assessed upon improvements, equipment, or

mining machine placed upon the demised premises by LESSEE for the mining, removing, processing or transportation of the coal shall be paid by LESSEE. Should any federal, state or local subdivision impose any tax upon the mining of coal, the coal mined, or otherwise, said taxes shall be paid by LESSEE.

8. Insurance: LESSEE agrees to keep in force during the term of this lease general liability insurance with a reputable insurance company in the sum of at least One Million Dollars. Upon request LESSEE shall furnish to LESSORS a certificate of said insurance which shall name LESSORS as an additional insured.

9. Timber Removal: If on investigation it appears that there is any appreciable quantity of paper wood or saw timber remaining on the leased premises, the LESSEE will at the request of the LESSORS arrange for the cutting and removal of such paper wood and saw timber by reliable people, subject to the approval of the LESSORS, and will supervise the cutting of such timber and pulpwood, arranging for monthly remittances to the LESSORS at the same time that royalties hereunder are due. The LESSEE shall refrain from destroying pulpwood or saw timber in the progress of its strip mining operations, if these is reasonable opportunity to arrange to have such timber cut off in advance of such operations.

10. Books and Records: LESSEE shall and will keep complete and accurate books of account, showing the amount of coal produced from the said property, and at the time for payment of the monthly royalties hereinbefore mentioned, shall furnish accurate statements of all coal mined and produced during the

preceding calendar month; shall and will keep all mining maps, books, plans and records necessary in operating said leased coal; and shall and will furnish LESSORS, or its duly authorized agent or employee, at any reasonable time, upon request, access to all books of account, records, weigh sheets, maps and plans and will also give LESSORS, or its duly authorized agent or employee, at reasonable request, access to any and all portions of the said leased premises and to the operations in connection with the same.

11. LESSEE agrees to supply to LESSORS, at the first of each month, tonnage on the number of trucks loaded with coal for the previous month.

12. Default in Royalties and Breach of Term: It is understood and agreed that in the event the LESSEE should default in any payment provided for herein when said payments become due, or should LESSEE be in default in any other respect and continue in such default for a period of thirty (30) days after being notified in writing of such default by LESSORS, then, in either event, at the option of the LESSORS, this Lease shall cease and terminate and LESSEE hereby authorizes any attorney of any court of record to appear for it and in its name to confess a judgment against it in an amicable action of ejectment to the end that a writ of habere facias possession may issue forthwith for the delivery of possession to LESSORS together with clause of fieri facias for royalties in arrears and costs.

13. Supplemental "C": LESSORS hereby agrees to execute, acknowledge and deliver to LESSEE within ten (10) days after the

exercise of the within option in quadruplicate the form know as Supplemental "C" required by the Department of Environmental Resources (DER) of the Commonwealth of Pennsylvania and thereafter any other forms required in order to secure the permits necessary for mining operations.

14. Force Majeure: LESSEE shall not be deemed in default for failure to perform any of its obligations under this Agreement during periods in which performance is partially or wholly prevented by any cause, condition or matter beyond LESSEE'S control, such as, and not by way of limitation, strikes, riots, accidents, governmental laws, lack of satisfactory markets for coal from the leased premises and acts of God.

15. No Assignment or Transfer: LESSEE agrees not to mortgage or encumber the leased premises with liens of any kind, or sell, or assign, or setover or sublet the whole or any part of the herein leased premises, or subcontract for the mining thereof, without the express written consent of the LESSOR first had and obtained, which, shall not be unreasonably withheld. It is further agreed and provided that any lawful levy and sale on execution or other legal processes, as well as any assignments or sale in bankruptcy, voluntary or involuntary proceedings, or any receivership created, shall be deemed and taken to be an assignment or subletting within the meaning of this lease agreement, and at the option the LESSORS shall work an immediate forfeiture, without notice, and thereupon possession may be immediately taken by the LESSORS without further formality.

It is understood, however, that anything to the contrary in the foregoing paragraph notwithstanding, LESSEE shall have the right to assign the within lease to LESSEE'S mining company, Penn-Grampian Coal Company or to Al Hamilton Contracting Company or any of its assigns.

16. Memorandum of Lease: Upon exercise of the within option by LESSEE, LESSORS agrees to execute, acknowledge and deliver to LESSEE a "memorandum of Lease" suitable for recording, which Memorandum retains the privacy of this document but gives public notice of the fact that the within lease has been executed. Said Memorandum shall contain a description of the property, the purpose of the lease, the length of the term and the fact that it incorporates the within lease by reference thereto. LESSEE agrees to prepare said Memorandum and deliver it to LESSORS and LESSORS agrees to execute, acknowledge and deliver to LESSEE the said Memorandum within ten (10) days of the receipt thereof.

17. Cancellation: The LESSEE shall have the right to cancel this Agreement at any time upon giving thirty (30) days written notice to the LESSORS, whereupon all accrued royalties including paid past minimum royalties shall be due and payable.

18. Notices: A written notice addressed to B & B Land Company, P.O. Box 249, Clearfield, Pennsylvania, 16830, and sent by certified mail, shall be deemed received by the LESSEE as of one day after the date of mailing. A written notice addressed to Raymond A. Smith, R.D. 1, Box 211-A, Reynoldsville, Pennsylvania

15851 and sent by certified mail shall be deemed received by the LESSORS as of one day after the date of mailing.

19. Water monitoring shall begin within ninety (90) days of the signing of the Agreement.

20. Anything to the contrary herein notwithstanding, mining shall commence within six (6) months after all required permits have been approved by D.E.R., otherwise the within lease shall terminate upon the expiration of thirty (30) days written notice by LESSORS to LESSEE should LESSEE fail to commence mining within said thirty (30) days.

21. This lease agreement is binding on the parties hereto, their heirs, executors, administrators, successors and assigns.

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

ATTEST:

Denise A. McGeehon

LESSORS:

R. Wesley Smith

Samantha L. Smith

Raymonda Smith

Shirley D. Smith

ATTEST:

Partner

LESSEES:
B & B LAND COMPANY
By

Partner

Lease Amendment

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT made this 2nd day of June, 2000, by and between R. WESLEY SMITH and SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, Pennsylvania 15851 and RAYMOND A. SMITH and SHIRLEY B. SMITH, his wife, of R R 1 Box 211A, Reynoldsville, Pennsylvania 15851, Party of the First Part, hereinafter referred to as "LESSORS";

AND

B & B LAND COMPANY of Clearfield, Pennsylvania, Party of the Second Part, hereinafter referred to as "LESSEE".

WHEREAS, the Lessors and Lessee have entered into a Lease Agreement dated April 15, 1995, and the Lessee has obtained certain mining permits on a portion of the premises set forth in said Lease in the Townships of Beccaria and Gulich in Clearfield County, Pennsylvania, more fully set forth in said Lease and the Lessors are desirous of granting additional time to Lessee.

WITNESSETH:

That the parties hereto agree to continue said lease for another three (3) years from the original term and Lessors do not require Lessee to pay any additional advance royalty and Lessee agrees to release from said Lease all premises not currently under permit including, but not limited to, all the premises lying South of T-534 and West of Muddy Run.

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

WITNESS:

Denise A. McGraner as to all — R. Wesley Smith (SEAL)
R. Wesley Smith

Samantha L. Smith (SEAL)
Samantha L. Smith

Raymond A. Smith (SEAL)
Raymond A. Smith

Shirley B. Smith (SEAL)
Shirley B. Smith

EXHIBIT 2

NOV 0 4 2002

MEMORANDUM OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that R. WESLEY SMITH & SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, PA 15851; and RAYMOND A. SMITH & SHIRLEY B. SMITH, his wife, of R. R. #1, Box 211A, Reynoldsville, PA 15851; LESSORS, have by Agreement dated April 15th, 1995; and amended June 2nd, 2000; leased to B & B LAND COMPANY of Clearfield, (PO Box 249) PA 16830; LESSEE, and subsequently transferred to MORAVIAN RUN RECLAMATION COMPANY, INC., for the purpose of strip mining all the coal upon certain premises located in Gulich Township, Clearfield County, Pennsylvania as shown on the attached map.

The date of commencement of amended Agreement is June 2nd, 2000. The term of amended Agreement and transfer is three (3) years.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 17th day of October, 2000.

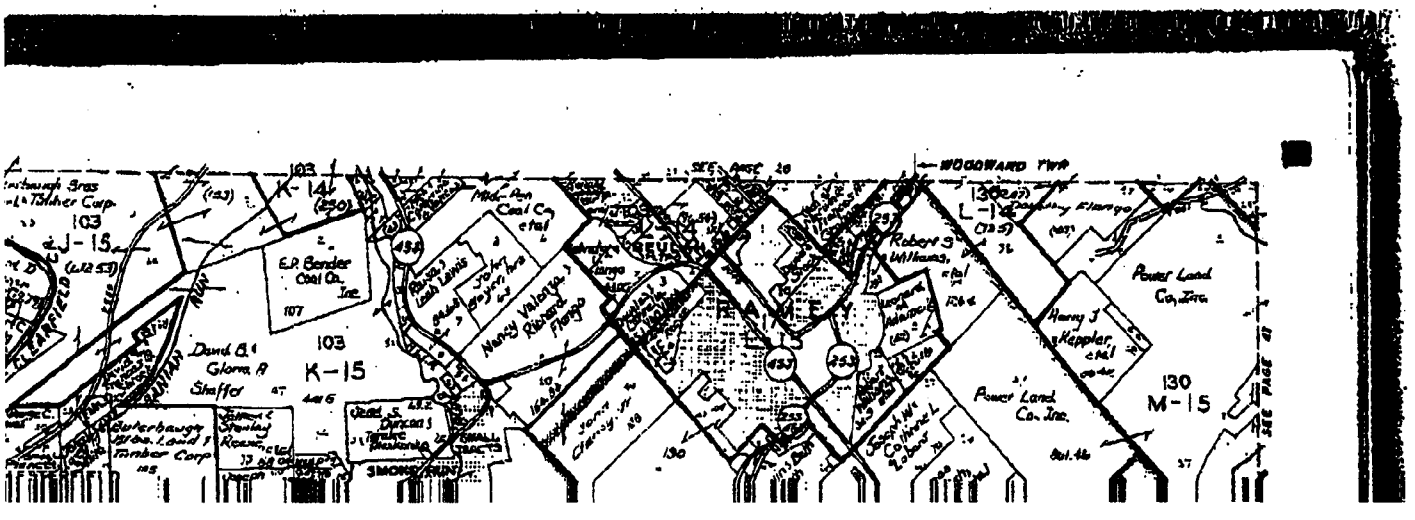
WITNESS:

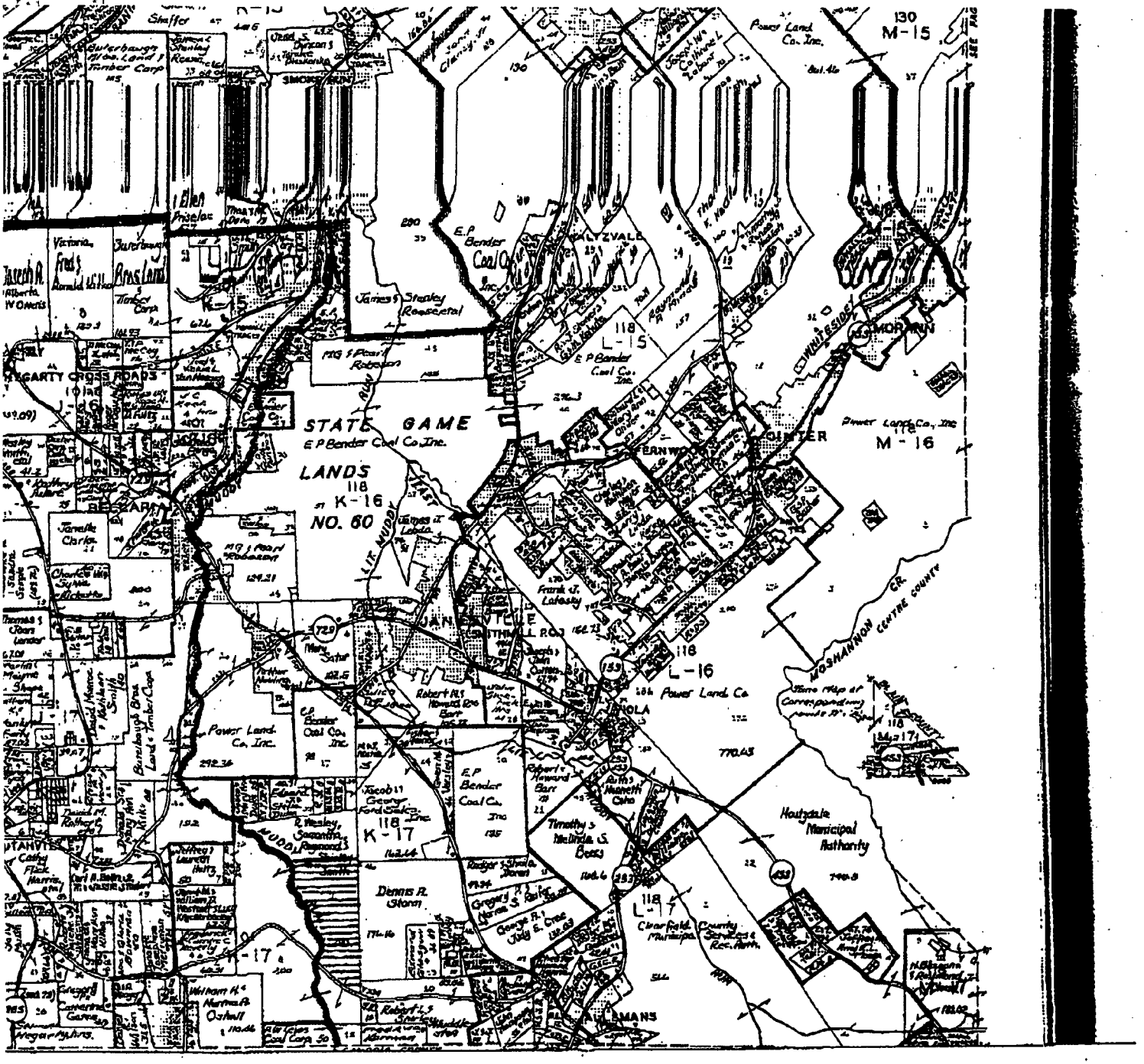
Denise A McGraner — R. Wesley Smith (SEAL)
R. Wesley Smith

Denise A McGraner — Samantha L. Smith (SEAL)
Samantha L. Smith

Denise A McGraner — Raymond A. Smith (SEAL)
Raymond A. Smith

Denise A McGraner — Shirley B. Smith (SEAL)
Shirley B. Smith





STATE OF PENNSYLVANIA:

: SS

COUNTY OF Jefferson :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 19th day of October, 2000, before me, the undersigned officer, personally appeared WILLIAM T. THORP, Partner, B & B LAND COMPANY, who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

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

Ronald D. Thorp
Notary Public

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 23rd day of Oct, 2000, before me, the undersigned officer, personally appeared DAVID M. CURULLA, President, MORAVIAN RUN RECLAMATION COMPANY, INC., who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he, as President of MORAVIAN RUN RECLAMATION COMPANY, INC., executed the same for the purpose therein

STATE OF PENNSYLVANIA:
: SS
COUNTY OF Jefferson :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained

L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A. McGranor
Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2003
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA:
: SS
COUNTY OF JEFFERSON :

[illegible] October 2000 before me, the

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 19th day of October, 2000, before me, the undersigned officer, personally appeared WILLIAM T. THORP, Partner, B & B LAND COMPANY, who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A. McGranor
Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2004
Member, Pennsylvania Association Of Notaries

STATE OF PENNSYLVANIA:
: SS
COUNTY OF JEFFERSON :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared RAYMOND A. SMITH and SHIRLEY B. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A. McGranor
Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2004

EXHIBIT 3

THIS DEED,

MADE THE 27th day of February, in the year two thousand two (2002),

BETWEEN CHARLES M. COLONY, DOROTHY I. COLONY and ERIC E. EMINHIZER, trading and doing business as FERGUSON VALLEY HARDWOODS, with its principal place of business at 501 Electric Avenue, Lewistown, Mifflin County, Pennsylvania, Grantor

AND

CHRISTOPHER SCOTT ILYES and MARY GALLAGHER ILYES, his wife, of 404 Debbi Ct., Hanover, PA 17331; JAY SCOTT ALDINGER and JANET LOUISE LAWRENCE/ALDINGER, his wife, of 2178 Gleim Ct., Enola, PA 17025; JEFFREY THOMAS COOKERLY and JENNIFER RENEE COOKERLY, his wife, of 405 Debbi Ct., Hanover, PA 17331; SCOTT WILLIAM MILLER and MICHELLE LYNN MILLER, his wife, of 813 Market St., Mt. Wolf, PA 17347, Grantees

WITNESS, that in consideration of Fifty Five Thousand ($55,000.00) Dollars, in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantees,

ALL THAT CERTAIN piece, parcel or tract of land situate in the Townships of Becarria and Gulich, County of Clearfield and State of Pennsylvania, bounded and described on Schedule "A" attached.

SUBJECT, HOWEVER, to all exceptions, reservations, restrictions, leases, interests, covenants, agreements, rights-of-way and easements contained in, and/or conveyed and/or granted by, prior instruments of writing of record in the chain of title, insofar as they may still be in force and effect; all easements apparent on the premises; municipal zoning ordinances; building codes; laws, ordinances or governmental regulations relating to sewage disposal; and, all laws, ordinances and regulations relating to subdivisions.

TOGETHER WITH the appurtenances.

BEING the premises which Ferguson Valley Hardwoods, became seized by deed of R. Wesley Smith and Samantha L. Smith, his wife; Raymond A. Smith and Shirley B. Smith, his wife, dated December 22, 2000, and recorded in the Recorder's Office of Clearfield County, Pennsylvania, at Instrument Number 200100027.

SCHEDULE A

ALL THAT CERTAIN 100.8645 acres tract of land located in Gulich Township and Beccaria Township, Clearfield County, Pennsylvania, which is shown as Lot 6 of a two sheet Plan of Subdivision of Ferguson Valley Hardwoods, prepared for Ferguson Valley Hardwoods by Colony & Company Surveying & Engineering, dated January 9, 2001, said Plan of Subdivision recorded in Instrument No. 2001 07907 to Map File No. 2317 Clearfield County Records, said tract of land being more fully bounded and described as follows:

BEGINNING at a set rebar in line of Lot 1 of said Plan of Subdivision at corner of Lot 2 of said Plan of Subdivision, said set rebar lying S 86° 37' 28" W 632.88' from a found square concrete monument at common corner of Lot 1, lands of Jacob George Ford Sales, Inc. and lands of John Dominicus; thence by Lot 2 S 01° 54' 41" W passing through a set rebar at 3668.58' a total distance of 3703.58' to a point in line of Lot 3 of said Plan of Subdivision, said point being in centerline of T-534 (Wippers Road), a 33' right-of-way leading from SR 2001 (Beaver Dam Road) to T-535 (Dakota Ridge Road); thence by Lot 3 and Lot 4 of said Plan of Subdivision and along centerline of T-534 (Wippers Road) the following 22 courses: 1) N 39° 08' 03" W 112.82'; 2) by a curve to the left with a Long Chord of N 41° 48' 34" W 189.03', a Radius of 2025.00', and an Intersection Angle of 05° 21' 01" a total distance of 189.10'; 3) N 44° 29' 05" W 71.03'; 4) by a curve to the left with a Long Chord of N 46° 47' 43" W 104.82', a Radius of 1300.00', and an Intersection Angle of 04° 37' 16" a total distance of 104.85'; 5) N 49° 06' 20" W 265.61'; 6) by a curve to the right with a Long Chord of N 37° 56' 09" W 120.10', a Radius of 310.00', and an Intersection Angle of 22° 20' 22" a total distance of 120.87'; 7) N 26° 45' 58" W 53.51'; 8) by a curve to the left with a Long Chord of N 39° 02' 37" W 141.20', a Radius of 332.00', and an Intersection Angle of 24° 33' 19" a total distance of 142.28'; 9) N 51° 19' 17" W 63.10'; 10) by a curve to the right with a Long Chord N 39° 12' 23" W 111.65', a Radius of 266.00', and an Intersection Angle of 24° 13' 48" a total distance of 112.49'; 11) N 27° 05' 29" W 54.77'; 12) by a curve to the left with a Long Chord of N 47° 23' 23" W 150.56', a Radius of 217.00', and an Intersection Angle of 40° 35' 49" a total distance of 153.76'; 13) N 67° 41' 18" W 120.55'; 14) by a curve to the right with a Long Chord of N 67° 03' 45" W 59.43', a Radius of 2720.00', and an Intersection Angle of 01° 15' 07" a total distance of 59.43' to a point at the intersection of the centerline of T-534 (Wippers Road) with the centerline of Muddy Run, said point being a common corner of Lot 3 and Lot 4 of said Plan of Subdivision, said point also marking the boundary line between Gulich Township and Beccaria Township; 15) thence by Lot 4, entering Beccaria Township and along centerline of T-534 and by a curve to the right with a Long Chord of N 65° 44' 48" W 65.50', a Radius of 2720.00', and an Intersection Angle of 01° 22' 47" a total distance of 65.50'; 16) N 65° 03' 24" W 137.22'; 17) by a curve to the right with a Long Chord of N 53° 35' 13" W 212.77', a Radius of 535.00', and an Intersection Angle of 22° 56' 21" a total distance of 214.20'; 18) N 42° 07' 03" W 106.40'; 19) by a curve to the right with a Long Chord of N 34° 49' 57" W 131.88', a Radius of 520.00', and an Intersection Angle of 14° 34' 12" a total

distance of 132.23'; 20) N 27° 32' 50" W 75.19'; 21) by a curve to the left with a Long Chord of N 29° 27' 32" W 66.05', a Radius of 990.00', and an Intersection Angle of 03° 49' 24" a total distance of 66.06'; 22) N 31° 22' 15" W 93.58' to a point in said centerline of T-534, being a corner of Lot 5 of said Plan of Subdivision; thence departing centerline of T-534 and by Lot 5 N 31° 31' 28" E passing through a set rebar at 50.00' and at 1180.00' a total distance of 1201.69' to a point in centerline of Muddy Run marking the boundary of Gulich Township and Beccaria Township; thence along centerline of Muddy Run and by Lot 5 the following 11 courses: 1) S 86° 14' 17" W 100.07'; 2) N 03° 10' 11" W 22.61'; 3) N 30° 58' 44" E 63.72'; 4) N 03° 07' 26" W 90.52'; 5) N 51° 07' 33" W 149.94'; 6) N 28° 40' 26" W 208.11'; 7) N 03° 49' 13" E 48.49'; 8) N 48° 32' 31" E 169.68'; 9) N 07° 39' 17" W 66.20'; 10) N 21° 04' 43" W 167.19'; 11) N 56° 45' 22" W 75.93' to a point in centerline of Muddy Run and in line of Lot 1 of said Plan of Subdivision, said point lying N 86° 37' 28" E 26.42' from a set rebar in common line of Lot 1 and Lot 5; thence departing the centerline of Muddy Run and by Lot 1 entering Gulich Township N 86° 37' 28" E 1540.70' to a set rebar, being the POINT OF BEGINNING.

CONTAINING: 100.8645 Acres.

TOGETHER WITH and SUBJECT TO a 100' Right-of-Way centered on the centerline of T-534 (Wippers Road) for placement of utilities as noted on aforesaid Plan of Subdivision.

CERTIFICATE OF RESIDENCE

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

2178 Gleim Court; Enola, PA 17025

Attorney for Grantee

COMMONWEALTH OF PENNSYLVANIA

ss:

COUNTY OF MIFFLIN

On this, the 22nd day of February, 2002, before me, the undersigned officer, personally appeared CHARLES M. COLONY, DOROTHY I. COLONY and ERIC E. EMINHIZER, individually and as partners of FERGUSON VALLEY HARDWOODS, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

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

Notarial Seal
Sharon F. Morris, Notary Public
Derry Twp., Mifflin County
My Commission Expires Apr. 9, 2005
Member, Pennsylvania Association of Notaries

Notary Public

RECORDED in the Office for Recording of Deeds, etc., in and for said County, in Record Book _____, Page _____.

WITNESS my hand and official seal this _____ day of _____, 200__.

Recorder of Deeds

NOTICE – Grantee (hereinafter, whether one or more, called "Grantee") hereby agrees that he may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal.

x Debby & Thomas Cooley
x Christopher Scott Ely
x Mary Gallagher Ely POA
x Jennifer Renee Cooley
x Janet Lawrence Aldenjo
x Jay Scott Aldenjo POA
x Michelle Lynn Miller
x Scott William Miller

NOTE – THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACEOF THE LAND AND ANY HOUSE, BUILDING OR OTHER SUTRCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT R MODIVFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.]

KAREN L. STARCK
EGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200203112
RECORDED ON
eb 27, 2002
2:12:40 PM
Total Pages: 6

ECORDING FEES - $21.00
ECORDER
OUNTY IMPROVEMENT $1.00
UND
ECORDER $1.00
MPROVEMENT FUND
TATE TRANSFER $550.00
AX
TATE WRIT TAX $0.50
CCARIA TOWNSHIP $137.50
ULICH TOWNSHIP $137.50
LENDALE SCHOOL $137.50
ISTRICT
DSHANNON VALLEY $137.50
CHOOLS
OTAL $1,123.50
CUSTOMER
HOMPSON, DAVID

UNIFORM CLEARFIELD COUNTY BAR ASSOCIATION CERTIFICATE OF TITLE

TO: Christopher Scott Ilyes and Mary Gallagher Ilyes; Jay Scott Aldinger and Janet Louise Lawrence/Aldinger; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly; Scott William Miller and Michelle Lynn Miller

CERTIFICATION

The undersigned does hereby certify the record title of Christopher Scott Ilyes and Mary Gallagher Ilyes, his wife; Jay Scott Aldinger and Janet Louise Lawrence/Aldinger, his wife; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly, his wife; Scott William Miller and Michelle Lynn Miller, his wife, whose property is located in Becarria and Gulich Townships, Clearfield County and recorded to Instrument Number 200203112, to be good and marketable and free and clear of all liens and encumbrances of record which would be disclosed by a search of the indices of the records of the Court House, at Clearfield, Pennsylvania, with any exceptions hereinafter noted, covering the period from fifty (50) years ago to this date.

EXCEPTIONS

1st Lien Mortgage to The Juniata Valley Bank in the original principal amount of $80,000.00 dated February 27, 2002 and recorded in Clearfield County to Instrument Number 200203113 on February 27, 2002.

This certificate embraces the following:

Miscellaneous agreements, grants, releases, easements, mechanic's liens, municipal liens, mortgages, liens of record, taxes are entered or recorded in any of the offices of the said Court House, but does not embrace liens or other matters not entered of record in the indices of said offices.

This certificate covers only matters disclosed by the indices of the Court House records of Clearfield County, Pennsylvania. It specifically does not cover any deficiency int he quantity of land, improvements on the premises, violation of zoning ordinances or building restrictions, boundary line disputes, nor taxes of any nature whatsoever which have accrued and are actually owing but which have not been entered or record, nor does it cover any matters which might be disclosed by either a survey or a physical inspection of the premises. No mechanic's or municipal liens were filed of record as of the date of this certificate, but your attention is specifically directed to the possibility that the same might be filed at a future date for any building, repair or other word already commenced.

This certificate shall insure only to the benefit of the person to whom it is addressed,

wife; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly, his wife; Scott William Miller and Michelle Lynn Miller, his wife, whose property is located in Becarria and Gulich Townships, Clearfield County and recorded to Instrument Number 200203112, to be good and marketable and free and clear of all liens and encumbrances of record which would be disclosed by a search of the indices of the records of the Court House, at Clearfield, Pennsylvania, with any exceptions hereinafter noted, covering the period from fifty (50) years ago to this date.

EXCEPTIONS

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This certificate covers only matters disclosed by the indices of the Court House records of Clearfield County, Pennsylvania. It specifically does not cover any deficiency int he quantity of land, improvements on the premises, violation of zoning ordinances or building restrictions, boundary line disputes, nor taxes of any nature whatsoever which have accrued and are actually owing but which have not been entered or record, nor does it cover any matters which might be disclosed by either a survey or a physical inspection of the premises. No mechanic's or municipal liens were filed of record as of the date of this certificate, but your attention is specifically directed to the possibility that the same might be filed at a future date for any building, repair or other word already commenced.

This certificate shall insure only to the benefit of the person to whom it is addressed, and is issued subject to all rights of persons who may be in possession under lease, or title or claim of title not indexed of record.

DATED: February 27, 2002

David R. Thompson, Esquire

VERIFICATION AFFIDAVIT

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief.

I understand that statements herein are made subject to the penalties of 18 Pa. C.S., §4904, relating to unsworn falsifications to authorities.

Jan Lawrence

FILED

AUG 3 1 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants.	*	

Type of Pleading:

ANSWER AND NEW MATTER

Filed on behalf of:
Defendant Moravian
Run Reclamation Co., Inc.

Counsel of Record for
this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

FILED 1cc
01 3.30 Atty
OCT 17 2005 Naddeo
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants.	*	

NOTICE TO PLEAD

TO THE PLAINTIFF:

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.

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendant
Moravian Run Reclamation
Co., Inc.

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants.	*	

ANSWER AND NEW MATTER

NOW COMES the Defendant, Moravian Run Reclamation Co., Inc., and by its attorney, James A. Naddeo, Esquire, and sets forth the following Answer to Plaintiff's Complaint:

1. Admitted.

2, Denied and on the contrary it is alleged that the Memorandum of lease dated October 17, 2000 did not affect the transfer of the surface mining Lease attached to Plaintiff's Complaint as Exhibit "1", but the contrary said transfer was accomplished through a document titled Transfer of Lease Agreements with the Memorandum referenced by Plaintiff as Exhibit "2" being a document to memorialize said transfer for public record.

3. Denied and on the contrary it is alleged that Johnson Brothers Coal Company, hereinafter "Johnson", at no time acted as a contract strip mine operator for Moravian but to the

contrary acted as contract miner for an entity known as Laurel Energy, LP.

4. Admitted but in further answer thereto it is alleged that at the time Plaintiffs purchased the premises located in Beccaria and Gulich Township, Clearfield County, Pennsylvania, they were on notice of the Coal Lease attached to their Complaint as Exhibit "1" by virtue of the recorded documents which appear of record evidencing the existence of said Lease and more specifically the Memorandum of Lease attached to Plaintiff's Complaint as Exhibit "2".

5. Denied in that after reasonable investigation Defendant Moravian is without knowledge or information sufficient to form a belief as to the truth of said averment.

6. Denied in that after reasonable investigation Defendant Moravian is without knowledge or information sufficient to form a belief as to the truth of said averment.

7. Denied in that after reasonable investigation Defendant Moravian is without knowledge or information sufficient to form a belief as to the truth of said averment.

8. Admitted in so far as it alleges that Defendant Moravian was never given permission to conduct surface mining operations on Plaintiffs' property for the reason that Moravian at no time conducted any surface mining upon Plaintiffs' property nor was Moravian aware of the date or dates upon which

surface mining occurred for the reasons set forth in Moravian's New Matter which is incorporated herein by reference.

COUNT I- BREACH OF CONTRACT

9. Defendant Moravian incorporates its answers to Paragraphs 1 through 8 and makes them a part hereof.

10. Denied for the reasons set forth in Moravian's New Matter which is incorporated herein by reference.

11. Denied in that after reasonable investigation Defendant Moravian is without knowledge or information sufficient to form a belief as to the truth of said averment.

12. No answer required in that said Lease Agreement speaks for itself.

13. Denied in so far as it states that Plaintiffs have made any demand upon Moravian to make royalty payments.

14. No answer required in that said Lease Agreement speaks for itself. As to that portion of said allegation that requires a response, it is denied that Plaintiffs have requested truck scale weights or other records from Defendant Moravian which Defendant would have no such records for the reasons set forth in its New Matter which is incorporated herein by reference.

15. Defendant Moravian incorporates its Answer to Paragraph 14 of Plaintiffs' Complaint by reference and makes it a part hereof.

16. No answer is required in that said Lease Agreement speaks for itself. As to that portion of said allegation that requires a response, Defendant Moravian denies said allegation in that after reasonable investigation Defendant Moravian is without knowledge or information sufficient to form a belief as to the truth of said averment.

17. Denied in that after reasonable investigation Defendant Moravian is without knowledge or information sufficient to form a belief as to the truth of said averment.

18. Denied and in further answer thereto Moravian incorporates New Matter hereafter set forth by reference

19. Denied in so far as said allegation implies that Defendant Moravian conducted mining operations upon Plaintiffs' property for the reasons more fully set forth in its New Matter incorporated herein by reference.

WHEREFORE, Defendant Moravian requests that Plaintiffs' Complaint against Moravian be dismissed.

COUNT II - TRESPASS

20. Defendant Moravian incorporates its answers to Paragraphs 1 through 19 and makes them a part hereof.

21, Denied and on the contrary it is alleged that said Lease was extended by Agreement dated June 2, 2000, a copy of which is attached hereto as Moravian Exhibit "A".

22. Denied in that after reasonable investigation Defendant Moravian is without knowledge or information sufficient to form a belief as to the truth of said averment. In further answer thereto Defendant Moravian incorporates its New Matter hereinafter set forth by reference.

23. investigation Defendant Moravian is without knowledge or information sufficient to form a belief as to the truth of said averment.

WHEREFORE, Defendant Moravian requests that Plaintiffs' Complaint against Moravian be dismissed.

NEW MATTER

24. That Moravian acquired ownership of the Lease attached to Plaintiffs' Complaint as Exhibit "1" by virtue of an Agreement dated October 23, 2000, a copy of which is attached hereto as Moravian's Exhibit "B".

25. That subsequent to acquiring ownership in the Lease attached to Plaintiffs' Complaint as Exhibit "1", Moravian caused a Memorandum of said Lease to be recorded in the Office of the Register and Recorder for Clearfield County on October 23, 2000. A copy of said Memorandum is attached hereto as Moravian Exhibit "C".

26. That Moravian never applied for a surface mining permit to strip the premises described in Exhibit "3" of

Plaintiffs' Complaint which Exhibit is incorporated herein by reference.

27. That Moravian transferred the Lease Agreement attached to Plaintiffs' Complaint as Exhibit "1" to Laurel Energy, LP by Agreement which is believed to be in the possession of Laurel Energy, LP and therefore unavailable as an exhibit to Moravian's New Matter.

28. That prior to assigning and/or selling the Lease attached to Plaintiffs' Complaint as Exhibit "1" to Laurel Energy, LP, Moravian conducted no mining of Plaintiffs' property nor did Moravian remove any timber from said property.

WHEREFORE, Defendant Moravian requests that Plaintiffs' Complaint against Moravian be dismissed.

James A. Naddeo
Attorney for Moravian

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT made this 2nd day of June, 2000, by and between R. WESLEY SMITH and SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, Pennsylvania 15851 and RAYMOND A. SMITH and SHIRLEY B. SMITH, his wife, of R R 1 Box 211A, Reynoldsville, Pennsylvania 15851, Party of the First Part, hereinafter referred to as "LESSORS";

AND

B & B LAND COMPANY of Clearfield, Pennsylvania, Party of the Second Part, hereinafter referred to as "LESSEE".

WHEREAS, the Lessors and Lessee have entered into a Lease Agreement dated April 15, 1995, and the Lessee has obtained certain mining permits on a portion of the premises set forth in said Lease in the Townships of Beccaria and Gulich in Clearfield County, Pennsylvania, more fully set forth in said Lease and the Lessors are desirous of granting additional time to Lessee.

WITNESSETH:

That the parties hereto agree to continue said lease for another three (3) years from the original term and Lessors do not require Lessee to pay any additional advance royalty and Lessee agrees to release from said Lease all premises not currently under permit including, but not limited to, all the premises lying South of T-534 and West of Muddy Run.

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

WITNESS:

Denise A. McGranor as to all — R. Wesley Smith (SEAL)
R. Wesley Smith

Samantha L. Smith (SEAL)
Samantha L. Smith

Raymond A. Smith (SEAL)
Raymond A. Smith

Shirley B. Smith (SEAL)
Shirley B. Smith

EXHIBIT "A"

This Transfer of Leases is binding on the parties hereto;

In witness whereof, the parties have hereunto set their hands and seal the day and year first above written.

ATTEST:

Moravian Run Reclamation, Inc.

ATTEST:

Penn-Grampian Coal Company

TRANSFER OF LEASE AGREEMENTS

The Transfer of Lease Agreements made this 23 day of OCTOBER, 2000, by and between Moravian Run Reclamation, Inc., 605 Sheridan Drive, Clearfield, PA 16830 and Penn-Grampian Coal Company, P.O. Box 249, Clearfield, PA 16830.

It is recognized that the Leases which are to be transferred to Moravian Run Reclamation, Inc. include the following:

William Oshall
Buterbaugh Bros. Land and Timber Corp.
Wesley Smith and Raymond Smith

Moravian Run Reclamation, Inc. hereby agrees to abide by the requirements and provisions set forth by the Lease agreements. Moravian Run Reclamation, Inc. will pay Penn-Grampian Coal Company the Royalties that are due Wesley and Raymond Smith for the money that was advanced to the Smith's, by Penn-Grampian Coal Company. This will be paid based on Royalty Rate that was agreed to between Penn-Grampian Coal Company and the Smith's on coal that is to be mined from the permit identified as SMP #17970119 in Gulich Township, Clearfield County. The amount that Penn-Grampian Coal Company advanced to the Smith's totaled $6,657.58. This amount is based on the average royalty rate per ton for the coal mined and shipped from the Smith property. This amount is to be paid according to the following schedule:

Initial $1,572.31 to be paid to Hess & Fisher Engineers, Inc. for an outstanding balance for consulting services for the permit application, SMP #17970119.

Remaining $5,085.27 to be paid to Penn-Grampian Coal Company.

Once Moravian Run Reclamation, Inc. reimburses the entire $6,657.58 all royalties are to be paid directly to the Lessors.

EXHIBIT "B"

This Transfer of Leases is binding on the parties hereto;

In witness whereof, the parties have hereunto set their hands and seal the day and year first above written.

ATTEST:

Moravian Run Reclamation, Inc.

ATTEST:

Penn-Grampian Coal Company

MEMORANDUM OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that R. WESLEY SMITH & SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, PA 15851; and RAYMOND A. SMITH & SHIRLEY B. SMITH, his wife, of R. R. #1, Box 211A, Reynoldsville, PA 15851; LESSORS, have by Agreement dated April 15th, 1995; and amended June 2nd, 2000; leased to B & B LAND COMPANY of Clearfield, PA 16830; LESSEE, and subsequently transferred to MORAVIAN RUN RECLAMATION COMPANY, INC., for the purpose of strip mining all the coal upon certain premises located in Gulich Township, Clearfield County, Pennsylvania as shown on the attached map. (RB Vol 2149)

The date of commencement of amended Agreement is June 2nd, 2000. The term of amended Agreement and transfer is three (3) years.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 17th day of October, 2000.

WITNESS:

Denise A McGranor — R. Wesley Smith (SEAL)
R. Wesley Smith

Denise A McGranor — Samantha L. Smith (SEAL)
Samantha L. Smith

Denise A McGranor — Raymond A. Smith (SEAL)
Raymond A. Smith

Denise A McGranor — Shirley B. Smith (SEAL)
Shirley B. Smith

WITNESS:

Ronald A. Thorp

B & B LAND COMPANY

William T. Thorp (SEAL)
William T. Thorp, Partner

ATTEST:

MORAVIAN RUN RECLAMATION COMPANY, INC.

David M. Curulla (SEAL)
David M. Curulla, President

Sold to Ferguson Valley Hardwoods - Lewistown 12/00

EXHIBIT "C"

STATE OF PENNSYLVANIA:

: SS

COUNTY OF JEFFERSON :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A McGranor

Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2003
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA:

: SS

COUNTY OF JEFFERSON :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared RAYMOND A. SMITH and SHIRLEY B. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A McGranor

Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2003
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :

On this, the 19th day of October, 2000, before me, the undersigned officer, personally appeared WILLIAM T. THORP, Partner, B & B LAND COMPANY, who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

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

Ronald D. Thorp
Notary Public

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

STATE OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :

On this, the 23rd day of Oct., 2000, before me, the undersigned officer, personally appeared DAVID M. CURULLA, President, MORAVIAN RUN RECLAMATION COMPANY, INC., who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he, as President of MORAVIAN RUN RECLAMATION COMPANY, INC., executed the same for the purpose therein contained.

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

Kathy L. DuFour
Notary Public

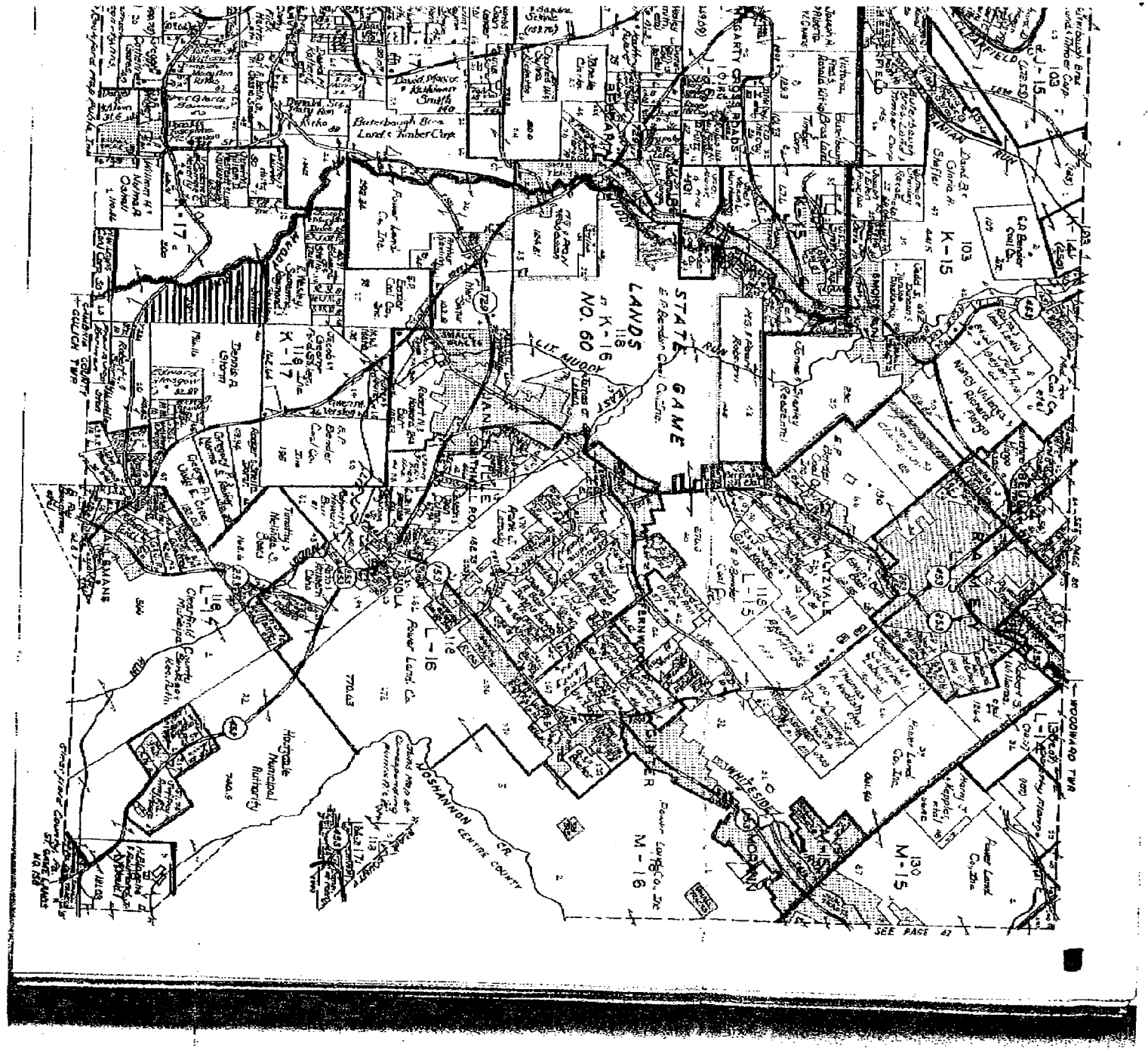
Notarial Seal
Kathy L. DuFour, Notary Public
Lawrence Twp., Clearfield County
My Commission Expires July 1, 2004
Member, Pennsylvania Association of Notaries

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200015793
RECORDED ON
Oct 23, 2000
11:19:12 AM

RECORDING FEES - RECORDER	$15.00
COUNTY IMPROVEMENT FUND	$1.00
RECORDER IMPROVEMENT FUND	$1.00
STATE WRIT TAX	$0.50
TOTAL	$17.50

CUSTOMER
BRAVIAN RUN RECLAMATION COMPANY INC



COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared JOSEPH TARBAY, who being duly sworn according to law, deposes and states that he is the Vice-President of Moravian Run, Inc. and that as such officer he is authorized to execute this Affidavit and further that the facts set forth in the foregoing Answer and New Matter are true and correct to the best of his knowledge, information and belief.

Joseph Tarbay

SWORN and SUBSCRIBED before me this 5th day of October, 2005.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2007

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of the Answer and New Matter of Defendant Moravian Run Reclamation Co., Inc. was served on the following and in the following manner on the 17th day of October, 2005:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

James A. Naddeo
Attorney for Defendant
Moravian Run Reclamation
Co., Inc.

FILED

OCT 17 2005

William A.
Prothonotary/Clerk of

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	

Type of Pleading:

ANSWER AND NEW MATTER

Filed on behalf of:
Defendant Johnson
Brothers Coal Company

Counsel of Record for
this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

FILED 1cc Atty Naddeo
01 3:45 BK
OCT 25 2005
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants.	*	

NOTICE TO PLEAD

TO THE PLAINTIFF:

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.

James A. Naddeo

James A. Naddeo, Esquire
Attorney for Defendant
Johnson Brothers Coal Company

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants.	*	

ANSWER AND NEW MATTER

NOW COMES the Defendant, Johnson Brothers Coal Company, and by its attorney, James A. Naddeo, Esquire, and sets forth the following Answer to Plaintiff's Complaint:

1. Admitted.

2, Denied in that after reasonable investigation Defendant Johnson is without knowledge or information sufficient to form a belief as to the truth of said averment.

3. Admitted in so far as it alleges that Defendant, Johnson Brothers Coal Company, hereinafter Johnson, was the permitee pursuant to Permit No. 17970119 on the property owned by Plaintiffs in Gulich Township, Clearfield County, Pennsylvania. It is denied, however, that Johnson was a contract stripper for Defendant Moravian but to the contrary was a contract stripper for Laurel Energy, LP pursuant to a Contract

Mine Agreement dated August 23, 2001. A copy of said Agreement is attached hereto as Exhibit "A".

4. Admitted but in further answer thereto it is alleged that at the time Plaintiffs purchased the premises located in Beccaria and Gulich Township, Clearfield County, Pennsylvania, they were on notice of the Coal Lease attached to their Complaint as Exhibit "1" by virtue of the recorded documents which appear of record evidencing the existence of said Lease and more specifically the Memorandum of Lease attached to Plaintiff's Complaint as Exhibit "2".

5. Denied in that after reasonable investigation Defendant Johnson is without knowledge or information sufficient to form a belief as to the truth of said averment.

6. Denied and on the contrary it is alleged that Johnson Brothers Coal Company did not have a copy of the Lease affecting Plaintiffs' property.

7. Denied and on the contrary it is alleged that a representative of Defendant Johnson did inform one of the Plaintiffs that the property was to be stripped. In further answer thereto it is alleged that to the best of Defendant Johnson's knowledge there was no timber remaining on Plaintiffs' property at the time strip mining was commenced.

8. Denied and in further answer thereto Defendant Johnson incorporates its New Matter hereinafter set forth by reference.

COUNT I- BREACH OF CONTRACT

9. Defendant Johnson incorporates its answers to Paragraphs 1 through 8 and makes them a part hereof.

10. States a conclusion of law to which no answer is required. To the extent that an answer may be required, Defendant Johnson incorporates its New Matter hereinafter set forth by reference.

11. Denied in that after reasonable investigation Defendant Johnson is without knowledge or information sufficient to form a belief as to the truth of said averment. In further answer thereto Defendant Johnson incorporates New Matter hereinafter set forth by reference.

12. No answer required in that said Lease Agreement speaks for itself.

13. It is denied that Plaintiffs have made demand upon Defendant Johnson to make royalty payments. In further answer thereto Defendant Johnson incorporates its New Matter hereinafter set forth by reference.

14. No answer required in that said Lease Agreement speaks for itself. As to that portion of said allegation that requires a response, it is denied that Plaintiffs have requested

truck scale weights or other records from Defendant Johnson which Defendant would have no such records for the reasons set forth in its New Matter which is incorporated herein by reference.

15. Defendant Moravian incorporates its Answer to Paragraph 14 of Plaintiffs' Complaint by reference and makes it a part hereof.

16. Denied and on the contrary it is alleged that said Lease Agreement speaks for itself. To the extent that an answer is required, it is denied that any marketable timber was removed by Defendant Johnson from Plaintiffs property and to the contrary it is alleged that all marketable timber was removed prior to strip mining.

17. Denied in so far as it implies that Defendant Johnson was the Lessee of the premises. It is further denied that Defendant Johnson destroyed any marketable pulp wood or saw timber. Finally, it is denied that Defendant Johnson failed to reclaim Plaintiff's property in accordance with the Lease or the laws of the Commonwealth of Pennsylvania.

18. Denied and in further answer thereto Defendant Johnson incorporates New Matter hereafter set forth by reference

19. Denied in so far as said allegation implies that Defendant Johnson was the Lessee of Plaintiff's property. It is further denied that Defendant Johnson failed to conduct mining

operations in accordance with the laws of the Commonwealth of Pennsylvania or that it failed to adequately reclaim and re-vegetate Plaintiff's property. Finally, the Defendant Johnson incorporates its New Matter hereinafter set forth by reference.

WHEREFORE, Defendant Johnson requests that Plaintiffs' Complaint against Johnson be dismissed.

COUNT II - TRESPASS

20. Defendant Johnson incorporates its answers to Paragraphs 1 through 19 and makes them a part hereof.

21. Denied in that after reasonable investigation Defendant Johnson is without knowledge or information sufficient to form a belief as to the truth of said averment.

22. Denied in that after reasonable investigation Defendant Johnson is without knowledge or information sufficient to form a belief as to the truth of said averment.

23. Denied in that after reasonable investigation Defendant Johnson is without knowledge or information sufficient to form a belief as to the truth of said averment. In further answer thereto Defendant Johnson incorporates New Matter hereinafter set forth.

WHEREFORE, Defendant Moravian requests that Plaintiffs' Complaint against Moravian be dismissed.

NEW MATTER

24. It is believed and therefore averred that Laurel Energy, LP of One Energy Place, Suite 750, Latrobe, Pennsylvania, held a lease or leases upon Plaintiffs' property on or about August 23, 2001 and for a period of time thereafter.

25. That on or about August 23, 2001 Johnson contracted with Laurel Energy, LP to remove coal from Plaintiffs' property by the strip mining method. A copy of the Contract Mining Agreement is attached hereto as Exhibit "A".

26. That subsequent to August 23, 2001 at the express insistence of Laurel Energy, LP, Defendant Johnson entered upon Plaintiffs' premises and strip mined the coal from said property.

27. That all mining activities and/or reclamation of the subject premises was completed at the express direction of Laurel Energy, LP and in accordance with the laws of the Commonwealth of Pennsylvania.

WHEREFORE, Defendant Johnson requests that Plaintiffs' Complaint against Johnson be dismissed.

James A. Naddeo
Attorney for Johnson

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared LESLIE P. JOHNSON, who being duly sworn according to law, deposes and states that he is the President of Johnson Bros. Coal Company, Inc. and that as such officer he is authorized to execute this Affidavit and further that the facts set forth in the foregoing Answer to Complaint and New Matter are true and correct to the best of his knowledge, information and belief.

Leslie P. Johnson

SWORN and SUBSCRIBED before me this 21st day of October, 2005.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2007

CONTRACT MINING AGREEMENT

This CONTRACT MINING AGREEMENT ("Agreement") is made and entered into as of the 23rd day of August, 2001, between Laurel Energy, L.P., of One Energy Place, Suite 7500, Latrobe, PA 15650-9628, (hereinafter called "Owner"), and Johnson Brothers Coal Company, Inc., R.D. #1, Box 580, Mahaffey PA 17757 (hereinafter called "Contractor.")

WHEREAS, Owner owns and has the right to surface mine certain coal-bearing properties located in Gulich Township, Clearfield County, Pennsylvania ("Premises"), as described in Pennsylvania Department of Environmental Protection (PaDEP) Mining Permit No. 17970119 ("SMP"); and,

WHEREAS, Contractor is the holder of the SMP, Tanoma Energy, Inc. ("Tanoma") has provided the collateral support for the bonds securing the SMP, and Owner has provided the engineering services required to prepare and obtain the SMP; and,

WHEREAS, Owner desires to engage Contractor to mine, by surface mining methods only, the seams of coal within the Premises, and Contractor is willing to undertake the mining of such coal upon the terms and conditions hereinafter set forth; and,

WHEREAS, Contractor is fully informed regarding mining operations in the area of the Premises, is skilled and experienced in mining coal in the manner contemplated hereby, and desires to mine such coal as an independent contractor for Owner and to deliver the same to Owner, pursuant to the terms and conditions herein set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein set out to be kept and performed by each of the parties, and intending to be legally bound hereby, the parties agree as follows:

1. Services to be Performed. Contractor shall, in accordance with the terms and conditions herein set forth and in the SMP, produce for Owner, by open pit or strip mining methods, the mineable coal located in and underlying the Premises, including the replacement of all soil, subsoils, and topsoil thereof. Contractor shall be responsible for the revegetation of the mined area after it reclaims the land to approximate original contour and shall replace all topsoil and subsoil. Contractor, at its expense, shall provide, repair, replace

EXHIBIT "A"

and maintain everything necessary to perform its operations hereunder, including without limitation, all tools, supplies, material and equipment and shall use recognized modern mining methods and practices, employ capable management, expend reasonable and necessary funds for proper health and safety measures, development, reclamation, drainage and pollution control and take all other actions necessary to enable it to achieve maximum recovery of mineable coal and to deliver the same to Owner as herein set forth.

1.1 Mineable Coal Defined. As used herein, the term "mineable coal" shall mean coal which, when reached in the course of Contractor's mining operations can be mined and removed by the use of modern mining machinery and prudent mining techniques and is of sufficient quality to be marketable at a reasonable profit to Owner.

1.2 Conduct of Operations. Contractor shall promptly commence and diligently prosecute its operations hereunder in a careful, skillful and workmanlike manner, in accordance with recognized modern mining methods and practices, in strict compliance with all applicable federal, state and local laws, rules, regulations, ordinances, and permits, and so as to secure the greatest possible recovery of mineable coal.

1.3 Reclamation. All reclamation activity will be completed by the end of the planting season following the removal of all mineable coal.

1.4 Thin Seams. Contractor agrees to load any seams encountered during its mining of the Premises that are 12 inches or greater in thickness.

2. Permits and Bonds. Contractor has obtained the SMP, Owner will provide the road bonding required for the mining contemplated hereby, and the Owner and Tanoma will provide the collateral support for the related permit and road bonding (together the "Bonds"). Contractor will reimburse Owner for the ongoing expenses incurred by Owner in maintaining and complying with the provisions of the Bonds.

2.1 Bond Recoupment Payment. Contractor agrees to pay Owner the sum of One Dollar and Twenty Five Cents ($1.25) ("Bond Recoupment Payment") per ton of coal shipped from the Premises. The right to receive the Bond Recoupment Payments from Contractor will be transferred and paid over by Owner to Tanoma

the purchaser of the Coal from Owner and the party that provided the collateral to support the Bonds. Tanoma shall maintain an account in which all Bond Recoupment Payments made by Contractor under this Agreement, or Bond Recoupment Payments made by Contractor under any other Contract Mining Agreement between Owner and Contractor will be recorded ("Reclamation Account"). Whenever the Reclamation Account exceeds the total amount of all of the bonds for permits issued by the PaDEP for work performed by Contractor for Owner, and for which Tanoma has provided the collateral to support the bonds ("Tanoma Bonds"), Tanoma will pay to Contractor a sum equal to the amount the balance in the Reclamation Account exceeds the Tanoma Bonds. The Bond Recoupment Payment shall not effect Contractor's obligation to completely reclaim the Premises to achieve Owner's full bond release at the conclusion of mining.

2.2 Contractor Bonds. Prior to commencing operations hereunder, Contractor, at its own expense, shall obtain and maintain in its own name, all other permits, licenses, governmental approvals and identification numbers, including but not limited to an MSHA identification number, which are necessary for such operations.

2.3 Recognized Contractor. Contractor shall execute such documents as may be necessary for Contractor's designation by DEP as the Recognized Contractor for the mining operation on the Premises.

3. Haul Road. Contractor, at its own expense, shall construct and maintain a road, satisfactory to Owner, for the transportation of coal from the Premises. Contractor shall be responsible for constructing and maintaining driveways suitable to access Township roads needed for coal hauling purposes.

4. Drainage Controls. Contractor, at its own expense, shall construct and maintain all sediment ponds, diversion ditches and other temporary and permanent structures necessary for the control of surface waste water and run-off in accordance with Contractor's mining plans, and all applicable federal, state and local laws, rules, regulations, ordinances and permits.

5. Quantity. Commencing with the date of this Agreement, Contractor shall make deliveries of raw coal to Owner at a monthly rate of Four thousand (4,000) to Six thousand (6,000) tons as directed by Owner. Contractor and Owner both recognize that monthly tonnage may vary due to changing sales opportunities. Contractor agrees to keep a monthly record for Owner of surface mine tonnage produced from each coal seam on each mining phase.

6. Sampling By Owner. Owner reserves that right to sample coal at the Premises prior to it being shipped, and to have sample(s) analyzed by an independent third party laboratory for payment purposes, which analysis shall be binding upon the parties hereto.

7. Payment For Services. Owner shall pay Contractor, on behalf of Owner, as full compensation for Contractor's work performed under this Agreement for each net ton of 2,000 lbs. of coal mined by Contractor and delivered to Owner during any calendar month, such sums as are shown on the Schedule attached hereto as Exhibit A. Owner will review on a quarterly basis the sums shown on Exhibit A to determine if market conditions require any adjustment. Any such adjustment shall be communicated in writing to Contractor at least thirty (30) days before it becomes effective. Promptly following the last day of each calendar month, Contractor shall invoice Owner for all coal mined by Contractor from the Premises during the preceding calendar month. Owner shall pay Contractor, the amount of each invoice by the 25th of the month following the month of production, provided that Contractor submits its invoice in a timely manner. Contractor agrees that the Owner may reduce any amount due to Contractor under this Agreement, at any time, by any sums owed by Contractor to Owner or to Tanoma or its affiliates.

8. Title To Coal. Owner is and shall remain the sole and exclusive owner of all coal mined by Contractor pursuant to this Agreement, and Owner shall have the sole right to sell the coal produced by the Contractor.

9. *Force Majeure*. If either party hereto is unable to perform, in whole or in part, any of its obligations under this Agreement by reason of *force majeure*, as hereinafter defined, and if such party promptly gives notice thereof to the other party, including sufficient information as to the cause and expected duration of such *force majeure* condition, then the obligations of the party giving such notice shall be suspended during the duration of such *force majeure* to the extent made necessary thereby. Any party claiming *force majeure* shall eliminate the cause of such *force majeure* with all reasonable dispatch. Any deficiencies in deliveries of coal hereunder caused by *force majeure* shall not be made up except by mutual consent of the parties hereto. The term "*Force Majeure*", as used herein, shall mean any causes beyond the reasonable control of the party affected thereby, such as acts of God, acts of the public enemy, insurrections, riots, strikes, labor disputes, fires, explosions, floods, embargoes, orders or acts of civil or military authority, governmental regulation or legislation, or other causes of a similar nature which wholly or partially prevent the mining or delivery of coal by Contractor or the receiving or marketing of the coal by Owner. "*Force Majeure*" shall not include equipment breakdowns, vacation periods, or planned shutdowns for inspection.

10. Weights. The weight of all coal mined by Contractor from the Premises shall be determined by scales located at the facility of the purchaser of the coal. Owner shall promptly furnish copies of all weigh slips or scale weights to Contractor. Unless weights are questioned by the Contractor within thirty (30) days following the date that Owner furnishes original weigh slips or scale weights, such weights shall be final and conclusive as between the parties for all purposes.

11. Inspections. Owner shall have the right, at any and all times, to enter upon, examine and survey Contractor's operations and inspect, examine all books, accounts, statements, maps and plans of Contractor for the purpose of verifying Contractor's compliance with the terms and conditions of this Agreement.

12. Independent Contractor. Contractor shall perform the work required by this Agreement without direction or control by Owner, except as may be necessary for Owner to protect its property or insure conformity with mining plans. Nothing herein shall be deemed to create a partnership between the parties hereto, to convey to either party, by operation of

law or otherwise, any interest in, right to, or ownership of, any property of the other party, or to constitute Contractor as an agent of Owner for any purpose, it being understood that Contractor is an independent contractor

13. Responsibility for Employees. Contractor, solely and exclusively, shall employ, direct, supervise, discharge and fix the compensation and working conditions and practices of its employees and shall be solely responsible for payment of their compensation. Contractor, solely and exclusively, shall be responsible for, and shall exercise complete control of its employees in all matters, disputes or grievances arising out of or in any way connected with Contractor's operations.

14. Workmen's Compensation; Black Lung Benefits. Contractor shall obtain and maintain Workmen's Compensation coverage, including coverage for occupational disease, for its employees in accordance with the laws of Pennsylvania and shall obtain and maintain insurance with Owner named as an additional insured thereon for, or otherwise guarantee to Owner's satisfaction, the payment of Federal Black Lung insurance to its employees in accordance with applicable federal laws. Contractor shall furnish written evidence of such Workmen's Compensation and Black Lung insurance coverage prior to commencing operations hereunder and thereafter shall furnish the same upon request of Owner.

15. Indemnification. Contractor shall fully indemnify and save harmless Owner and its directors, officers, partners, employees and agents, successors and assigns, from and against any and all fines, penalties or other assessments which are levied upon or assessed against Owner under any applicable federal, state or local law, rule, regulation or ordinance including without limitation the Federal Mine Safety and Health Act of 1977, the Surface Mining Control and Reclamation Act of 1977, The Clean Streams Law of Pennsylvania, and/or the Surface Mining Conservation and Reclamation Act of Pennsylvania by reason or as the result of any failure by Contractor to strictly comply with the provisions of said laws, rules, regulations and ordinances and any amendments thereto. Owner shall promptly notify Contractor of all citations, notices and orders issued and all fines, penalties or other assessments levied upon or against Owner as a result of or in any way connected with Contractor's performance or its obligations under this Agreement. Owner shall have the right to retain from payments due to Contractor hereunder sufficient funds to cover any fines,

penalties or other assessments which are or may be levied upon or assessed against Owner by reason of any citation, notice or order issued to Owner as a result of any failure of Contractor, or any of its employees or agents to strictly comply with the provisions of the aforesaid laws, rules, regulations and ordinances. Such funds may be retained by Owner until such time as a final assessment is determined. Contractor further shall indemnify and hold harmless Owner and its directors, officers, partners, employees and agents, successors and assigns from and against all claims, demands, actions, causes of action and liability of any nature whatsoever for property damage and/or for personal injury, including death resulting therefrom, caused or alleged to have been caused, directly or indirectly, by any act or omission on the part of the Contractor, or its employees and agents, or in any way connected with Contractor's performance of its obligations and/or exercise of the rights and privileges granted under this Agreement.

16. Insurance. Contractor shall obtain and maintain Comprehensive General Liability Insurance, including contractual Liability Insurance with limits of liability of not less that $1,000,000 for property damage and $1,000,000 per person/$1,000,000 per occurrence for bodily injury and with a deductible not exceeding Ten Thousand Dollars ($10,000), if obtainable, and otherwise the lowest deductible obtainable. Owner and Tanoma shall be named as an additional insured thereunder. Such insurance shall not be deemed a limitation on any liability of Contractor provided for in this Agreement but shall be additional security therefore. Prior to commencing operations hereunder, Contractor shall provide Owner with a certificate or certificates evidencing such insurance, together with written assurance of the insurance company or companies that Owner will be advised in writing not less than thirty (30) days prior to any cancellation of any such insurance.

17. Term. The initial term of this Agreement shall be a period of one (1) year, beginning on the day and year first above written, and if not sooner terminated, the term of this Agreement shall thereafter be automatically extended for successive periods of one (1) year each until terminated as hereunder set forth. Contractor shall remain responsible for all reclamation obligations after termination of this Agreement pursuant to this paragraph 17 or paragraph 18 following.

18. Remedies.

18.1. Termination For Default. In the event Contractor (a) fails to comply with any of the terms and conditions of this Agreement for a period of ten (10) days after receipt of written notice from Owner, and such failure to comply is not excused under Section 9 Force Majeure hereof, or (b) Contractor is finally adjudicated a bankrupt, files a voluntary petition in bankruptcy, or makes a general assignment for the benefit of creditors, or liquidates itself or its assets, or if a receiver is appointed on account of its insolvency, or (c) Contractor's operations result in the issuance of more than five (5) citations, notices or orders because of Contractor's failure to comply with applicable state and local laws, rules, regulations and ordinances, regardless of whether the condition giving rise to any such citation, notice or order is a force majeure under Section 9 Force Majeure, or Contractor fails to mine and deliver more than 4,000 tons for three consecutive months, Owner shall have the right to terminate this Agreement by giving notice of such termination to Contractor in writing. Subparagraph (c) above shall not be constructed to include any inspection report by the Pennsylvania Department of Environmental Protection which contains a notice of violation unless such inspection report subsequently results in the assessment or proposed assessment of a civil penalty or the issuance of an abatement order to cease operations.

18.2. Termination For Lack of Markets. Notwithstanding anything to the contrary that may be contained in the Agreement, Owner further shall have the right, upon giving Contractor not less than fifteen (15) days written notice, to terminate this Agreement if, in Owner's sole judgment, Owner is unable to sell the coal mined from the Premises.

18.3. Suspension For lack of Markets. Owner shall have the right at any and all times to suspend deliveries of coal hereunder, whenever the coal in and underlying the Premises cannot, in Owner's sole judgment, be mined, removed, sold and shipped from the Premises at reasonable profit in markets then available to Owner.

18.3 Suspension For Violations of Law. In the event Contractor's operations on the Premises are in violation of any federal, state or local law, rule, regulation, ordinance or permit for a period of forty-eight (48) consecutive hours, Owner in addition to all other rights it may have under this Agreement or at law or in equity, shall have the right to require the Contractor to suspend its operations on the Premises until such violation is corrected. Contractor shall immediately suspend its operations if so requested by Owner.

19. Surrender on Termination. Contractor agrees, upon termination or cancellation of this Agreement by either party, to transfer or surrender the SMP, as Owner shall direct.

19.1 Power of Attorney. To effectuate the rights and interests in this paragraph 19, Contractor hereby irrevocably appoints the Owner its true and lawful attorney, with power of substitution, for the Contractor and in the Contractors name, or in the Owner's name or otherwise, for its use and benefit, (i) to assign, transfer, surrender, cancel, or terminate and take any other action with respect to or otherwise deal with the SMP held by Contractor, as fully and completely as if the Owner were the permittee or licensee thereunder, and (ii) to make, execute, acknowledge, and file any documents or instruments which may be required in or to effectuate such assignment, transfer, cancellation, termination, or other action with respect to such permit.

19.2 Survival of Power of Attorney. The power of attorney granted in paragraph 19.1 shall survive termination of this Agreement and shall survive the liquidation, dissolution, death, or incapacity of the Contractor. The powers conferred on the Owner by this paragraph are solely to protect its interests and shall not impose any duties upon the Owner to exercise any such powers. Contractor agrees to execute and deliver to Owner an instrument in recordable form, as provided for in Pennsylvania law, to effectuate the purposes of this paragraph 19.

20. Depletion. It is specifically understood and agreed by Owner and Contractor that (a) all coal mined hereunder and the economic interest therein be and at all times shall remain the property of Owner, (b) no leasehold or other estate or interest in and to the coal nor any economic interest therein is hereby granted to Contractor, (c) Owner shall retain and have all rights to claim the entire depletion allowance for state or federal income tax purposes or other purposes attributable to the coal mined by Contractor hereunder, (d) Contractor shall not make any claim for any portion of such depletion allowance for state or federal income tax purposes or for any other purpose, and (e) Owner's sole right to such depletion allowance has been fully considered by Owner and Contractor in fixing the price for coal to be mined and delivered hereunder.

21. Payment of Fees. Owner shall pay the excise tax imposed by the Federal Black Lung Benefits Revenue Act, the reclamation fee imposed by the Federal Surface Mining Control and Reclamation Act of 1977, and any surface or coal royalties due which are applicable to coal mined by Contractor from the Premises.

22. Investigation of Premises. Contractor accepts the Premises hereinabove described in their existing condition and knowledge that Contractor has made an investigation to determine existing conditions, limitation of areas involved, equipment necessary to conduct and complete operations, law affecting performance hereunder, and latent dangers and dangerous conditions. OWNER MAKES NO IMPLIED OR EXPRESS WARRANTY OR REPRESENTATION CONCERNING THE EXISTENCE, QUALITY, MINEABILITY OR MERCHANTABILITY OF THE COAL SEAM(S) WITHIN THE PREMISES, AND CONTRACTOR COVENANTS AND AGREES THAT NO REPRESENTATIONS, STATEMENTS OR WARRANTIES, EXPRESS OR IMPLIED, HAVE BEEN MADE BY OR ON BEHALF OF OWNER REGARDING THE PREMISES, THEIR CONDITION, THE USE OR OCCUPATION THAT MAY BE MADE THEREOF OR THE INCOME THEREFROM. Owner shall in no event assume or be liable for any loss incurred by Contractor under this Agreement. Owner does not assume any responsibility or liability for the present or future condition of the Premises, and Owner shall not be liable to Contractor for any damage to or destruction of the Premises, or Contractor's property or the property of

any other person due to fire, flood, or any other accident or natural catastrophe which occurs on or within the Premises.

23. Assignment. This Agreement shall not be assigned in whole or in part by Contractor without the written consent of Owner, which consent may be denied by Owner in its sole judgment, and any such assignment without the prior written consent of Owner shall be void and of no force and effect. Any change in ownership of Contractor by 20% or more shall be deemed an assignment by Contractor hereunder.

24. Notices. All notices required or permitted to be given in writing under this Agreement shall be deemed given when delivered to the receiving party personally or by United States Certified Mail, Return Receipt Requested, postage prepaid, addressed as follows:

(a) To Owner:

Laurel Energy, L.P.
One Energy Place, Suite 7500
Latrobe, PA 15650-9628

(b) To Contractor:

Johnson Brothers Coal Company, Inc.
R.D. #1, Box 580
Mahaffey, PA 17757

or (c) to such other person(s) and address(es) as the parties may from time to time designate in writing.

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

26. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof unless it substantially and adversely affects the value of this Agreement to one of the parties; and in the absence of any such

substantial and adverse effect, this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

27. Entire Agreement. This Agreement constitutes the entire contract between Owner and Contractor and supersedes all other prior negotiations, undertakings, notices, memoranda and agreements, whether oral or written, with respect to the subject matter hereof.

28. Amendments. Any modification or amendment of the terms and provisions of this Agreement shall be valid and effective only if and when made in writing and duly executed on behalf of the parties hereto.

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

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

ATTEST:

LAUREL ENERGY, L.P., by
Laurel Mountain Management, Inc., its
General Partner

By _____
Michael J. Walker, Executive Vice President

ATTEST:

JOHNSON BROTHERS COAL COMPANY, INC.

By _____
Leslie Johnson, President

TANOMA ENERGY, INC. joins in the execution of the above Contract Mining Agreement between Laurel Energy, L.P. and Johnson Brothers Coal Company, Inc., for the sole purpose of acknowledging its intent to comply with the provisions of Section 2.1, to the extent they are applicable to it.

TANOMA ENERGY, INC.

By_____
Michael J. Walker, Executive Vice President

EXHIBIT A

PAYMENT FOR SERVICES

COAL SUPPLY PRICING SCHEDULE

Product: Smith #1 Crop

Quality:

Moisture:	10.00%
Ash:	16.50%
Sulfur:	.80%
BTU:	11,000

Price: $14.00 F.O.B. Mine Site

Premium/Penalty:

BTU: ± $0.25 per 100 BTU above/below 11,000 BTU, fractions pro rate on any daily analysis.

Product: Smith #1 C'

Quality:

Moisture:	6.00%
Ash:	15.00%
Sulfur:	1.00%
BTU:	12,200

Price: $20.00 F.O.B. Mine Site

Premium/Penalty:

BTU: ± $0.25 per 100 BTU above/below 12,200 BTU, fractions pro rate on any daily analysis.

*** All quality is determined by daily analysis taken by "Owner".

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of the Answer and New Matter of Defendant Johnson Brothers Coal Company was served on the following and in the following manner on the 25th day of October, 2005:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

James A. Naddeo
Attorney for Defendant
Johnson Brothers Coal
Company

FILED

OCT 25 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

PRAECIPE FOR WRIT

Filed on behalf of:
Defendant Moravian Run Reclamation Co., Inc. and Defendant Johnson Brothers Coal Company

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

FILED No cc
01 10:47 BA
OCT 31 2005 1 cert to Sheriff
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

PRAECIPE FOR WRIT

TO THE PROTHONOTARY:

Kindly issue a writ to join Laurel Energy, LP as an additional defendant in this action.

James A. Naddeo
Attorney for Defendant
Moravian Run Reclamation
Co., Inc. and Johnson
Brothers Coal Company

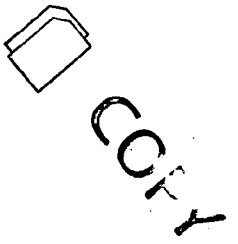
FILED

OCT 3 1 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	



WRIT

TO: LAUREL ENERGY, LP

You are notified that Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company, have joined you as an additional defendant in this action, which you are required to defend.

Prothonotary

By _____

DATED: October 31, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs

vs.

MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants

FILED
NOV 04 2005
11:50 /
William A. Shaw
Prothonotary/Clerk of Courts
No C/C

CASE NO. 05-1351-CD

TYPE OF PLEADING:
REPLY TO THE NEW MATTER OF JOHNSON BROTHERS COAL COMPANY

FILED ON BEHALF OF:
Plaintiffs

COUNSEL OF RECORD:

ROBERT P. GING, JR., ESQUIRE
Pa. Id. No. 25459
2095 Humbert Road
Confluence, PA 15424-2371
(814) 395-3661

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

REPLY TO THE NEW MATTER OF JOHNSON BROTHERS COAL COMPANY

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Reply to the New Matter of Johnson Brothers Coal Company.

1. Paragraph 24 is denied. After reasonable investigation Plaintiffs are without sufficient information to form a belief as to the averments set forth therein.

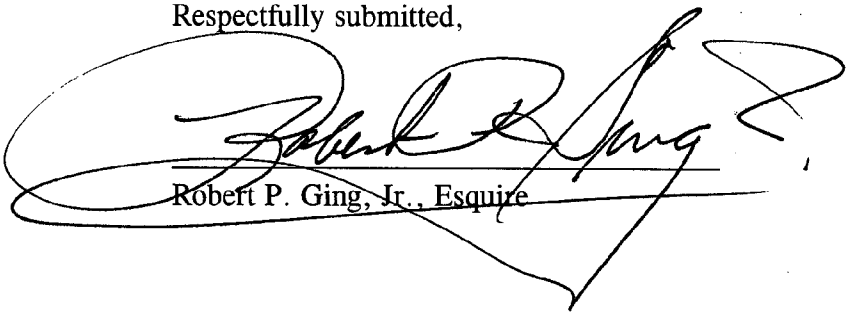
2. Paragraph 25 is denied. After reasonable investigation Plaintiffs are without sufficient information to form a belief as to the averments set forth therein.

3. Paragraph 26 is denied. After reasonable investigation Plaintiffs are without sufficient information to form a belief as to the averments set forth therein.

4. Paragraph 27 is denied. After reasonable investigation Plaintiffs are without sufficient

information to form a belief as to the averments set forth therein.

Respectfully submitted,



Robert P. Ging, Jr., Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to New Matter was served on the following party on this date at his respective address via U.S. First Class, Postage Pre-Paid Mail.

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

DATED: November 3, 2005

Respectfully submitted,

Robert P. Ging, Jr., Esquire

FILED
NOV 0 4 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs

vs.

MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants

CASE NO. 05-1351-CD

FILED
NOV 04 2005
William A. S
Prothonotary/Clerk of Courts
no c/c GR

TYPE OF PLEADING:
REPLY TO THE NEW MATTER OF MORAVIAN RUN RECLAMATION CO., INC.

FILED ON BEHALF OF:
Plaintiffs

COUNSEL OF RECORD:

ROBERT P. GING, JR., ESQUIRE
Pa. Id. No. 25459
2095 Humbert Road
Confluence, PA 15424-2371
(814) 395-3661

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

REPLY TO THE NEW MATTER OF MORAVIAN RUN RECLAMATION CO., INC.

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Reply to the New Matter of Moravian Run Reclamation Co., Inc.

1. Paragraph 24 of the New Matter is admitted to the extent that it describes Exhibit B to the Answer and New Matter.

2. Paragraph 25 of the New Matter is admitted to the extent that it describes Exhibit C to the New Matter.

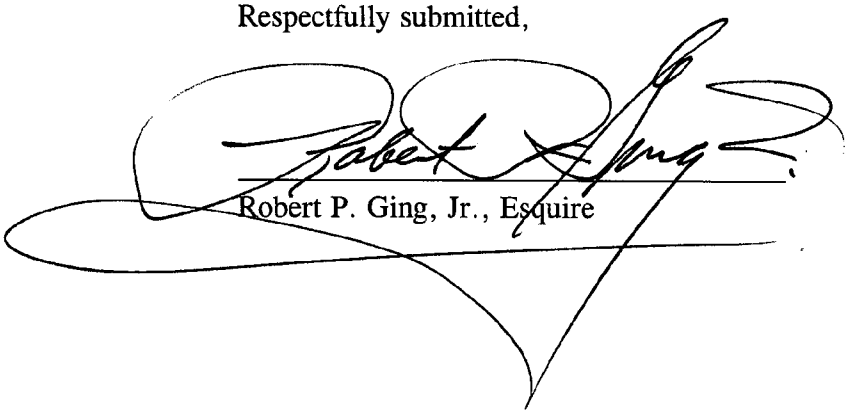
3. Paragraph 26 is denied. After reasonable investigation the Plaintiffs are without sufficient information to form a belief as to the truth of the averments contained therein.

4. Paragraph 27 is denied. After reasonable investigation the Plaintiffs are without sufficient information to form a belief as to the truth of the averments contained therein.

5. Paragraph 28 is denied. After reasonable investigation the Plaintiffs are without

sufficient information to form a belief as to the truth of the averments contained therein.

Respectfully submitted,



Robert P. Ging, Jr., Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to New Matter was served on the following party on this date at his respective address via U.S. First Class, Postage Pre-Paid Mail.

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

DATED: November 3, 2005

Respectfully submitted,

Robert P. Ging, Jr., Esquire

FILED
NOV 0 4 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100775
NO: 05-1351-CD
SERVICE # 1 OF 2
COMPLAINT

PLAINTIFF: JAN LAWRENCE, CHRIS & MARY ILYES, JEFF COOKERLY & SCOTT ALDINGER
vs.
DEFENDANT: MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY

SHERIFF RETURN

NOW, September 27, 2005 AT 9:03 AM SERVED THE WITHIN COMPLAINT ON MORAVIAN RUN RECLAMATION CO. INC. DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DAVID CURULLA, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING /

FILED
012:51 bdl
DEC 28 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100775
NO: 05-1351-CD
SERVICE # 2 OF 2
COMPLAINT

PLAINTIFF: JAN LAWRENCE, CHRIS & MARY ILYES, JEFF COOKERLY & SCOTT ALDINGER
vs.
DEFENDANT: MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY

SHERIFF RETURN

NOW, September 22, 2005 AT 10:41 AM SERVED THE WITHIN COMPLAINT ON JOHNSON BROTHERS COAL COMPANY DEFENDANT AT RR#1 BOX 580, MAHAFFEY, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO SHARON JOHNSON, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100775
NO: 05-1351-CD
SERVICES 2
COMPLAINT

PLAINTIFF: JAN LAWRENCE, CHRIS & MARY ILYES, JEFF COOKERLY & SCOTT ALDINGER
vs.
DEFENDANT: MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	GING	3370	20.00
SHERIFF HAWKINS	GING	3370	48.71

Sworn to Before Me This

_____ Day of _____ 2005

_____

So Answers,

Chester A. Hawkins
Sheriff

FILED

DEC 28 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 05-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

PRAECIPE FOR ISSUANCE OF A RULE TO FILE A COMPLAINT AGAINST ADDITIONAL DEFENDANT PURSUANT TO PA.R.C.P. 2252(b)(1)

TO: WILLIAM SHAW, PROTHONOTARY

Kindly issue a Rule to the Defendants to file a Complaint against the Additional Defendant in the above captioned case.

Respectfully submitted,

Robert P. Ging, Jr., Esquire

FILED 4 Rules to Atty Ging
JAN 20 2006
12:44 cc

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praeciepe for Issuance was served on the following party on this date at his respective address via U.S. First Class, Postage Pre-Paid Mail.

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

DATED: January 18, 2006

Respectfully submitted,

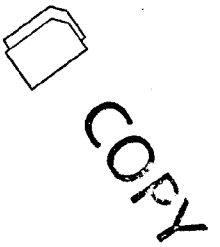
Robert P. Ging, Jr., Esquire

FILED

JAN 20 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION



JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

RULE TO FILE A COMPLAINT

TO: MORAVIAN RUN RECLAMATION CO, INC. and
JOHNSON BROTHERS COAL COMPANY

A Rule is hereby issued on you to file a Complaint against the Additional Defendant, Laurel Energy, LP within twenty (20) days hereof, in accordance with Pa.R.C.P. 2252(b)(1).

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY EILYES, JEFF COOKERLY and SCOTT ALDINER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD ~~1531-CD~~

PRAECIPE FOR APPEARANCE

Filed on Behalf of this Party:

Laurel Energy, LP, Additional Defendant

Counsel of Record for this Party:

Lynn E. Bell, Esquire
Pa I.D. #38588

Davies, McFarland & Carroll, P.C.
Firm I.D. #281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED
JAN 30 2006
m 13:45
William A. Shaw
Prothonotary/Clerk of Courts
no c/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY EILYES, JEFF COOKERLY and SCOTT ALDINER,	)	CIVIL DIVISION
Plaintiffs,	)	
vs.	)	No.: 05-1531-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant	)	

PRAECIPE FOR APPEARANCE

TO: WILLIAM A. SHAW, JR., PROTHONOTARY

PLEASE ENTER my appearance, Lynn E. Bell, Esquire, Pa I.D. #38588, in the above-captioned matter on behalf of Additional Defendant, Laurel Energy, LP.

JURY TRIAL DEMANDED

Davies, McFarland & Carroll, P.C.

By: _____
Lynn E. Bell, Esquire
Attorney for Laurel Energy, LP.,
Additional Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 27th day of September, 2006:

Via Facsimile
Via Hand Delivery
Via First Class U.S. Mail ✓
Via Overnight Mail
Via Certified Mail/ Return Receipt Request

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
Lynn E. Bell, Esquire
Attorneys for Laurel Energy, LP.,
Additional Defendant

FILED
JAN 30 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY EILYES, JEFF COOKERLY and SCOTT ALDINER,	CIVIL DIVISION
Plaintiffs,	
vs.	No.: 05-~~1531~~ 1351 -CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,	PRAECIPE FOR RULE
Defendants,	
and	
LAUREL ENERGY, LP.,	
Additional Defendant	Filed on Behalf of this Party:
	Laurel Energy, LP, Additional Defendant
	Counsel of Record for this Party:

Lynn E. Bell, Esquire
Pa I.D. #38588

Davies, McFarland & Carroll, P.C.
Firm I.D. #281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED
JAN 30 2006
M/3:45 (W)
William A. Shaw
Prothonotary/Clerk of Courts
No C/C
2 Rules to Atty.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY EILYES, JEFF COOKERLY and SCOTT ALDINER,	)	CIVIL DIVISION
Plaintiffs,	)	
vs.	)	No.: 05-1531-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant	)	

PRAECIPE FOR RULE

TO: WILLIAM A. SHAW, JR., PROTHONOTARY

PLEASE ISSUE a Rule upon Defendants, Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company, to file their Complaint within twenty (20) Days.

Davies, McFarland & Carroll, P.C.

By: _____

Lynn E. Bell, Esquire
Attorney for Laurel Energy, LP.,
Additional Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 27th day of Jan, 2006:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	✓
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
Lynn E. Bell, Esquire
Attorneys for Laurel Energy, LP.,
Additional Defendant

FILED

JAN 30 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

Jan Lawrence
Chris Ilyes
Mary Ilyes
Jeff Cookerly
Scott Aldinger

Vs.

Case No. 2005-01351-CD

Moravian Run Reclamation Co., Inc.
Johnson Brothers Coal Company
Defendants
and
Laurel Energy, LP
Additional Defendant

RULE TO FILE COMPLAINT

TO: Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: January 30, 2006

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

COMPLAINT OF ORIGINAL DEFENDANT MORAVIAN RUN RECLAMATION, CO., INC. AGAINST ADDITIONAL DEFENDANT LAUREL ENERGY, LP

Filed on behalf of: Defendant Moravian Run Reclamation Co., Inc. and Defendant Johnson Brothers Coal Company

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

FILED 2cc Atty Naddeo
01:04:30
FEB 02 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional 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 (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or 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.

Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

COMPLAINT OF ORIGINAL DEFENDANT, MORAVIAN RUN RECLAMATION CO., INC. AGAINST ADDITIONAL DEFENDANT LAUREL ENERGY, LP

1. Additional Defendant, Moravian Run Reclamation Co., Inc., is a Pennsylvania corporation having its registered office located at 605 Sheridan Street, Clearfield, Pennsylvania, hereinafter referred to as "MRC".

2. Plaintiffs initiated this action against Defendant alleging that Defendant MRC stripped coal from Plaintiffs' property, removed paper wood and/or saw timber from Plaintiffs' property and failed to properly reclaim and/or re-vegetate Plaintiffs' property. A copy of Plaintiffs' Complaint is attached hereto as Exhibit "A".

3. Defendant MRC denies that it conducted any mining or timbering of Plaintiffs' property and to the contrary never entered upon the land of the Plaintiffs.

4. Defendant MRC entered into an Option Agreement with Additional Defendant, Laurel Energy, LP, hereinafter "Laurel" on June 15, 2001, a copy of which Agreement is attached hereto as Exhibit "B".

5. Under the terms of the Option Agreement attached hereto as Exhibit "B", MRC's lease on Plaintiffs' property was at the option of Laurel to be assigned to Laurel.

6. Laurel exercised its option to take an assignment of MRC's lease of Plaintiffs' property. A copy of MRC's lease with supporting assignments and modifications are attached hereto collectively as Exhibit "C".

7. Laurel after exercising its option to acquire the lease upon Plaintiffs' property caused Plaintiffs' property to be stripped by one of the original defendants in this action, Johnson Brothers Coal Company, hereinafter "Johnson".

8. MRC placed Laurel on notice of the instant suit and demanded that Laurel defend Plaintiffs' claim as required by Paragraph 4 of the Option Agreement which is incorporated herein by reference.

9. Laurel refused to defend Plaintiffs' action causing MRC to employ counsel at $150.00 per hour for office

time and $250.00 per hour for trial time plus out-of-pocket expenses incurred by MRC's counsel.

10. If it is judicially determined that MRC is in any manner liable to Plaintiffs for the damages claimed in Plaintiffs' Complaint, Additional Defendant Laurel is solely liable to the Plaintiffs for any and all damages suffered by the Plaintiffs or is liable over to MRC for indemnification and/or contribution, any and all liability on the part of MRC being expressly denied.

WHEREFORE, Defendant MRC demands:

1. Judgment in its favor together with costs;

2. Judgment that if there is any liability to Plaintiffs, Additional Defendant Laurel is solely liable to Plaintiffs;

3. In the event that a verdict is recovered by Plaintiffs against MRC that MRC may have judgment over and against Additional Defendant Laurel by way of indemnification and/or contribution for the amount recovered by Plaintiffs against MRC together with costs and counsel fees incurred by MRC.

James A. Naddeo
Attorney for Defendant
Moravian Run Reclamation
Co., Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs

vs.

MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants

CASE NO. 05-1351-CD

TYPE OF PLEADING:
COMPLAINT

FILED ON BEHALF OF:
Plaintiffs

COUNSEL OF RECORD:

ROBERT P. GING, JR., ESQUIRE
Pa. Id. No. 25459
2095 Humbert Road
Confluence, PA 15424-2371
(814) 395-3661

I hereby certify this to be a true and attested copy of the original statement filed in this case.

AUG 31 2005

Attest

Prothonotary/
Clerk of Courts

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO.
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

NOTICE TO DEFEND

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MidPenn Legal Services
211 ½ E. Locust Street
Clearfield, PA 16830
(800) 326-9177

IN THE COURT OF COMMON PLEAS OF BLAIR COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO.
MORAVIAN RUN RECLAMATION CO, INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

COMPLAINT

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Complaint.

1. The Plaintiffs are adult citizens of Pennsylvania, who reside in the Commonwealth of Pennsylvania at the following addresses: Jan Lawrence and Scott Aldinger, 2178 Gleim Court, Enola, PA 17025; Chris and Mary Ilyes, 2160 Esbenshade Road, York, Pennsylvania 17404; and Jeff Cookerly, 152 Linda Drive, New Oxford, Pennsylvania 17350.

2. The Defendant, Moravian Run Reclamation Co., Inc. (hereinafter "Moravian") entered into a Memorandum of Lease with B & B Land Company of Clearfield, Pennsylvania, transferring all right, title and interest to a surface mine lease in Gulich Township, Clearfield County on October 17, 2000. The lease was for property now owned by the Plaintiffs. A copy of the lease is attached

hereto as Exhibit 1 and a copy of the Memorandum of Lease is attached as Exhibit 2.

3. At all times material hereto Johnson Brothers Coal Company (hereinafter "Johnson Brothers"), R.R. 1, Box 586, Mahaffey, Pennsylvania 15757 was the permittee and contract strip mine operator for Moravian which conducted mining operations pursuant to Permit No. 17970119 on the property owned by the Plaintiffs in Gulich Township, Clearfield County.

4. On February 27, 2002 Plaintiffs were the purchasers of a piece of property located in Beccari and Gulich Townships, Clearfield County, Pennsylvania as more fully set forth in the Deed attached hereto as Exhibit 3, being Instrument No. 200203112 dated February 27, 2002.

5. Subsequent to acquiring the property the Plaintiffs began building a cabin on the property in March of 2002. On August 23, 2002 Plaintiffs returned to the property from their primary residences which were not in Clearfield County to find that the property was being surface mined by Johnson Brothers Coal Company.

6. In October, 2002 a representative of Johnson Brothers Coal Company provided a copy of the lease to the Plaintiffs for the first time.

7. Mining was conducted on the property, without notice to the Plaintiffs, and the timber remaining on the property was also cut during the mining operation.

8. At no time did the Plaintiffs give permission to either of the Defendants or their predecessors or successors in interest to conduct surface mining operations on their property, nor did the Defendants make the Plaintiffs aware that they intended to conduct surface mining on their property

COUNT I - BREACH OF CONTRACT

9. The averments of Paragraphs 1 through 8 are incorporated herein by reference as if fully set forth.

10. At all times material hereto the Defendants have breached the surface mining contract as more fully set forth herein.

11. At the time of the mining conducted by the Defendants, the prior lessors did not own the surface rights of the premises.

12. Paragraph 3 of the original lease provided for a payment from the mining company to the property owners of $1.50 per net ton or 5% of the pit selling price per all merchantable and mineable coal whichever amount is greater for all coal mined and removed on the premises.

13. The Plaintiffs have made a request for payment of the royalties set forth in Paragraph 3, however the Defendants, and their successors in interest have refused and continue to refuse to make any royalty payments.

14. Paragraph 5 of the lease requires that the Defendants maintain certified truck scale weights for all coal mined and removed from the premises. The Plaintiffs have requested truck scale weights and other records through the Defendants or their successors in interest, however the Defendants and their successors in interest have refused and continue to refuse to comply with that provision of the original lease.

15. The original lease provided that lessors, their successors in interest would have access to the operation and scale records. Plaintiffs, or the current property owners have requested on numerous occasions that such records be provided, however the Defendants and their successors in interest have refused and continue to refuse to comply with the provision of the lease.

16. Paragraph 9 of the lease requires that prior to mining any paperwood or saw timber remaining on the leased premises would be cut and removed, and payment made to the Plaintiffs, as, successors in interest to the original lessors, pursuant to that paragraph. No such payments were made, nor was the timber on the property cut and removed by reliable people subject to the approval of the lessors. Defendants gave no notice to the Plaintiffs that they intended to mine Plaintiffs' property.

17. The lessee also failed to refrain from destroying pulpwood and saw timber in the progress of its mining operations and has failed to replant the premises in accordance wit the lease and its permits.

18. Paragraph 11 requires that lessee supply to lessors monthly tonnage reports, which the Defendants and their successors in interest have refused and continue to refuse to do.

19. Paragraph 6 of the lease required that lessee conduct all mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. The Defendants and their successors in interest failed to conduct mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry, have failed to adequately reclaim and re-vegetate the site, to implement sedimentation and erosion controls, and to assure that there was no mine drainage emanating from the mined area.

WHEREFORE Plaintiffs demand judgment in an amount in excess of arbitration limits of the Court of Common Pleas of Clearfield County.

COUNT II - TRESPASS

20. The averments of paragraphs 1 through 19 are incorporated herein by reference as if fully set forth.

21. At the time that mining was commenced the original lease agreement had expired, and the Memorandum of Lease, purportedly commencing June 2, 2000, occurred after the expiration of the original lease agreement.

22. No mining occurred prior to the expiration of the original coal lease.

23. In the alternative, if the lease was not in full force and affect at the time the mining was conducted, the Defendants, and their successors in interest and/or contractors converted timber present on the property to their own use, and converted the coal on the property to their own use and trespassed on Plaintiffs' property without Plaintiffs' consent and without the benefit of a lease.

WHEREFORE, Plaintiffs respectfully request judgment in excess of the arbitration limits of the Court of Common Pleas of Clearfield County.

Respectfully submitted,

Robert P. Ging, Jr., Esquire

EXHIBIT 1

Original Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 15th day of April, 1995 by and between R. Wesley Smith and Samantha Smith, his wife of R.D. 2, Box 39, Reynoldsville, Pennsylvania 15851 and Raymond A. Smith and Shirley B. Smith, his wife of R.D. 1, Box 211-A, Reynoldsville, Pennsylvania 15851, party of the first part, hereinafter referred to as "LESSORS";

A N D

B & B LAND COMPANY, of Clearfield, Pennsylvania, party of the second part, hereinafter referred to as "LESSEE".

W I T N E S S E T H:

THE LEASE

1. That for and in consideration of the sum of One Dollar ($1.00) paid by the LESSEE to the LESSORS, the receipt whereof is hereby acknowledged, the LESSORS do hereby let, lease and demise unto the LESSEE, its succesors and assigns, the right with such terms, covenants and conditions as hereinafter set forth, to mine and remove all the mineable and merchantable coal in, under and upon that certain tract in the Township of Beccaria and in the Township of Gulich title to which is vested in the LESSORS which tract of land is Parcel #1 - 290 acres in Gulich Township under Ray and Wesley Smith which is shown on Tax Map No. 118-K7-9 and Parcel #2 - 200 acres in Beccaria Township under Ray and Wesley Smith, which is shown on Tax Map No. 101-K17-8. Also, 110.56

110.56 acres in Beccaria Township under William O'Shall, Tax Map No. 101-K17-1.

The LESSORS covenant that they own either the coal or the surface (right of surface support) of the described premises, and do hereby grant and convey the full and complete rights for the mining and removing of the coal in, under and upon the above described premises by all modern mining methods, including but not limited to surface stripping, with the right of ingress, egress and regress, into, upon the under said lands for the purpose of examining, testing, mining, stripping and removing said coal, together with the right to locate and erect such chutes, tipples, buildings, pipe lines, pole lines and other structures as may be necessary for the use and working of mines or strippings, and with the right to deposit spoil therefrom upon the surface with the right to redeposit the same, and with all rights and privileges necessary and convenient in mining, digging, stripping, removing and transporting said coal without liability for any and all damage done to said lands or buildings or the water therein or thereon, caused by the mining, stripping and removal of all said coal, or the exercise of any or all of the mining rights aforesaid.

LESSORS hereby lease unto the LESSEE the right of ingress, egress and regress in and to the leased premises any time within five (5) years after the termination of this lease for the purpose of backfilling or planting trees or otherwise complying with the mining laws of the Commonwealth of Pennsylvania. But this right of re-entry for a period of five (5) years is for the

purpose alone and shall vest in LESSEE no rights whatsoever in the coal, in the mining of coal, or in the property. In addition, LESSORS agree to execute the required written consents on the form furnished by the Commonwealth of Pennsylvania concerning re-entry for backfilling, planting, reclamation and inspection.

2. Term and Effective Date: This lease shall become effective as of the 15th day of April, 1995, by the LESSEE and shall continue for a period of four (4) years with automatic extensions of one (1) year terms from year to year to exhaustion of the coal provided the premises are being actively mined at the end of the original term and each yearly extention thereof. Active mining shall be defined to mean mining operations upon the premises on a regular five (5) days per week.

3. Tonnage Royalty: LESSEE shall pay to LESSORS royalty at the rate of One Dollar and Fifty Cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton for all merchantable and mineable coal, whichever amount is greater, for all coal mined and removed from the premises. All payments of royalty shall be made on or before the 25th day of each calendar month for all coal mined and removed in the preceding calendar month and shall be accompanied by a statement showing the tonnage mined and royalty due. All payments are to be made to the LESSORS without demand or to any other party or parties LESSORS in writing designate as an agent for receiving payments.

All payments of royalty as herein provided are based on either one hundred percent (100%) ownership of surface (right of

surface support) coal or both surface and coal. In the event LESSORS should own less than one hundred percent (100%) of said surface and/or coal rights said sums shall be adjusted in accordance with the percentage of ownership.

4. Minimum Royalty: LESSEE shall pay to LESSORS the sum of Two Hundred Dollars ($200.00) per month as a minimum royalty for each month that the within lease is in full force and effect. All payments of minimum royalty shall be recoupable by the LESSEE as a credit against tonnage royalty from production as herein provided.

5. Tonnage Measurements: Royalty and other payments shall be based on certified truck scale weights or railroad weights, and all coal mined and removed from the premises shall be weighed on such scales. LESSEE hereby authorizes LESSORS or its agent, to examine any and all of the LESSEE'S records and to examine the records of any truck scale weights or railroad weights concerning the coal which was hauled or shipped from the described premises and the right to make copies of his findings.

6. Mining Methods: LESSEE agrees that all mining operations shall be conducted in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that LESSORS (at its own risk) shall have access to the operation and scale records of LESSEE at all times in person or by duly authorized agent.

7. Taxes: All taxes upon the premises herein demised shall be paid by LESSORS, and all taxes that may be levied, imposed, charged or assessed upon improvements, equipment, or

mining machine placed upon the demised premises by LESSEE for the mining, removing, processing or transportation of the coal shall be paid by LESSEE. Should any federal, state or local subdivision impose any tax upon the mining of coal, the coal mined, or otherwise, said taxes shall be paid by LESSEE.

8. Insurance: LESSEE agrees to keep in force during the term of this lease general liability insurance with a reputable insurance company in the sum of at least One Million Dollars. Upon request LESSEE shall furnish to LESSORS a certificate of said insurance which shall name LESSORS as an additional insured.

9. Timber Removal: If on investigation it appears that there is any appreciable quantity of paper wood or saw timber remaining on the leased premises, the LESSEE will at the request of the LESSORS arrange for the cutting and removal of such paper wood and saw timber by reliable people, subject to the approval of the LESSORS, and will supervise the cutting of such timber and pulpwood, arranging for monthly remittances to the LESSORS at the same time that royalties hereunder are due. The LESSEE shall refrain from destroying pulpwood or saw timber in the progress of its strip mining operations, if these is reasonable opportunity to arrange to have such timber cut off in advance of such operations.

10. Books and Records: LESSEE shall and will keep complete and accurate books of account, showing the amount of coal produced from the said property, and at the time for payment of the monthly royalties hereinbefore mentioned, shall furnish accurate statements of all coal mined and produced during the

preceding calendar month; shall and will keep all mining maps, books, plans and records necessary in operating said leased coal; and shall and will furnish LESSORS, or its duly authorized agent or employee, at any reasonable time, upon request, access to all books of account, records, weigh sheets, maps and plans and will also give LESSORS, or its duly authorized agent or employee, at reasonable request, access to any and all portions of the said leased premises and to the operations in connection with the same.

11. LESSEE agrees to supply to LESSORS, at the first of each month, tonnage on the number of trucks loaded with coal for the previous month.

12. Default in Royalties and Breach of Term: It is understood and agreed that in the event the LESSEE should default in any payment provided for herein when said payments become due, or should LESSEE be in default in any other respect and continue in such default for a period of thirty (30) days after being notified in writing of such default by LESSORS, then, in either event, at the option of the LESSORS, this Lease shall cease and terminate and LESSEE hereby authorizes any attorney of any court of record to appear for it and in its name to confess a judgment against it in an amicable action of ejectment to the end that a writ of habere facias possession may issue forthwith for the delivery of possession to LESSORS together with clause of fieri facias for royalties in arrears and costs.

13. Supplemental "C": LESSORS hereby agrees to execute, acknowledge and deliver to LESSEE within ten (10) days after the

exercise of the within option in quadruplicate the form know as Supplemental "C" required by the Department of Environmental Resources (DER) of the Commonwealth of Pennsylvania and thereafter any other forms required in order to secure the permits necessary for mining operations.

14. Force Majeure: LESSEE shall not be deemed in default for failure to perform any of its obligations under this Agreement during periods in which performance is partially or wholly prevented by any cause, condition or matter beyond LESSEE'S control, such as, and not by way of limitation, strikes, riots, accidents, governmental laws, lack of satisfactory markets for coal from the leased premises and acts of God.

15. No Assignment or Transfer: LESSEE agrees not to mortgage or encumber the leased premises with liens of any kind, or sell, or assign, or setover or sublet the whole or any part of the herein leased premises, or subcontract for the mining thereof, without the express written consent of the LESSOR first had and obtained, which, shall not be unreasonably withheld. It is further agreed and provided that any lawful levy and sale on execution or other legal processes, as well as any assignments or sale in bankruptcy, voluntary or involuntary proceedings, or any receivership created, shall be deemed and taken to be an assignment or subletting within the meaning of this lease agreement, and at the option the LESSORS shall work an immediate forfeiture, without notice, and thereupon possession may be immediately taken by the LESSORS without further formality.

It is understood, however, that anything to the contrary in the foregoing paragraph notwithstanding, LESSEE shall have the right to assign the within lease to LESSEE'S mining company, Penn-Grampian Coal Company or to Al Hamilton Contracting Company or any of its assigns.

16. Memorandum of Lease: Upon exercise of the within option by LESSEE, LESSORS agrees to execute, acknowledge and deliver to LESSEE a "memorandum of Lease" suitable for recording, which Memorandum retains the privacy of this document but gives public notice of the fact that the within lease has been executed. Said Memorandum shall contain a description of the property, the purpose of the lease, the length of the term and the fact that it incorporates the within lease by reference thereto. LESSEE agrees to prepare said Memorandum and deliver it to LESSORS and LESSORS agrees to execute, acknowledge and deliver to LESSEE the said Memorandum within ten (10) days of the receipt thereof.

17. Cancellation: The LESSEE shall have the right to cancel this Agreement at any time upon giving thirty (30) days written notice to the LESSORS, whereupon all accrued royalties including paid past minimum royalties shall be due and payable.

18. Notices: A written notice addressed to B & B Land Company, P.O. Box 249, Clearfield, Pennsylvania, 16830, and sent by certified mail, shall be deemed received by the LESSEE as of one day after the date of mailing. A written notice addressed to Raymond A. Smith, R.D. 1, Box 211-A, Reynoldsville, Pennsylvania

15851 and sent by certified mail shall be deemed received by the LESSORS as of one day after the date of mailing.

19. Water monitoring shall begin within ninety (90) days of the signing of the Agreement.

20. Anything to the contrary herein notwithstanding, mining shall commence within six (6) months after all required permits have been approved by D.E.R., otherwise the within lease shall terminate upon the expiration of thirty (30) days written notice by LESSORS to LESSEE should LESSEE fail to commence mining within said thirty (30) days.

21. This lease agreement is binding on the parties hereto, their heirs, executors, administrators, successors and assigns.

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

ATTEST:

Denise A. McGregor

LESSORS:

R. Wesley Smith

Samantha L. Smith

Raymonda Smith

Phillip E. Smith

ATTEST:

Partner

LESSEES:
B & B LAND COMPANY
By

Partner

Lease Amendment

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT made this 2nd day of June, 2000, by and between R. WESLEY SMITH and SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, Pennsylvania 15851 and RAYMOND A. SMITH and SHIRLEY B. SMITH, his wife, of R R 1 Box 211A, Reynoldsville, Pennsylvania 15851, Party of the First Part, hereinafter referred to as "LESSORS";

AND

B & B LAND COMPANY of Clearfield, Pennsylvania, Party of the Second Part, hereinafter referred to as "LESSEE".

WHEREAS, the Lessors and Lessee have entered into a Lease Agreement dated April 15, 1995, and the Lessee has obtained certain mining permits on a portion of the premises set forth in said Lease in the Townships of Beccaria and Gulich in Clearfield County, Pennsylvania, more fully set forth in said Lease and the Lessors are desirous of granting additional time to Lessee.

WITNESSETH:

That the parties hereto agree to continue said lease for another three (3) years from the original term and Lessors do not require Lessee to pay any additional advance royalty and Lessee agrees to release from said Lease all premises not currently under permit including, but not limited to, all the premises lying South of T-534 and West of Muddy Run.

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

WITNESS:

Denise A. McGraner as to all — R. Wesley Smith (SEAL)
R. Wesley Smith

_____ — Samantha L. Smith (SEAL)
Samantha L. Smith

_____ — Raymond A. Smith (SEAL)
Raymond A. Smith

_____ — Shirley B. Smith (SEAL)
Shirley B. Smith

EXHIBIT 2

MEMORANDUM OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that R. WESLEY SMITH & SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, PA 15851; and RAYMOND A. SMITH & SHIRLEY B. SMITH, his wife, of R. R. #1, Box 211A, Reynoldsville, PA 15851; LESSORS, have by Agreement dated April 15th, 1995; and amended June 2nd, 2000; leased to B & B LAND COMPANY of Clearfield, (PO Box 249) PA 16830; LESSEE, and subsequently transferred to MORAVIAN RUN RECLAMATION COMPANY, INC., for the purpose of strip mining all the coal upon certain premises located in Gulich Township, Clearfield County, Pennsylvania as shown on the attached map.

The date of commencement of amended Agreement is June 2nd, 2000. The term of amended Agreement and transfer is three (3) years.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 17th day of October, 2000.

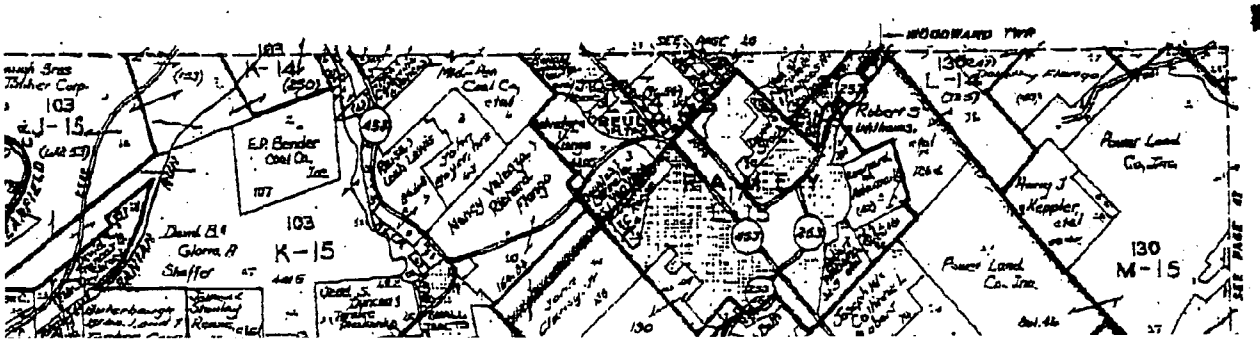
WITNESS:

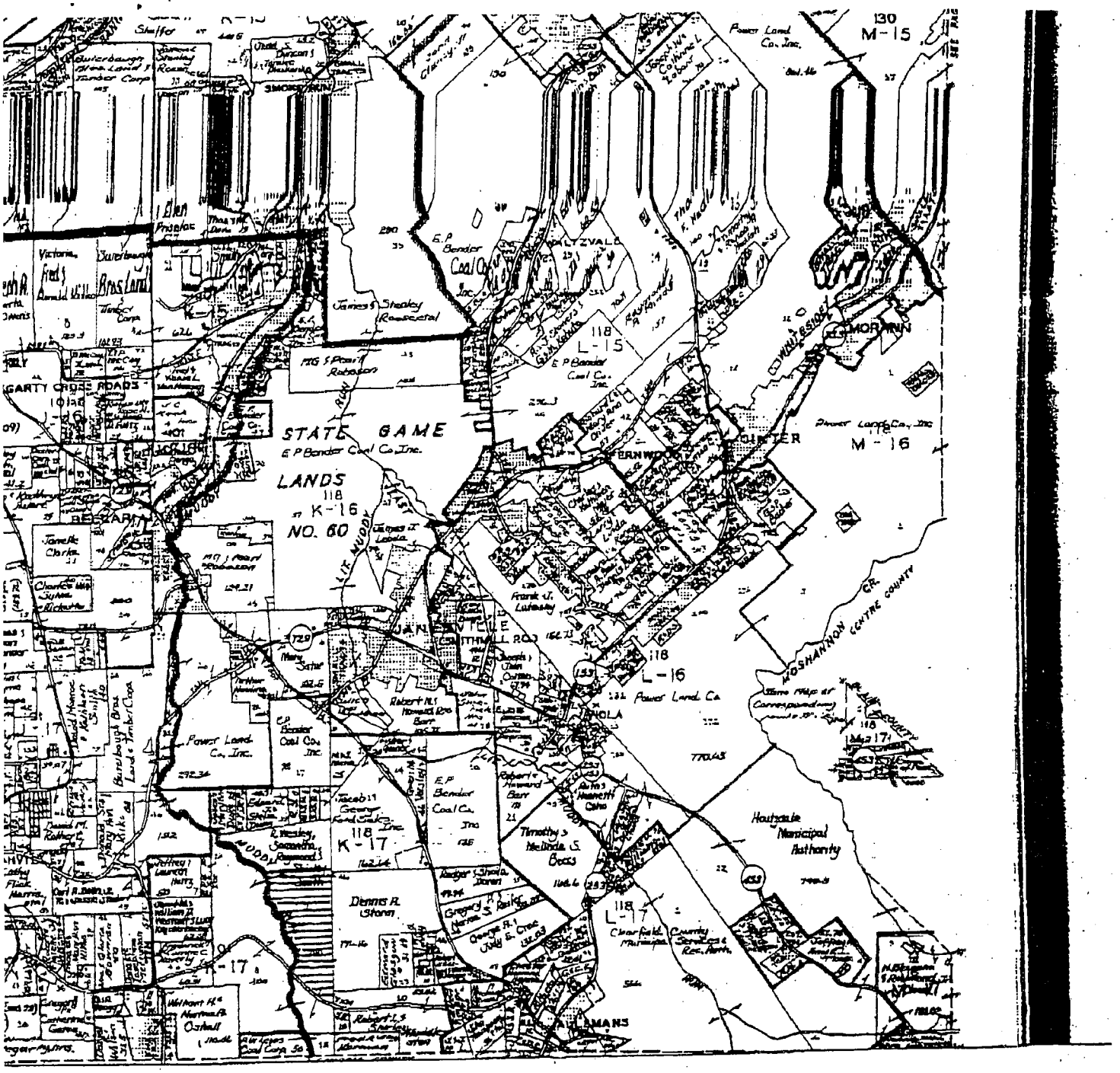
Denise A McGranor — R. Wesley Smith (SEAL)
R. Wesley Smith

Denise A McGranor — Samantha L. Smith (SEAL)
Samantha L. Smith

Denise A McGranor — Raymond A. Smith (SEAL)
Raymond A. Smith

Denise A McGranor — Shirley B. Smith (SEAL)
Shirley B. Smith





STATE OF PENNSYLVANIA:

: SS

COUNTY OF JEFFERSON :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 19th day of October, 2000, before me, the undersigned officer, personally appeared WILLIAM T. THORP, Partner, B & B LAND COMPANY, who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

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

Ronald D. Thorp
Notary Public

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 23rd day of Oct., 2000, before me, the undersigned officer, personally appeared DAVID M. CURULLA, President, MORAVIAN RUN RECLAMATION COMPANY, INC., who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he, as President of MORAVIAN RUN RECLAMATION COMPANY, INC., executed the same for the purpose therein

STATE OF PENNSYLVANIA:
: SS
COUNTY OF Jefferson :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and

L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A. McGranor
Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 29, 2004
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA:
: SS
COUNTY OF JEFFERSON :

[illegible] 2000 before me, the

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 19th day of October, 2000, before me, the undersigned officer, personally appeared WILLIAM T. THORP, Partner, B & B LAND COMPANY, who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A. McGranor

Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2004
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA:

: SS

COUNTY OF JEFFERSON :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared RAYMOND A. SMITH and SHIRLEY B. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A. McGranor

Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2004

EXHIBIT 3

THIS DEED,

MADE THE 27th day of February, in the year two thousand two (2002),

BETWEEN CHARLES M. COLONY, DOROTHY I. COLONY and ERIC E. EMINHIZER, trading and doing business as FERGUSON VALLEY HARDWOODS, with its principal place of business at 501 Electric Avenue, Lewistown, Mifflin County, Pennsylvania, Grantor

AND

CHRISTOPHER SCOTT ILYES and MARY GALLAGHER ILYES, his wife, of 404 Debbi Ct., Hanover, PA 17331; JAY SCOTT ALDINGER and JANET LOUISE LAWRENCE/ALDINGER, his wife, of 2178 Gleim Ct., Enola, PA 17025; JEFFREY THOMAS COOKERLY and JENNIFER RENEE COOKERLY, his wife, of 405 Debbi Ct., Hanover, PA 17331; SCOTT WILLIAM MILLER and MICHELLE LYNN MILLER, his wife, of 813 Market St., Mt. Wolf, PA 17347, Grantees

WITNESS, that in consideration of Fifty Five Thousand ($55,000.00) Dollars, in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantees,

ALL THAT CERTAIN piece, parcel or tract of land situate in the Townships of Becarria and Gulich, County of Clearfield and State of Pennsylvania, bounded and described on Schedule "A" attached.

SUBJECT, HOWEVER, to all exceptions, reservations, restrictions, leases, interests, covenants, agreements, rights-of-way and easements contained in, and/or conveyed and/or granted by, prior instruments of writing of record in the chain of title, insofar as they may still be in force and effect; all easements apparent on the premises; municipal zoning ordinances; building codes; laws, ordinances or governmental regulations relating to sewage disposal; and, all laws, ordinances and regulations relating to subdivisions.

TOGETHER WITH the appurtenances.

BEING the premises which Ferguson Valley Hardwoods, became seized by deed of R. Wesley Smith and Samantha L. Smith, his wife; Raymond A. Smith and Shirley B. Smith, his wife, dated December 22, 2000, and recorded in the Recorder's Office of Clearfield County, Pennsylvania, at Instrument Number 200100027.

SCHEDULE A

ALL THAT CERTAIN 100.8645 acres tract of land located in Gulich Township and Beccaria Township, Clearfield County, Pennsylvania, which is shown as Lot 6 of a two sheet Plan of Subdivision of Ferguson Valley Hardwoods, prepared for Ferguson Valley Hardwoods by Colony & Company Surveying & Engineering, dated January 9, 2001, said Plan of Subdivision recorded in Instrument No. 2001 07907 to Map File No. 2317 Clearfield County Records, said tract of land being more fully bounded and described as follows:

BEGINNING at a set rebar in line of Lot 1 of said Plan of Subdivision at corner of Lot 2 of said Plan of Subdivision, said set rebar lying S 86° 37' 28" W 632.88' from a found square concrete monument at common corner of Lot 1, lands of Jacob George Ford Sales, Inc. and lands of John Dominicus; thence by Lot 2 S 01° 54' 41" W passing through a set rebar at 3668.58' a total distance of 3703.58' to a point in line of Lot 3 of said Plan of Subdivision, said point being in centerline of T-534 (Wippers Road), a 33' right-of-way leading from SR 2001 (Beaver Dam Road) to T-535 (Dakota Ridge Road); thence by Lot 3 and Lot 4 of said Plan of Subdivision and along centerline of T-534 (Wippers Road) the following 22 courses: 1) N 39° 08' 03" W 112.82'; 2) by a curve to the left with a Long Chord of N 41° 48' 34" W 189.03', a Radius of 2025.00', and an Intersection Angle of 05° 21' 01" a total distance of 189.10'; 3) N 44° 29' 05" W 71.03'; 4) by a curve to the left with a Long Chord of N 46° 47' 43" W 104.82', a Radius of 1300.00', and an Intersection Angle of 04° 37' 16" a total distance of 104.85'; 5) N 49° 06' 20" W 265.61'; 6) by a curve to the right with a Long Chord of N 37° 56' 09" W 120.10', a Radius of 310.00', and an Intersection Angle of 22° 20' 22" a total distance of 120.87'; 7) N 26° 45' 58" W 53.51'; 8) by a curve to the left with a Long Chord of N 39° 02' 37" W 141.20', a Radius of 332.00', and an Intersection Angle of 24° 33' 19" a total distance of 142.28'; 9) N 51° 19' 17" W 63.10'; 10) by a curve to the right with a Long Chord N 39° 12' 23" W 111.65', a Radius of 266.00', and an Intersection Angle of 24° 13' 48" a total distance of 112.49'; 11) N 27° 05' 29" W 54.77'; 12) by a curve to the left with a Long Chord of N 47° 23' 23" W 150.56', a Radius of 217.00', and an Intersection Angle of 40° 35' 49" a total distance of 153.76'; 13) N 67° 41' 18" W 120.55'; 14) by a curve to the right with a Long Chord of N 67° 03' 45" W 59.43', a Radius of 2720.00', and an Intersection Angle of 01° 15' 07" a total distance of 59.43' to a point at the intersection of the centerline of T-534 (Wippers Road) with the centerline of Muddy Run, said point being a common corner of Lot 3 and Lot 4 of said Plan of Subdivision, said point also marking the boundary line between Gulich Township and Beccaria Township; 15) thence by Lot 4, entering Beccaria Township and along centerline of T-534 and by a curve to the right with a Long Chord of N 65° 44' 48" W 65.50', a Radius of 2720.00', and an Intersection Angle of 01° 22' 47" a total distance of 65.50'; 16) N 65° 03' 24" W 137.22'; 17) by a curve to the right with a Long Chord of N 53° 35' 13" W 212.77', a Radius of 535.00', and an Intersection Angle of 22° 56' 21" a total distance of 214.20'; 18) N 42° 07' 03" W 106.40'; 19) by a curve to the right with a Long Chord of N 34° 49' 57" W 131.88', a Radius of 520.00', and an Intersection Angle of 14° 34' 12" a total

distance of 132.23'; 20) N 27° 32' 50" W 75.19'; 21) by a curve to the left with a Long Chord of N 29° 27' 32" W 66.05', a Radius of 990.00', and an Intersection Angle of 03° 49' 24" a total distance of 66.06'; 22) N 31° 22' 15" W 93.58' to a point in said centerline of T-534, being a corner of Lot 5 of said Plan of Subdivision; thence departing centerline of T-534 and by Lot 5 N 31° 31' 28" E passing through a set rebar at 50.00' and at 1180.00' a total distance of 1201.69' to a point in centerline of Muddy Run marking the boundary of Gulich Township and Beccaria Township; thence along centerline of Muddy Run and by Lot 5 the following 11 courses: 1) S 86° 14' 17" W 100.07'; 2) N 03° 10' 11" W 22.61'; 3) N 30° 58' 44" E 63.72'; 4) N 03° 07' 26" W 90.52'; 5) N 51° 07' 33" W 149.94'; 6) N 28° 40' 26" W 208.11'; 7) N 03° 49' 13" E 48.49'; 8) N 48° 32' 31" E 169.68'; 9) N 07° 39' 17" W 66.20'; 10) N 21° 04' 43" W 167.19'; 11) N 56° 45' 22" W 75.93' to a point in centerline of Muddy Run and in line of Lot 1 of said Plan of Subdivision, said point lying N 86° 37' 28" E 26.42' from a set rebar in common line of Lot 1 and Lot 5; thence departing the centerline of Muddy Run and by Lot 1 entering Gulich Township N 86° 37' 28" E 1540.70' to a set rebar, being the POINT OF BEGINNING.

CONTAINING: 100.8645 Acres.

TOGETHER WITH and SUBJECT TO a 100' Right-of-Way centered on the centerline of T-534 (Wippers Road) for placement of utilities as noted on aforesaid Plan of Subdivision.

CERTIFICATE OF RESIDENCE

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

2178 Gleim Court; Enola, PA 17025

Attorney for Grantee

COMMONWEALTH OF PENNSYLVANIA

ss:

COUNTY OF MIFFLIN

On this, the 27th day of February, 2002, before me, the undersigned officer, personally appeared CHARLES M. COLONY, DOROTHY I. COLONY and ERIC E. EMINHIZER, individually and as partners of FERGUSON VALLEY HARDWOODS, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

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

Notarial Seal
Sharon F. Morris, Notary Public
Derry Twp., Mifflin County
My Commission Expires Apr. 9, 2005
Member, Pennsylvania Association of Notaries

Notary Public

RECORDED in the Office for Recording of Deeds, etc., in and for said County, in Record Book _____, Page _____.

WITNESS my hand and official seal this _____ day of _____, 200__.

Recorder of Deeds

NOTICE – Grantee (hereinafter, whether one or more, called "Grantee") hereby agrees that he may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal.

x Debby & Thomas Cooley
x Christoph Scott Sly
x Mary Gallagher Sly POA
x Jennifer Renee Cotterly
x Jane Lawrence Aldrich
x Jay Scott Aldrich POA
x Michelle Lynn Miller
x Scott William Miller

NOTE – THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACEOF THE LAND AND ANY HOUSE, BUILDING OR OTHER SUTRCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT R MODIVFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.]

REN L. STARCK
STER AND RECORDER
ARFIELD COUNTY
ennsylvania

STRUMENT NUMBER
20020031112
RECORDED ON
27, 2002
12:40 PM
Total Pages: 6

DING FEES - $21.00
DER
F IMPROVEMENT $1.00
DER
/EMENT FUND $1.00
TRANSFER $550.00
WRIT TAX $0.50
IA TOWNSHIP $137.50
TOWNSHIP $137.50
LE SCHOOL $137.50
ICT
NON VALLEY $137.50
S
$1,123.50
CUSTOMER
ON: DAVID

AND the said Grantor will **SPECIALLY WARRANT** the property hereby conveyed.

GRANTOR certifies that no hazardous waste, within the meaning of the Solid Waste Management Act of 1980, is presently being disposed of or has ever been disposed of by the Grantor or to the Grantor's actual knowledge in or upon the premises above described.

IN WITNESS WHEREOF, the said Grantor has hereunto set its hand and seal, the day and year first above-written.

Sealed and delivered in the presence of

Sharon Moore

Charles M. Colony

CHARLES M. COLONY, individually and as a partner of Ferguson Valley Hardwoods

Sharon Moore

Dorothy I. Colony

DOROTHY I. COLONY, individually and as a partner of Ferguson Valley Hardwoods

Sharon Moore

Eric E. Eminhizer

ERIC E. EMINHIZER, individually and as a partner of Ferguson Valley Hardwoods

UNIFORM CLEARFIELD COUNTY BAR ASSOCIATION CERTIFICATE OF TITLE

TO: Christopher Scott Ilyes and Mary Gallagher Ilyes; Jay Scott Aldinger and Janet Louise Lawrence/Aldinger; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly; Scott William Miller and Michelle Lynn Miller

CERTIFICATION

The undersigned does hereby certify the record title of Christopher Scott Ilyes and Mary Gallagher Ilyes, his wife; Jay Scott Aldinger and Janet Louise Lawrence/Aldinger, his wife; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly, his wife; Scott William Miller and Michelle Lynn Miller, his wife, whose property is located in Becarria and Gulich Townships, Clearfield County and recorded to Instrument Number 200203112, to be good and marketable and free and clear of all liens and encumbrances of record which would be disclosed by a search of the indices of the records of the Court House, at Clearfield, Pennsylvania, with any exceptions hereinafter noted, covering the period from fifty (50) years ago to this date.

EXCEPTIONS

1st Lien Mortgage to The Juniata Valley Bank in the original principal amount of $80,000.00 dated February 27, 2002 and recorded in Clearfield County to Instrument Number 200203113 on February 27, 2002.

This certificate embraces the following:

Miscellaneous agreements, grants, releases, easements, mechanic's liens, municipal liens, mortgages, liens of record, taxes are entered or recorded in any of the offices of the said Court House, but does not embrace liens or other matters not entered of record in the indices of said offices.

This certificate covers only matters disclosed by the indices of the Court House records of Clearfield County, Pennsylvania. It specifically does not cover any deficiency int he quantity of land, improvements on the premises, violation of zoning ordinances or building restrictions, boundary line disputes, nor taxes of any nature whatsoever which have accrued and are actually owing but which have not been entered or record, nor does it cover any matters which might be disclosed by either a survey or a physical inspection of the premises. No mechanic's or municipal liens were filed of record as of the date of this certificate, but your attention is specifically directed to the possibility that the same might be filed at a future date for any building, repair or other word already commenced.

wife; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly, his wife; Scott William Miller and Michelle Lynn Miller, his wife, whose property is located in Becarria and Gulich Townships, Clearfield County and recorded to Instrument Number 200203112, to be good and marketable and free and clear of all liens and encumbrances of record which would be disclosed by a search of the indices of the records of the Court House, at Clearfield, Pennsylvania, with any exceptions hereinafter noted, covering the period from fifty (50) years ago to this date.

EXCEPTIONS

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This certificate shall insure only to the benefit of the person to whom it is addressed, and is issued subject to all rights of persons who may be in possession under lease, or title or claim of title not indexed of record.

DATED: February 27, 2002

David R. Thompson, Esquire

VERIFICATION AFFIDAVIT

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief.

I understand that statements herein are made subject to the penalties of 18 Pa. C.S., §4904, relating to unsworn falsifications to authorities.

Jan Lawrence

Jan Lawrence

OPTION AGREEMENT

This **Option Agreement** ("Agreement") made and entered into on this 15th day of ~~May,~~ June 2001 by and between Moravian Run Reclamation, Co., Inc. of 605 Sheridan Drive Clearfield PA 16830, ("Optionor")

~ AND ~

Laurel Energy, L.P., a Pennsylvania limited partnership, with a principal business office located at One Energy Place Suite 7500 Latrobe, PA 15650, ("Optionee").

WHEREAS, Optionor owns leases to certain coal lands ("Leases") more particularly described in Exhibit A attached hereto ("Premises") and;

WHEREAS, Optionor is the permit holder under a certain mining Permit issued by the Pennsylvania Department of Environmental Protection more particularly described in Exhibit B attached hereto ("Permit");

WHEREAS, Optionor has granted to Optionee an option to (a) obtain an assignment of the Leases, and (b) acquire the Permit, in accordance with the provisions of this Agreement, and Optionee has accepted the option.

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, in consideration of the above covenants and conditions and those hereinafter set forth mutually agree as follows:

1. Option. In consideration of the sum of $1,000.00 (One Thousand Dollars) paid by the Optionee to Optionor, Optionor does hereby grant and convey to Optionee the sole, exclusive, and irrevocable right and option ("Option") to take an assignment of the Leases, and acquire the Permit, at any time within a period of thirty (30) days from the date hereof ("Option Period"), subject to the terms and conditions hereinafter set forth. The Option Period may be extended for an additional period of thirty (30) days if needed to obtain consent to the assignment of leases by the Optionee giving notice thereof to Optionor.

2. Right of Entry. During the Option Period, Optionee shall have the right to enter upon the Premises for the purposes of test drilling, core drilling, and such other investigations and exploratory tests as Optionee shall deem necessary in its sole and exclusive discretion. The Optionee agrees to reclaim any areas disturbed by the activities of the Optionee during exploration of the Premises. Such obligations to reclaim will survive the expiration or termination of this Agreement.

3. Access to Information. Optionor shall provide and furnish Optionee and Optionee's counsel, accountants, engineers, and other representatives full access, during normal business hours throughout the Option Period, all of the Optionor's records and information pertaining to the Premises as necessary for Optionee to conduct due diligence. In the event the Optionee fails to exercise the option granted herein, all records and information obtained by the Optionee in conducting due diligence shall be surrendered and remitted to Optionor within five

EXHIBIT "B"

(5) days of the earlier of the expiration of the option granted herein or notice by Optionee to Optionor of its intent not to exercise the option granted herein.

4. Indemnification. During the Option Period, Optionee will indemnify and save harmless Optionor, its successors and assigns, from any and all loss and/or liability for claims, demands, and suits, or causes of action in law or equity for damages and injuries (including death) of every kind and nature to persons and property, including loss of the use thereof, as the result of Optionee activities hereunder, and Optionee will defend all such claims, demands, and suits at its sole cost and expense, whether groundless or not. Nothing herein shall relieve Optionor from liability for its own negligence or acts, or the negligence or acts of its employees, agents, and contractors. This provision shall survive the expiration or termination of this agreement.

5. Exercise of Option. In the event Optionee elects to exercise its Option, it shall exercise the Option within thirty (30) days from the date hereof unless otherwise extended as provided for in Section 1 above. The notice of the exercise of the option or extension shall be given in writing by the Optionee by registered mail or United States certified mail, return receipt requested, addressed to the Optionor, which shall be postmarked within the period set forth above at which time the option shall be considered exercised. If the Optionor shall exercise the Option, as herein provided then the following provisions of this Agreement shall immediately become effective. If the Optionee fails to exercise the option in accordance with the terms of this Agreement within the Option Period, then the option granted by this Agreement, and all rights hereunder of the Optionee shall automatically terminate without notice to either party.

6. Time and Place of Closing. The assignment of Leases and the signing of documents to allow for the transfer of the Permit shall take place thirty (30) days after the Optionee exercises the Option, at the offices of the Optionor, 605 Sheridan Drive Clearfield PA 16830 commencing at 10:00 a.m., local time, or at such other date, time or place as may be agreed to by the Buyer and Seller.

7. Transaction. At the Closing Optionor will assign the Leases to Optionee, in form and substance satisfactory to Optionee, and complete the documentation required to transfer the Permit to Optionee, such transfer is to occur in the manner prescribed by Department of Environmental Protection, under the following terms and conditions:

a. Optionee shall pay an overriding production royalty ("Overriding Royalty") of thirty cents ($0.30) per ton for all merchantable and mineable coal produced and sold from mining activities conducted on the Premises. Such Overriding Royalty shall be paid on the twenty fifth (25) day of each month for all coal removed and shipped from the Premises during the previous calendar month and shall be accompanied by a correct statement showing the truck weights for all coal shipped during such month. such payment shall be paid to Moravian Run Reclamation Co., Inc. 605 Sheridan Dr. Clearfield, PA 16830

b. Upon completion of transfer of the Permit to the Optionee, the Optionee shall pay the sum of $18,963.00 to the Optionor for reimbursement of permit preparation

costs. Provided Optionee or its designee has a contract miners license, has replaced Optionors bonds, and has applied for transfer of the permit, Optionor shall permit Optionee or its designee to conduct mining operations pursuant to the Permit, providing that the Optionors bonds have been released, until such time as the Permit is transferred to the Optionee or its designee.

8. Representations & Warranties of Optionor.

Optionor represents and warrants to Optionee as follows:

B. Optionor is the sole and exclusive owner and/or lessee of the Leases and has good and marketable title to the Leases, free and clear of all liens and encumbrances, clouds and defects whatsoever and has the authority to enter in this Agreement with Optionee.

C. All the Leases are valid and in good standing with no circumstances of default or pending default or other condition that would effect the right of the Optionee to mine coal under the Leases.

D. There are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Premises or the Leases, or any portion thereof, at law or in equity before any court or administrative agency.

E. To the best of the Optionors knowledge, there are no pending or threatening proceedings in eminent domain, or otherwise, which would affect the Premise, or any portion of the same.

F. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor the consummation of the transaction contemplated hereby, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions, provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which Optionor is a party.

G. Neither the Optionor, nor any other entity, person, direct or indirect affiliate controlled by the Optionor has caused to be deposited or has deposited on, at, or in the Premises, or has caused to be disposed, treated, stored or discharged upon the Premises any hazardous or toxic materials or substances, and the Premises and Optionor's activities thereon are now in full compliance with all environmental laws. For the purpose of the preceding sentence and if hereafter used in this Agreement the term "environmental laws" means any federal, state or local law, rule, regulation, or ordinance regulating and relating to protection of the environment, including without limitation, the land, air and water, or human health or safety, and the term "hazardous or toxic substances" means any

substance defined as hazardous or toxic or otherwise regulated by any environmental law.

H. There are no agreements, formal or informal, between Optionor, the Lessors under the Leases and any third party regarding the Premises or the Leases, except for an agreement between Moravian Run Reclamation Co., Inc. and Penn Grampian Coal Company regarding the advanced royalties paid by Penn Grampian Coal Company to Wesley and Raymond Smith, which is attached to and considered part of this agreement.

I. All representations, warranties and agreements made by both parties in this Agreement shall survive the Transaction, for a period of two (2) years.

J. All representations and warranties by Optionor in this Agreement and all statements and certificates furnished or to be furnished to Optionee pursuant hereto, or in connection with the Transaction, contain true statements of material fact, and do not omit the material facts necessary to confirm all of the above representations and warranties.

8.1 Representations and Warranties of Optionee

Optionee represents and warrants to Optionor as follows:

A. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor the consummation of the transaction contemplated hereby, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions, provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which Optionee is a party.

B. Neither the Optionee, nor any other entity, person, direct or indirect affiliate controlled by the Optionee has caused to be deposited or has deposited on, at, or in the Premises, or has caused to be disposed, treated, stored or discharged upon the Premises any hazardous or toxic materials or substances, and the Premises and Optionee's activities thereon are now in full compliance with all environmental laws. For the purpose of the preceding sentence and if hereafter used in this Agreement the term "environmental laws" means any federal, state or local law, rule, regulation, or ordinance regulating and relating to protection of the environment, including without limitation, the land, air and water, or human health or safety, and the term "hazardous or toxic substances" means any substance defined as hazardous or toxic or otherwise regulated by any environmental law.

C. All representations and warranties by Optionee in this Agreement and all statements and certificates furnished or to be furnished to Optionee pursuant hereto, or in connection with the Transaction, contain true statements of material fact, and do not omit the material facts necessary to confirm all of the above representations and warranties.

9. Place of Payment and Notices. All Overriding Royalties payable hereunder, and all notices and other communications hereunder by either party may be effectuated by personal delivery or in writing by first class United States mail, postage prepaid, and shall be deemed received for all purposes hereunder as of the date of actual mailing as determined by the postmark date. All payments and notices by mail shall be addressed to the respective parties at their addresses set forth above, or to such other address the parties hereafter designate by notice to each other. All royalties payable to the Optionor shall be mailed to the address set forth above.

10. Events Of Default.

(a) The following shall constitute acts of default hereunder:

(i) if any representation or warranty of either party made in or pursuant to this Agreement is untrue or incorrect in any material respect, either party materially breaches the covenants or other terms of this Agreement

(ii) the neglect or refusal of Optionee to make payment of royalties, required to be paid by Optionee hereunder for a period of fifteen (15) days after Optionor has made written demand upon Optionee.

(iii) Optionee shall file a voluntary petition in bankruptcy or for the appointment of a receiver or shall be adjudicated a bankrupt or insolvent, or shall seek, consent to, or acquiesce in the appointment of any trustee, receiver or liquidator for all or any substantial part of its assets or be unable to meet its obligations to creditors as they come due.

(b) In the event of any such default by the Optionee, Optionor shall have at its addition to any other remedies it may have at law or in equity, all and singular the following remedies:

1. The right to terminate and cancel this Agreement upon thirty (30) days written notice of the same in addition to any other notice requirement above set forth, being provided to Optionee.

2. If Optionor elects to terminate and cancel this Agreement, Optionee authorizes any attorney of any court of record to appear for it and confess judgment against it and in favor of the Optionor, in ejectment or its equivalent legal remedy, for possession of the Leased Premises and further, authorizes said attorney to cause the immediate issuance of writ of possession delivering possession of the Leased Premises to the Optionor.

3. All of the rights and remedies of Optionor shall be cumulative and shall not be deemed to exclude Optionor from any other legal or equitable remedy or remedies which they may have. Failure on the part of Optionor to enforce any of the rights herein reserved by them on default for a period shall not operate as an estoppel or as a waiver against Optionor or prevent it at any subsequent time from electing to exercise all or any of such rights for any subsequent default.

4. Optionee hereby authorizes any attorney of any court of record, as often as default be made in the payment of royalties and other moneys as above stipulated to appear for it and confess judgment or judgments against it for the amount of royalties and other moneys due and unpaid, with attorney's commissions of ten percent (10%) and costs of suit, without stay of execution, waiving inquisition and exemption. This power of attorney shall be continuous and may be exercised as often as any default be made by Optionee in the terms of this Agreement.

11. Indemnification by Seller. For a period of five (5) years from and after the closing, Optionor shall indemnify and hold Optionee (and its permitted assigns) and the officers, directors and shareholders thereof harmless against and in respect of any and all losses, costs, expenses, claims, damages, obligations and liabilities, including interest, penalties and attorneys' fees and disbursements ("Damages"), which Optionee or any such person may suffer, incur or become subject to arising out of, based upon or otherwise in respect of: (a) any inaccuracy in or breach of any representation or warranty of Optionor made in or pursuant to this Agreement; (b) any breach or non-fulfillment of any covenant or obligation of Optionor contained in this Agreement; and (c) any violation of the Environmental Laws by Optionor or any affiliate of Optionor of which Optionor was aware or should have been aware.

12. Modification & Alteration. No modification, alteration, waiver or addition to this Agreement or any part thereof, shall be valid or binding or be set up or relied upon by either party unless the same be in writing, specifically referring to this Agreement, and signed by the Optionor and Optionee. No evidence of any such modification, alteration, waiver or addition shall be received in any controversy arising out of this Agreement, unless it be in writing and signed as aforesaid.

13. Applicable Law. It is hereby mutually understood and agreed that this Agreement shall be interpreted in accordance with the internal laws of the Commonwealth of Pennsylvania and that no presumption shall be deemed to exist in favor or against either party hereto as a result of the preparation and/or negotiation of the same nor for any other reason.

14. Integration. This Agreement contains and constitutes the final expression of the intent of the parties hereto, and is the complete and exclusive statement of the terms and conditions agreed upon by the parties hereto. No modification or amendment of this Agreement will be valid unless stated in writing and executed by the parties hereto.

15. Binding Effect. This Agreement shall be binding upon the parties hereto, their respective successors and assigns.

16. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be one in the same.

17. Severability. If any part or provision of this Agreement is found or declared to be invalid in contravention of any governing law or regulation, such part or provision shall be severable without affecting the validity of this Agreement.

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

ATTEST

OPTIONOR

By:

ATTEST

LAUREL ENERGY, L.P.
By Laurel Mountain Management, Inc.
Its General Partner

By:
D. Scott Kroh, President

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Original Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 15th day of April, 1995 by and between R. Wesley Smith and Samantha Smith, his wife of R.D. 2, Box 39, Reynoldsville, Pennsylvania 15851 and Raymond A. Smith and Shirley B. Smith, his wife of R.D. 1, Box 211-A, Reynoldsville, Pennsylvania 15851, party of the first part, hereinafter referred to as "LESSORS";

A N D

B & B LAND COMPANY, of Clearfield, Pennsylvania, party of the second part, hereinafter referred to as "LESSEE".

W I T N E S S E T H:

THE LEASE

1. That for and in consideration of the sum of One Dollar ($1.00) paid by the LESSEE to the LESSORS, the receipt whereof is hereby acknowledged, the LESSORS do hereby let, lease and demise unto the LESSEE, its succesors and assigns, the right with such terms, covenants and conditions as hereinafter set forth, to mine and remove all the mineable and merchantable coal in, under and upon that certain tract in the Township of Beccaria and in the Township of Gulich title to which is vested in the LESSORS which tract of land is Parcel #1 - 290 acres in Gulich Township under Ray and Wesley Smith which is shown on Tax Map No. 118-K7-9 and Parcel #2 - 200 acres in Beccaria Township under Ray and Wesley Smith, which is shown on Tax Map No. 101-K17-8. Also, 110.56

EXHIBIT "C"

110.56 acres in Beccaria Township under William O'Shall, Tax Map No. 101-K17-1.

The LESSORS covenant that they own either the coal or the surface (right of surface support) of the described premises, and do hereby grant and convey the full and complete rights for the mining and removing of the coal in, under and upon the above described premises by all modern mining methods, including but not limited to surface stripping, with the right of ingress, egress and regress, into, upon the under said lands for the purpose of examining, testing, mining, stripping and removing said coal, together with the right to locate and erect such chutes, tipples, buildings, pipe lines, pole lines and other structures as may be necessary for the use and working of mines or strippings, and with the right to deposit spoil therefrom upon the surface with the right to redeposit the same, and with all rights and privileges necessary and convenient in mining, digging, stripping, removing and transporting said coal without liability for any and all damage done to said lands or buildings or the water therein or thereon, caused by the mining, stripping and removal of all said coal, or the exercise of any or all of the mining rights aforesaid.

LESSORS hereby lease unto the LESSEE the right of ingress, egress and regress in and to the leased premises any time within five (5) years after the termination of this lease for the purpose of backfilling or planting trees or otherwise complying with the mining laws of the Commonwealth of Pennsylvania. But this right of re-entry for a period of five (5) years is for the

purpose alone and shall vest in LESSEE no rights whatsoever in the coal, in the mining of coal, or in the property. In addition, LESSORS agree to execute the required written consents on the form furnished by the Commonwealth of Pennsylvania concerning re-entry for backfilling, planting, reclamation and inspection.

2. Term and Effective Date: This lease shall become effective as of the 15th day of April, 1995, by the LESSEE and shall continue for a period of four (4) years with automatic extensions of one (1) year terms from year to year to exhaustion of the coal provided the premises are being actively mined at the end of the original term and each yearly extention thereof. Active mining shall be defined to mean mining operations upon the premises on a regular five (5) days per week.

3. Tonnage Royalty: LESSEE shall pay to LESSORS royalty at the rate of One Dollar and Fifty Cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton for all merchantable and mineable coal, whichever amount is greater, for all coal mined and removed from the premises. All payments of royalty shall be made on or before the 25th day of each calendar month for all coal mined and removed in the preceding calendar month and shall be accompanied by a statement showing the tonnage mined and royalty due. All payments are to be made to the LESSORS without demand or to any other party or parties LESSORS in writing designate as an agent for receiving payments.

All payments of royalty as herein provided are based on either one hundred percent (100%) ownership of surface (right of

surface support) coal or both surface and coal. In the event LESSORS should own less than one hundred percent (100%) of said surface and/or coal rights said sums shall be adjusted in accordance with the percentage of ownership.

4. Minimum Royalty: LESSEE shall pay to LESSORS the sum of Two Hundred Dollars ($200.00) per month as a minimum royalty for each month that the within lease is in full force and effect. All payments of minimum royalty shall be recoupable by the LESSEE as a credit against tonnage royalty from production as herein provided.

5. Tonnage Measurements: Royalty and other payments shall be based on certified truck scale weights or railroad weights, and all coal mined and removed from the premises shall be weighed on such scales. LESSEE hereby authorizes LESSORS or its agent, to examine any and all of the LESSEE'S records and to examine the records of any truck scale weights or railroad weights concerning the coal which was hauled or shipped from the described premises and the right to make copies of his findings.

6. Mining Methods: LESSEE agrees that all mining operations shall be conducted in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that LESSORS (at its own risk) shall have access to the operation and scale records of LESSEE at all times in person or by duly authorized agent.

7. Taxes: All taxes upon the premises herein demised shall be paid by LESSORS, and all taxes that may be levied, imposed, charged or assessed upon improvements, equipment, or

mining machine placed upon the demised premises by LESSEE for the mining, removing, processing or transportation of the coal shall be paid by LESSEE. Should any federal, state or local subdivision impose any tax upon the mining of coal, the coal mined, or otherwise, said taxes shall be paid by LESSEE.

8. Insurance: LESSEE agrees to keep in force during the term of this lease general liability insurance with a reputable insurance company in the sum of at least One Million Dollars. Upon request LESSEE shall furnish to LESSORS a certificate of said insurance which shall name LESSORS as an additional insured.

9. Timber Removal: If on investigation it appears that there is any appreciable quantity of paper wood or saw timber remaining on the leased premises, the LESSEE will at the request of the LESSORS arrange for the cutting and removal of such paper wood and saw timber by reliable people, subject to the approval of the LESSORS, and will supervise the cutting of such timber and pulpwood, arranging for monthly remittances to the LESSORS at the same time that royalties hereunder are due. The LESSEE shall refrain from destroying pulpwood or saw timber in the progress of its strip mining operations, if these is reasonable opportunity to arrange to have such timber cut off in advance of such operations.

10. Books and Records: LESSEE shall and will keep complete and accurate books of account, showing the amount of coal produced from the said property, and at the time for payment of the monthly royalties hereinbefore mentioned, shall furnish accurate statements of all coal mined and produced during the

preceding calendar month; shall and will keep all mining maps, books, plans and records necessary in operating said leased coal; and shall and will furnish LESSORS, or its duly authorized agent or employee, at any reasonable time, upon request, access to all books of account, records, weigh sheets, maps and plans and will also give LESSORS, or its duly authorized agent or employee, at reasonable request, access to any and all portions of the said leased premises and to the operations in connection with the same.

11. LESSEE agrees to supply to LESSORS, at the first of each month, tonnage on the number of trucks loaded with coal for the previous month.

12. Default in Royalties and Breach of Term: It is understood and agreed that in the event the LESSEE should default in any payment provided for herein when said payments become due, or should LESSEE be in default in any other respect and continue in such default for a period of thirty (30) days after being notified in writing of such default by LESSORS, then, in either event, at the option of the LESSORS, this Lease shall cease and terminate and LESSEE hereby authorizes any attorney of any court of record to appear for it and in its name to confess a judgment against it in an amicable action of ejectment to the end that a writ of habere facias possession may issue forthwith for the delivery of possession to LESSORS together with clause of fieri facias for royalties in arrears and costs.

13. Supplemental "C": LESSORS hereby agrees to execute, acknowledge and deliver to LESSEE within ten (10) days after the

exercise of the within option in quadruplicate the form know as Supplemental "C" required by the Department of Environmental Resources (DER) of the Commonwealth of Pennsylvania and thereafter any other forms required in order to secure the permits necessary for mining operations.

14. Force Majeure: LESSEE shall not be deemed in default for failure to perform any of its obligations under this Agreement during periods in which performance is partially or wholly prevented by any cause, condition or matter beyond LESSEE'S control, such as, and not by way of limitation, strikes, riots, accidents, governmental laws, lack of satisfactory markets for coal from the leased premises and acts of God.

15. No Assignment or Transfer: LESSEE agrees not to mortgage or encumber the leased premises with liens of any kind, or sell, or assign, or setover or sublet the whole or any part of the herein leased premises, or subcontract for the mining thereof, without the express written consent of the LESSOR first had and obtained, which, shall not be unreasonably withheld. It is further agreed and provided that any lawful levy and sale on execution or other legal processes, as well as any assignments or sale in bankruptcy, voluntary or involuntary proceedings, or any receivership created, shall be deemed and taken to be an assignment or subletting within the meaning of this lease agreement, and at the option the LESSORS shall work an immediate forfeiture, without notice, and thereupon possession may be immediately taken by the LESSORS without further formality.

It is understood, however, that anything to the contrary in the foregoing paragraph notwithstanding, LESSEE shall have the right to assign the within lease to LESSEE'S mining company, Penn-Grampian Coal Company or to Al Hamilton Contracting Company or any of its assigns.

16. Memorandum of Lease: Upon exercise of the within option by LESSEE, LESSORS agrees to execute, acknowledge and deliver to LESSEE a "memorandum of Lease" suitable for recording, which Memorandum retains the privacy of this document but gives public notice of the fact that the within lease has been executed. Said Memorandum shall contain a description of the property, the purpose of the lease, the length of the term and the fact that it incorporates the within lease by reference thereto. LESSEE agrees to prepare said Memorandum and deliver it to LESSORS and LESSORS agrees to execute, acknowledge and deliver to LESSEE the said Memorandum within ten (10) days of the receipt thereof.

17. Cancellation: The LESSEE shall have the right to cancel this Agreement at any time upon giving thirty (30) days written notice to the LESSORS, whereupon all accrued royalties including paid past minimum royalties shall be due and payable.

18. Notices: A written notice addressed to B & B Land Company, P.O. Box 249, Clearfield, Pennsylvania, 16830, and sent by certified mail, shall be deemed received by the LESSEE as of one day after the date of mailing. A written notice addressed to Raymond A. Smith, R.D. 1, Box 211-A, Reynoldsville, Pennsylvania

15851 and sent by certified mail shall be deemed received by the LESSORS as of one day after the date of mailing.

19. Water monitoring shall begin within ninety (90) days of the signing of the Agreement.

20. Anything to the contrary herein notwithstanding, mining shall commence within six (6) months after all required permits have been approved by D.E.R., otherwise the within lease shall terminate upon the expiration of thirty (30) days written notice by LESSORS to LESSEE should LESSEE fail to commence mining within said thirty (30) days.

21. This lease agreement is binding on the parties hereto, their heirs, executors, administrators, successors and assigns.

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

ATTEST:

Denise A. McGregor

LESSORS:

R. Wesley Smith

Samantha L. Smith

Raymond A. Smith

Shirley L. Smith

ATTEST:

Partner

LESSEES:
B & B LAND COMPANY
By

Partner

Lease Amendment

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT made this 2nd day of June, 2000, by and between R. WESLEY SMITH and SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, Pennsylvania 15851 and RAYMOND A. SMITH and SHIRLEY B. SMITH, his wife, of R R 1 Box 211A, Reynoldsville, Pennsylvania 15851, Party of the First Part, hereinafter referred to as "LESSORS";

AND

B & B LAND COMPANY of Clearfield, Pennsylvania, Party of the Second Part, hereinafter referred to as "LESSEE".

WHEREAS, the Lessors and Lessee have entered into a Lease Agreement dated April 15, 1995, and the Lessee has obtained certain mining permits on a portion of the premises set forth in said Lease in the Townships of Beccaria and Gulich in Clearfield County, Pennsylvania, more fully set forth in said Lease and the Lessors are desirous of granting additional time to Lessee.

WITNESSETH:

That the parties hereto agree to continue said lease for another three (3) years from the original term and Lessors do not require Lessee to pay any additional advance royalty and Lessee agrees to release from said Lease all premises not currently under permit including, but not limited to, all the premises lying South of T-534 and West of Muddy Run.

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

WITNESS:

Denise A. McGraner as to all — R. Wesley Smith (SEAL)
R. Wesley Smith

Samantha L. Smith (SEAL)
Samantha L. Smith

Raymond A. Smith (SEAL)
Raymond A. Smith

Shirley B. Smith (SEAL)
Shirley B. Smith

MEMORANDUM OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that R. WESLEY SMITH & SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, PA 15851; and RAYMOND A. SMITH & SHIRLEY B. SMITH, his wife, of R. R. #1, Box 211A, Reynoldsville, PA 15851; LESSORS, have by Agreement dated April 15th, 1995; and amended June 2nd, 2000; leased to B & B LAND COMPANY of Clearfield, (PO Box 247) PA 16830; LESSEE, and subsequently transferred to MORAVIAN RUN RECLAMATION COMPANY, INC., for the purpose of strip mining all the coal upon certain premises located in Gulich Township, Clearfield County, Pennsylvania as shown on the attached map.

The date of commencement of amended Agreement is June 2nd, 2000. The term of amended Agreement and transfer is three (3) years.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 17th day of October, 2000.

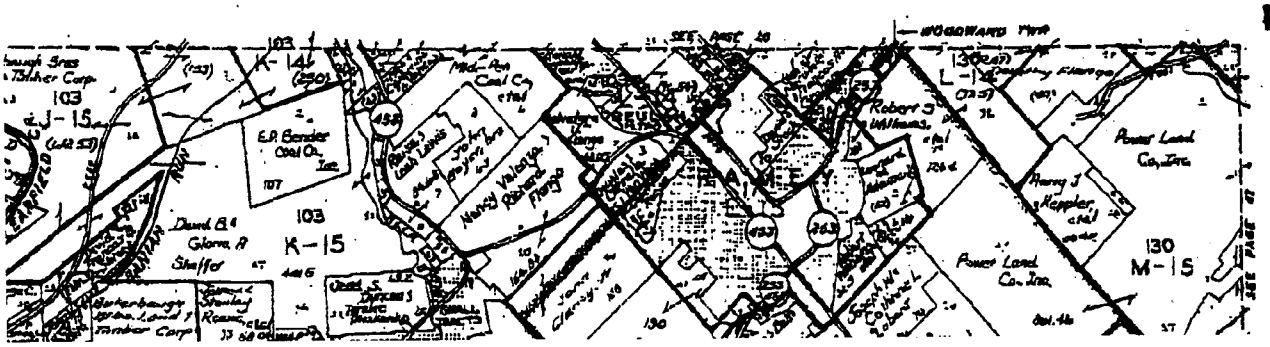
WITNESS:

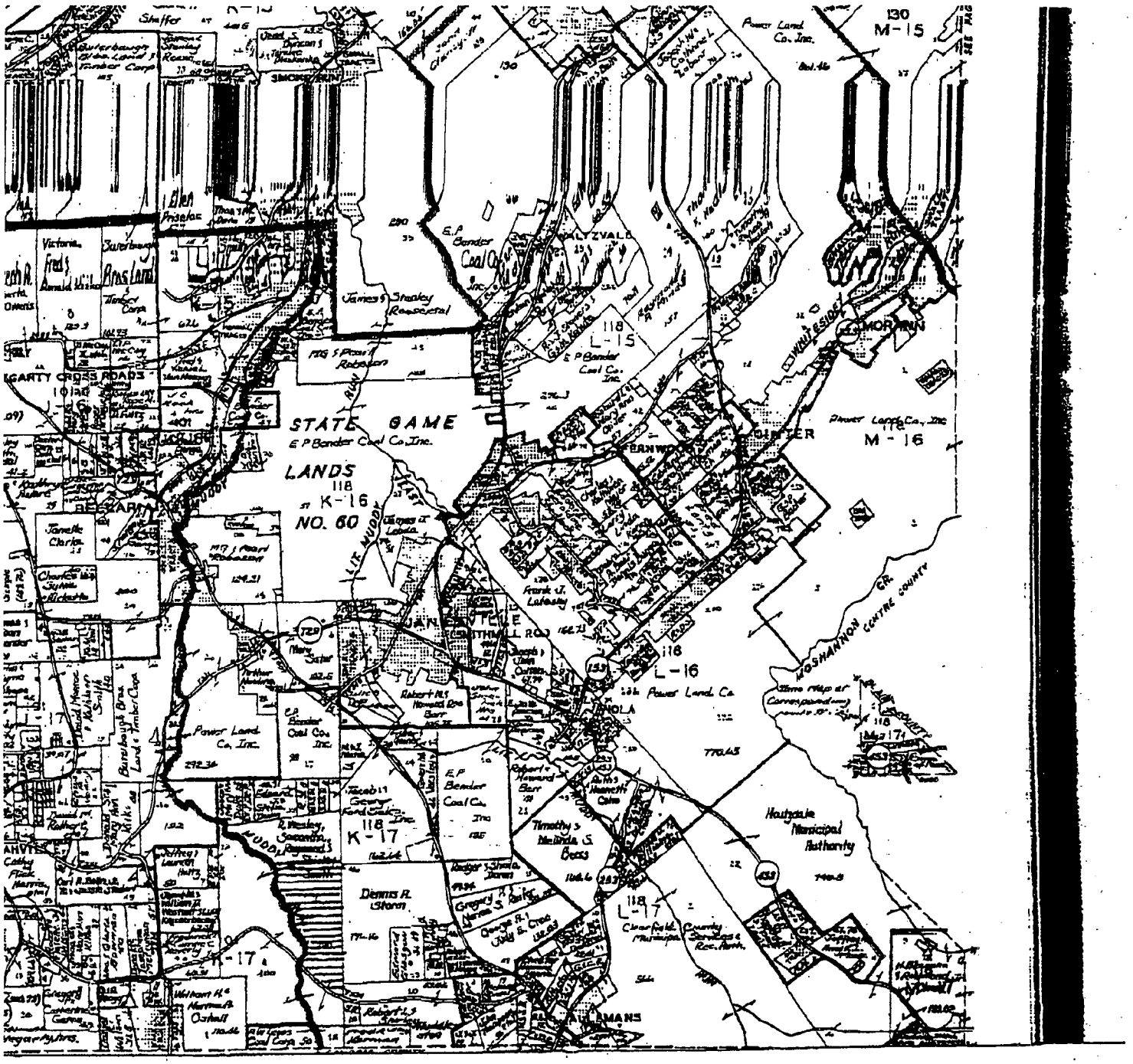
Denise A McGranor — R. Wesley Smith (SEAL)
R. Wesley Smith

Denise A McGranor — Samantha L. Smith (SEAL)
Samantha L. Smith

Denise A McGranor — Raymond A. Smith (SEAL)
Raymond A. Smith

Denise A McGranor — Shirley B. Smith (SEAL)
Shirley B. Smith





STATE OF PENNSYLVANIA:

: SS

COUNTY OF Jefferson :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 19th day of October, 2000, before me, the undersigned officer, personally appeared WILLIAM T. THORP, Partner, B & B LAND COMPANY, who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

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

Ronald D. Thorp
Notary Public

NOTARIAL SEAL
RONALD D. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 23rd day of Oct., 2000, before me, the undersigned officer, personally appeared DAVID M. CURULLA, President, MORAVIAN RUN RECLAMATION COMPANY, INC., who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he, as President of MORAVIAN RUN RECLAMATION COMPANY, INC., executed the same for the purpose therein

STATE OF PENNSYLVANIA:
: SS
COUNTY OF Jefferson :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument. and

L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A. McGranor
Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2004
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA:
: SS
COUNTY OF JEFFERSON :

On this, the [illegible] day of [illegible], 2000 before me, the

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 19th day of October, 2000, before me, the undersigned officer, personally appeared WILLIAM T. THORP, Partner, B & B LAND COMPANY, who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A McGranor
Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2003
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA:
: SS
COUNTY OF JEFFERSON :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared RAYMOND A. SMITH and SHIRLEY B. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A McGranor
Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2003

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared JOSEPH TARBAY, who being duly sworn according to law, deposes and states that he is the Vice-President of Moravian Run Reclamation Co., Inc. and that as such officer he is authorized to execute this Affidavit and further that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Joseph Tarbay

SWORN and SUBSCRIBED before me this 2nd day of February, 2006.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2007

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of the Complaint of Defendant Moravian Run Reclamation Co., Inc. Against Additional Defendant Laurel Energy, LP was served on the following persons and in the following manner on the 2nd day of February, 2006:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-1416

James A. Naddeo
Attorney for Defendant
Moravian Run Reclamation
Co., Inc.

FILED

FEB 02 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

No. 05-1351-CD

Type of Pleading:

COMPLAINT OF ORIGINAL DEFENDANT JOHNSON BROTHERS COAL COMPANY AGAINST ADDITIONAL DEFENDANT LAUREL ENERGY, LP

Filed on behalf of:
Defendant Johnson Brothers Coal Company

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

FILED 2cc Atty Naddeo
01 3:11 BK
FEB 07 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional 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 (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or 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.

Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	

COMPLAINT OF ORIGINAL DEFENDANT, JOHNSON BROTHERS COAL COMPANY, AGAINST ADDITIONAL DEFENDANT LAUREL ENERGY, LP

1. Original Defendant, Johnson Brothers Coal Company, is a Pennsylvania corporation having its registered office located at 1390 Lee Run Road, Mahaffey, Pennsylvania, hereinafter referred to as "Johnson".

2. Plaintiffs initiated this action against Defendants alleging that Defendant MRC stripped coal from Plaintiffs' property, removed paper wood and/or saw timber from Plaintiffs' property and failed to properly reclaim and/or re-vegetate Plaintiffs' property. A copy of Plaintiffs' Complaint is attached hereto as Exhibit "A".

3. Defendant Johnson strip mined Plaintiffs' property pursuant to a Contract Mining Agreement with Additional

Defendant, Laurel Energy, LP, hereinafter "Laurel", dated August 23, 2001. A copy of said Contract Mining Agreement is attached hereto as Exhibit "B".

4. Paragraph 8 of the Contract Mining Agreement attached hereto as Exhibit "B" represents that Laurel is the owner of the coal underlying Plaintiffs' premises.

5. Johnson at all times conducted its mining operations upon Plaintiffs' property in a good and workmanlike manner and further complied with all of the laws of the Commonwealth of Pennsylvania pertaining to the reclamation of said property.

6. Laurel at no time informed Johnson that it was to refrain from removing pulp wood and/or saw timer from the property of Plaintiffs'.

7. Johnson is not obligated under the terms of its Contract Mining Agreement with Laurel to pay any coal royalties directly to Plaintiffs or to refrain from removing pulp wood and/or saw timber from Plaintiffs' property incident to Johnson's obligation to Laurel to strip mine the coal from Plaintiffs' property.

8. To the extent that Laurel failed to pay Plaintiffs' royalty from removal and sale of the coal underlying Plaintiffs' property, Johnson has been required to retain

counsel to defend this action and therefore seeks a reasonable amount from Laurel for counsel fees, costs and expenses.

9. If it is judicially determined that there is any amount due to Plaintiffs from Johnson, it is averred that the Additional Defendant Laurel is solely liable to the Plaintiffs for all injury suffered by Plaintiffs, or is jointly and/or severally liable with Additional Defendant Laurel, or is liable over to Defendant Johnson for indemnification and/or contribution, any and all liability on the part of Johnson being expressly denied.

WHEREFORE, Defendant Johnson demands:

1. Judgment in its favor together with costs;

2. Judgment that, if there is any liability to Plaintiffs, Additional Defendant Laurel is solely liable to Plaintiffs.

3. Judgment that, if there is any liability to Plaintiffs, Additional Defendant Laurel is jointly and severally liable to Plaintiffs.

4. In the event that a verdict is recovered by Plaintiffs against Defendant Johnson that Defendant Johnson may have judgment over and against Additional Defendant Laurel by way of indemnification and/or contribution for the amount recovered by Plaintiffs against Defendant together with costs

and reasonable attorney fees.

James A. Naddeo
Attorney for Defendant
Johnson Brothers Coal
Company

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared Leslie Johnson, who being duly sworn according to law, deposes and states that he is the President of Johnson Brothers Coal Company and that as such officer he is authorized to execute this Affidavit and further that the facts set forth in the foregoing Answer to Complaint and New Matter are true and correct to the best of his knowledge, information and belief.

Leslie Johnson

SWORN and SUBSCRIBED before me this 7th day of February, 2006.

Linda C. Lewis

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2007

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of the Original Defendant Johnson Brothers Coal Company Against Additional Defendant Laurel Energy, LP was served on the following and in the following manner on the 7th day of February, 2006:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-1416

James A. Naddeo
Attorney for Defendant
Johnson Brothers Coal
Company

Extension- Apr. 15, 05
OR June 2, 03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs

vs.

MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants

CASE NO. 05-1351-CD

- 9/27/05 - Cancelled
- 9/22/05

TYPE OF PLEADING:
COMPLAINT

536 - 0735

FILED ON BEHALF OF:
Plaintiffs

COUNSEL OF RECORD:

ROBERT P. GING, JR., ESQUIRE
Pa. Id. No. 25459
2095 Humbert Road
Confluence, PA 15424-2371
(814) 395-3661

I hereby certify this to be a true and attested copy of the original statement filed in this case.

AUG 31 2005

Attest:

Prothonotary/
Clerk of Courts

Exhibit "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO.
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

NOTICE TO DEFEND

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MidPenn Legal Services
211 ½ E. Locust Street
Clearfield, PA 16830
(800) 326-9177

IN THE COURT OF COMMON PLEAS OF BLAIR COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO.
MORAVIAN RUN RECLAMATION CO, INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

COMPLAINT

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Complaint.

1. The Plaintiffs are adult citizens of Pennsylvania, who reside in the Commonwealth of Pennsylvania at the following addresses: Jan Lawrence and Scott Aldinger, 2178 Gleim Court, Enola, PA 17025; Chris and Mary Ilyes, 2160 Esbenshade Road, York, Pennsylvania 17404; and Jeff Cookerly, 152 Linda Drive, New Oxford, Pennsylvania 17350.

2. The Defendant, Moravian Run Reclamation Co., Inc. (hereinafter "Moravian") entered into a Memorandum of Lease with B & B Land Company of Clearfield, Pennsylvania, transferring all right, title and interest to a surface mine lease in Gulich Township, Clearfield County on October 17, 2000. The lease was for property now owned by the Plaintiffs. A copy of the lease is attached

hereto as Exhibit 1 and a copy of the Memorandum of Lease is attached as Exhibit 2.

3. At all times material hereto Johnson Brothers Coal Company (hereinafter "Johnson Brothers"), R.R. 1, Box 586, Mahaffey, Pennsylvania 15757 was the permittee and contract strip mine operator for Moravian which conducted mining operations pursuant to Permit No. 17970119 on the property owned by the Plaintiffs in Gulich Township, Clearfield County.

4. On February 27, 2002 Plaintiffs were the purchasers of a piece of property located in Beccari and Gulich Townships, Clearfield County, Pennsylvania as more fully set forth in the Deed attached hereto as Exhibit 3, being Instrument No. 200203112 dated February 27, 2002.

5. Subsequent to acquiring the property the Plaintiffs began building a cabin on the property in March of 2002. On August 23, 2002 Plaintiffs returned to the property from their primary residences which were not in Clearfield County to find that the property was being surface mined by Johnson Brothers Coal Company. – mining started by this date

6. In October, 2002 a representative of Johnson Brothers Coal Company provided a copy of the lease to the Plaintiffs for the first time. – Never Saw Lease

7. Mining was conducted on the property, without notice to the Plaintiffs, and the timber remaining on the property was also cut during the mining operation.

8. At no time did the Plaintiffs give permission to either of the Defendants or their predecessors or successors in interest to conduct surface mining operations on their property, nor did the Defendants make the Plaintiffs aware that they intended to conduct surface mining on their property

COUNT I - BREACH OF CONTRACT

9. The averments of Paragraphs 1 through 8 are incorporated herein by reference as if fully set forth.

10. At all times material hereto the Defendants have breached the surface mining contract as more fully set forth herein.

11. At the time of the mining conducted by the Defendants, the prior lessors did not own the surface rights of the premises.

12. Paragraph 3 of the original lease provided for a payment from the mining company to the property owners of $1.50 per net ton or 5% of the pit selling price per all merchantable and mineable coal whichever amount is greater for all coal mined and removed on the premises.

13. The Plaintiffs have made a request for payment of the royalties set forth in Paragraph 3, however the Defendants, and their successors in interest have refused and continue to refuse to make any royalty payments.

14. Paragraph 5 of the lease requires that the Defendants maintain certified truck scale weights for all coal mined and removed from the premises. The Plaintiffs have requested truck scale weights and other records through the Defendants or their successors in interest, however the Defendants and their successors in interest have refused and continue to refuse to comply with that provision of the original lease.

15. The original lease provided that lessors, their successors in interest would have access to the operation and scale records. Plaintiffs, or the current property owners have requested on numerous occasions that such records be provided, however the Defendants and their successors in interest have refused and continue to refuse to comply with the provision of the lease.

16. Paragraph 9 of the lease requires that prior to mining any paperwood or saw timber remaining on the leased premises would be cut and removed, and payment made to the Plaintiffs, as, successors in interest to the original lessors, pursuant to that paragraph. No such payments were made, nor was the timber on the property cut and removed by reliable people subject to the approval of the lessors. Defendants gave no notice to the Plaintiffs that they intended to mine Plaintiffs' property.

17. The lessee also failed to refrain from destroying pulpwood and saw timber in the progress of its mining operations and has failed to replant the premises in accordance wit the lease and its permits.

18. Paragraph 11 requires that lessee supply to lessors monthly tonnage reports, which the Defendants and their successors in interest have refused and continue to refuse to do.

19. Paragraph 6 of the lease required that lessee conduct all mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. The Defendants and their successors in interest failed to conduct mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry, have failed to adequately reclaim and re-vegetate the site, to implement sedimentation and erosion controls, and to assure that there was no mine drainage emanating from the mined area.

WHEREFORE Plaintiffs demand judgment in an amount in excess of arbitration limits of the Court of Common Pleas of Clearfield County.

COUNT II - TRESPASS

20. The averments of paragraphs 1 through 19 are incorporated herein by reference as if fully set forth.

21. At the time that mining was commenced the original lease agreement had expired, and the Memorandum of Lease, purportedly commencing June 2, 2000, occurred after the expiration of the original lease agreement.

22. No mining occurred prior to the expiration of the original coal lease.

23. In the alternative, if the lease was not in full force and affect at the time the mining was conducted, the Defendants, and their successors in interest and/or contractors converted timber present on the property to their own use, and converted the coal on the property to their own use and trespassed on Plaintiffs' property without Plaintiffs' consent and without the benefit of a lease.

WHEREFORE, Plaintiffs respectfully request judgment in excess of the arbitration limits of the Court of Common Pleas of Clearfield County.

Respectfully submitted,

Robert P. Ging, Jr., Esquire

EXHIBIT 1

Original Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 15th day of April, 1995 by and between R. Wesley Smith and Samantha Smith, his wife of R.D. 2, Box 39, Reynoldsville, Pennsylvania 15851 and Raymond A. Smith and Shirley B. Smith, his wife of R.D. 1, Box 211-A, Reynoldsville, Pennsylvania 15851, party of the first part, hereinafter referred to as "LESSORS";

A N D

B & B LAND COMPANY, of Clearfield, Pennsylvania, party of the second part, hereinafter referred to as "LESSEE".

W I T N E S S E T H:

THE LEASE

1. That for and in consideration of the sum of One Dollar ($1.00) paid by the LESSEE to the LESSORS, the receipt whereof is hereby acknowledged, the LESSORS do hereby let, lease and demise unto the LESSEE, its succesors and assigns, the right with such terms, covenants and conditions as hereinafter set forth, to mine and remove all the mineable and merchantable coal in, under and upon that certain tract in the Township of Beccaria and in the Township of Gulich title to which is vested in the LESSORS which tract of land is Parcel #1 - 290 acres in Gulich Township under Ray and Wesley Smith which is shown on Tax Map No. 118-K7-9 and Parcel #2 - 200 acres in Beccaria Township under Ray and Wesley Smith, which is shown on Tax Map No. 101-K17-8. Also, 110.56

110.56 acres in Beccaria Township under William O'Shall, Tax Map No. 101-K17-1.

The LESSORS covenant that they own either the coal or the surface (right of surface support) of the described premises, and do hereby grant and convey the full and complete rights for the mining and removing of the coal in, under and upon the above described premises by all modern mining methods, including but not limited to surface stripping, with the right of ingress, egress and regress, into, upon the under said lands for the purpose of examining, testing, mining, stripping and removing said coal, together with the right to locate and erect such chutes, tipples, buildings, pipe lines, pole lines and other structures as may be necessary for the use and working of mines or strippings, and with the right to deposit spoil therefrom upon the surface with the right to redeposit the same, and with all rights and privileges necessary and convenient in mining, digging, stripping, removing and transporting said coal without liability for any and all damage done to said lands or buildings or the water therein or thereon, caused by the mining, stripping and removal of all said coal, or the exercise of any or all of the mining rights aforesaid.

LESSORS hereby lease unto the LESSEE the right of ingress, egress and regress in and to the leased premises any time within five (5) years after the termination of this lease for the purpose of backfilling or planting trees or otherwise complying with the mining laws of the Commonwealth of Pennsylvania. But this right of re-entry for a period of five (5) years is for the

purpose alone and shall vest in LESSEE no rights whatsoever in the coal, in the mining of coal, or in the property. In addition, LESSORS agree to execute the required written consents on the form furnished by the Commonwealth of Pennsylvania concerning re-entry for backfilling, planting, reclamation and inspection.

2. Term and Effective Date: This lease shall become effective as of the 15th day of April, 1995, by the LESSEE and shall continue for a period of four (4) years with automatic extensions of one (1) year terms from year to year to exhaustion of the coal provided the premises are being actively mined at the end of the original term and each yearly extention thereof. Active mining shall be defined to mean mining operations upon the premises on a regular five (5) days per week.

3. Tonnage Royalty: LESSEE shall pay to LESSORS royalty at the rate of One Dollar and Fifty Cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton for all merchantable and mineable coal, whichever amount is greater, for all coal mined and removed from the premises. All payments of royalty shall be made on or before the 25th day of each calendar month for all coal mined and removed in the preceding calendar month and shall be accompanied by a statement showing the tonnage mined and royalty due. All payments are to be made to the LESSORS without demand or to any other party or parties LESSORS in writing designate as an agent for receiving payments.

All payments of royalty as herein provided are based on either one hundred percent (100%) ownership of surface (right of

surface support) coal or both surface and coal. In the event LESSORS should own less than one hundred percent (100%) of said surface and/or coal rights said sums shall be adjusted in accordance with the percentage of ownership.

4. Minimum Royalty: LESSEE shall pay to LESSORS the sum of Two Hundred Dollars ($200.00) per month as a minimum royalty for each month that the within lease is in full force and effect. All payments of minimum royalty shall be recoupable by the LESSEE as a credit against tonnage royalty from production as herein provided.

5. Tonnage Measurements: Royalty and other payments shall be based on certified truck scale weights or railroad weights, and all coal mined and removed from the premises shall be weighed on such scales. LESSEE hereby authorizes LESSORS or its agent, to examine any and all of the LESSEE'S records and to examine the records of any truck scale weights or railroad weights concerning the coal which was hauled or shipped from the described premises and the right to make copies of his findings.

6. Mining Methods: LESSEE agrees that all mining operations shall be conducted in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that LESSORS (at its own risk) shall have access to the operation and scale records of LESSEE at all times in person or by duly authorized agent.

7. Taxes: All taxes upon the premises herein demised shall be paid by LESSORS, and all taxes that may be levied, imposed, charged or assessed upon improvements, equipment, or

mining machine placed upon the demised premises by LESSEE for the mining, removing, processing or transportation of the coal shall be paid by LESSEE. Should any federal, state or local subdivision impose any tax upon the mining of coal, the coal mined, or otherwise, said taxes shall be paid by LESSEE.

8. Insurance: LESSEE agrees to keep in force during the term of this lease general liability insurance with a reputable insurance company in the sum of at least One Million Dollars. Upon request LESSEE shall furnish to LESSORS a certificate of said insurance which shall name LESSORS as an additional insured.

9. Timber Removal: If on investigation it appears that there is any appreciable quantity of paper wood or saw timber remaining on the leased premises, the LESSEE will at the request of the LESSORS arrange for the cutting and removal of such paper wood and saw timber by reliable people, subject to the approval of the LESSORS, and will supervise the cutting of such timber and pulpwood, arranging for monthly remittances to the LESSORS at the same time that royalties hereunder are due. The LESSEE shall refrain from destroying pulpwood or saw timber in the progress of its strip mining operations, if these is reasonable opportunity to arrange to have such timber cut off in advance of such operations.

10. Books and Records: LESSEE shall and will keep complete and accurate books of account, showing the amount of coal produced from the said property, and at the time for payment of the monthly royalties hereinbefore mentioned, shall furnish accurate statements of all coal mined and produced during the

preceding calendar month; shall and will keep all mining maps, books, plans and records necessary in operating said leased coal; and shall and will furnish LESSORS, or its duly authorized agent or employee, at any reasonable time, upon request, access to all books of account, records, weigh sheets, maps and plans and will also give LESSORS, or its duly authorized agent or employee, at reasonable request, access to any and all portions of the said leased premises and to the operations in connection with the same.

11. LESSEE agrees to supply to LESSORS, at the first of each month, tonnage on the number of trucks loaded with coal for the previous month.

12. Default in Royalties and Breach of Term: It is understood and agreed that in the event the LESSEE should default in any payment provided for herein when said payments become due, or should LESSEE be in default in any other respect and continue in such default for a period of thirty (30) days after being notified in writing of such default by LESSORS, then, in either event, at the option of the LESSORS, this Lease shall cease and terminate and LESSEE hereby authorizes any attorney of any court of record to appear for it and in its name to confess a judgment against it in an amicable action of ejectment to the end that a writ of habere facias possession may issue forthwith for the delivery of possession to LESSORS together with clause of fieri facias for royalties in arrears and costs.

13. Supplemental "C": LESSORS hereby agrees to execute, acknowledge and deliver to LESSEE within ten (10) days after the

exercise of the within option in quadruplicate the form know as Supplemental "C" required by the Department of Environmental Resources (DER) of the Commonwealth of Pennsylvania and thereafter any other forms required in order to secure the permits necessary for mining operations.

14. Force Majeure: LESSEE shall not be deemed in default for failure to perform any of its obligations under this Agreement during periods in which performance is partially or wholly prevented by any cause, condition or matter beyond LESSEE'S control, such as, and not by way of limitation, strikes, riots, accidents, governmental laws, lack of satisfactory markets for coal from the leased premises and acts of God.

15. No Assignment or Transfer: LESSEE agrees not to mortgage or encumber the leased premises with liens of any kind, or sell, or assign, or setover or sublet the whole or any part of the herein leased premises, or subcontract for the mining thereof, without the express written consent of the LESSOR first had and obtained, which, shall not be unreasonably withheld. It is further agreed and provided that any lawful levy and sale on execution or other legal processes, as well as any assignments or sale in bankruptcy, voluntary or involuntary proceedings, or any receivership created, shall be deemed and taken to be an assignment or subletting within the meaning of this lease agreement, and at the option the LESSORS shall work an immediate forfeiture, without notice, and thereupon possession may be immediately taken by the LESSORS without further formality.

It is understood, however, that anything to the contrary in the foregoing paragraph notwithstanding, LESSEE shall have the right to assign the within lease to LESSEE'S mining company, Penn-Grampian Coal Company or to Al Hamilton Contracting Company or any of its assigns.

16. Memorandum of Lease: Upon exercise of the within option by LESSEE, LESSORS agrees to execute, acknowledge and deliver to LESSEE a "memorandum of Lease" suitable for recording, which Memorandum retains the privacy of this document but gives public notice of the fact that the within lease has been executed. Said Memorandum shall contain a description of the property, the purpose of the lease, the length of the term and the fact that it incorporates the within lease by reference thereto. LESSEE agrees to prepare said Memorandum and deliver it to LESSORS and LESSORS agrees to execute, acknowledge and deliver to LESSEE the said Memorandum within ten (10) days of the receipt thereof.

17. Cancellation: The LESSEE shall have the right to cancel this Agreement at any time upon giving thirty (30) days written notice to the LESSORS, whereupon all accrued royalties including paid past minimum royalties shall be due and payable.

18. Notices: A written notice addressed to B & B Land Company, P.O. Box 249, Clearfield, Pennsylvania, 16830, and sent by certified mail, shall be deemed received by the LESSEE as of one day after the date of mailing. A written notice addressed to Raymond A. Smith, R.D. 1, Box 211-A, Reynoldsville, Pennsylvania

15851 and sent by certified mail shall be deemed received by the LESSORS as of one day after the date of mailing.

19. Water monitoring shall begin within ninety (90) days of the signing of the Agreement.

20. Anything to the contrary herein notwithstanding, mining shall commence within six (6) months after all required permits have been approved by D.E.R., otherwise the within lease shall terminate upon the expiration of thirty (30) days written notice by LESSORS to LESSEE should LESSEE fail to commence mining within said thirty (30) days.

21. This lease agreement is binding on the parties hereto, their heirs, executors, administrators, successors and assigns.

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

ATTEST:

Denise A. McGregor

LESSORS:

R. Wesley Smith

Samantha L. Smith

Raymonda Smith

Shirley E. Smith

ATTEST:

LESSEES:
B & B LAND COMPANY
By

Partner

Partner

Lease Amendment

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT made this 2nd day of June, 2000, by and between R. WESLEY SMITH and SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, Pennsylvania 15851 and RAYMOND A. SMITH and SHIRLEY B. SMITH, his wife, of R R 1 Box 211A, Reynoldsville, Pennsylvania 15851, Party of the First Part, hereinafter referred to as "LESSORS";

AND

B & B LAND COMPANY of Clearfield, Pennsylvania, Party of the Second Part, hereinafter referred to as "LESSEE".

WHEREAS, the Lessors and Lessee have entered into a Lease Agreement dated April 15, 1995, and the Lessee has obtained certain mining permits on a portion of the premises set forth in said Lease in the Townships of Beccaria and Gulich in Clearfield County, Pennsylvania, more fully set forth in said Lease and the Lessors are desirous of granting additional time to Lessee.

WITNESSETH:

That the parties hereto agree to continue said lease for another three (3) years from the original term and Lessors do not require Lessee to pay any additional advance royalty and Lessee agrees to release from said Lease all premises not currently under permit including, but not limited to, all the premises lying South of T-534 and West of Muddy Run.

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

WITNESS:

Denise A. McGraner as to all — R. Wesley Smith (SEAL)
R. Wesley Smith

_____ — Samantha L. Smith (SEAL)
Samantha L. Smith

_____ — Raymond A. Smith (SEAL)
Raymond A. Smith

_____ — Shirley B. Smith (SEAL)
Shirley B. Smith

EXHIBIT 2

MEMORANDUM OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that R. WESLEY SMITH & SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, PA 15851; and RAYMOND A. SMITH & SHIRLEY B. SMITH, his wife, of R. R. #1, Box 211A, Reynoldsville, PA 15851; LESSORS, have by Agreement dated April 15th, 1995, and amended June 2nd, 2000; leased to B & B LAND COMPANY of Clearfield, (PO Box 247) PA 16830; LESSEE, and subsequently transferred to MORAVIAN RUN RECLAMATION COMPANY, INC., for the purpose of strip mining all the coal upon certain premises located in Gulich Township, Clearfield County, Pennsylvania as shown on the attached map.

The date of commencement of amended Agreement is June 2nd, 2000. The term of amended Agreement and transfer is three (3) years.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 17th day of October, 2000.

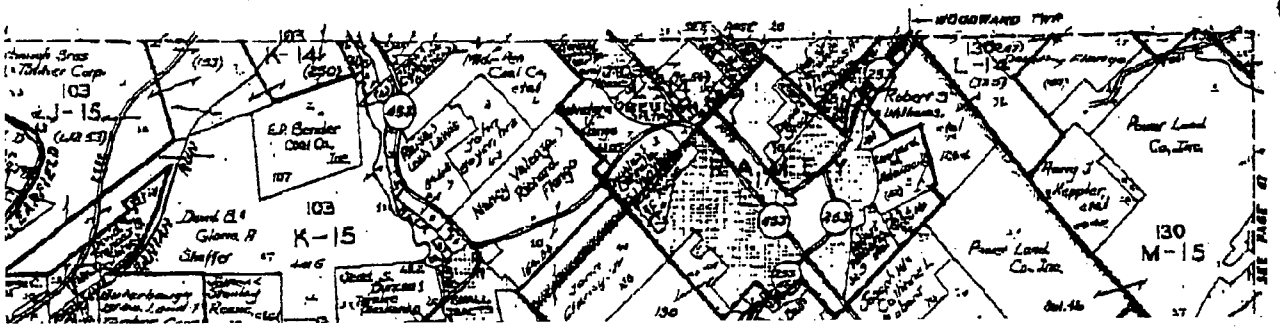
WITNESS:

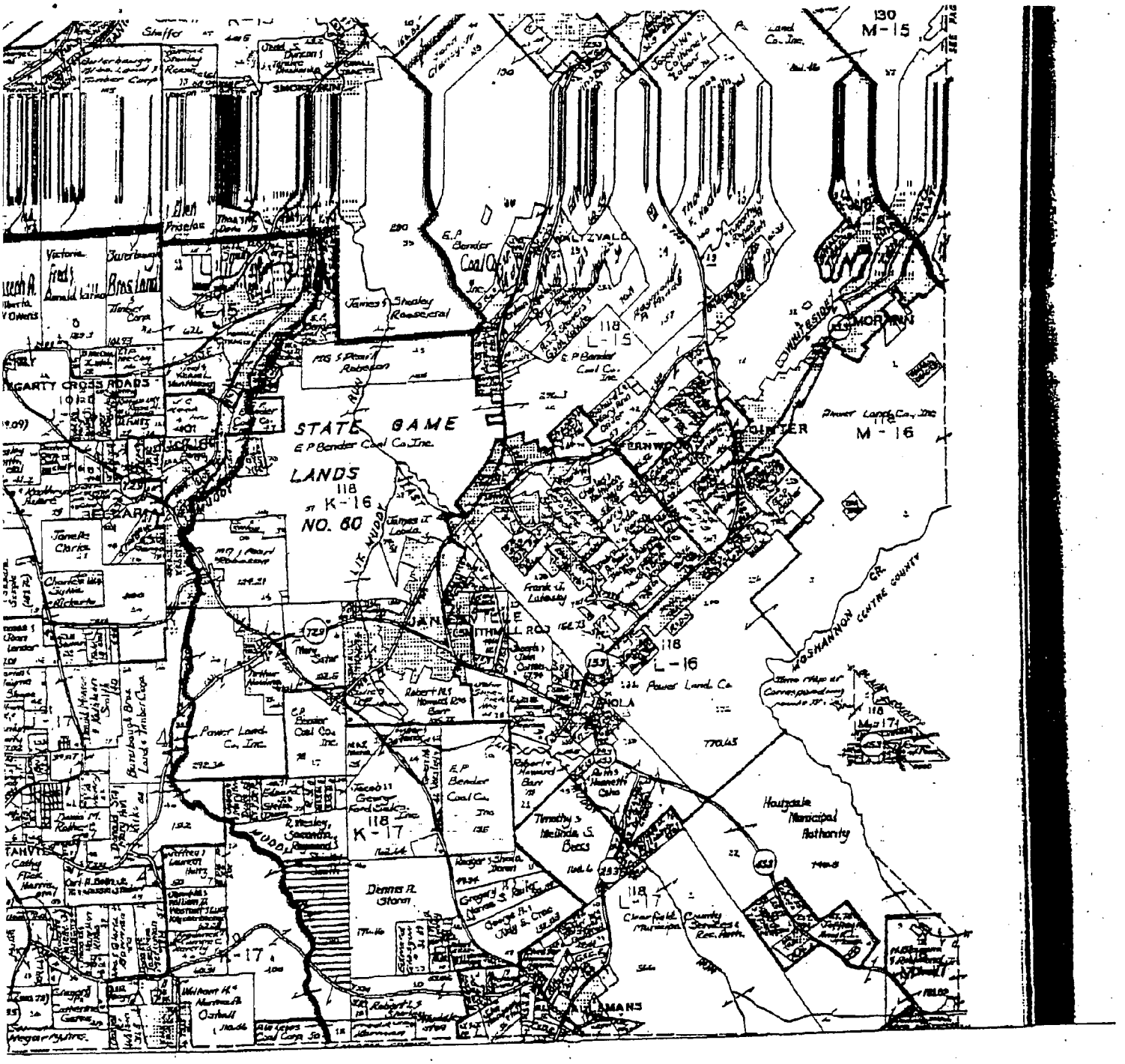
Denise A McGraw — R. Wesley Smith (SEAL)
R. Wesley Smith

Denise A McGraw — Samantha L. Smith (SEAL)
Samantha L. Smith

Denise A McGraw — Raymond A. Smith (SEAL)
Raymond A. Smith

Denise A McGraw — Shirley B. Smith (SEAL)
Shirley B. Smith





STATE OF PENNSYLVANIA:

: SS

COUNTY OF Jefferson :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 19th day of October, 2000, before me, the undersigned officer, personally appeared WILLIAM T. THORP, Partner, B & B LAND COMPANY, who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

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

Ronald O. Thorp
Notary Public

NOTARIAL SEAL
RONALD O. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 23rd day of Oct, 2000, before me, the undersigned officer, personally appeared DAVID M. CURULLA, President, MORAVIAN RUN RECLAMATION COMPANY, INC., who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he, as President of MORAVIAN RUN RECLAMATION COMPANY, INC., executed the same for the purpose therein

STATE OF PENNSYLVANIA:
: SS
COUNTY OF Jefferson :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and

L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A. McGranor
Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2003
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA:
: SS
COUNTY OF JEFFERSON :

[illegible] 2000 before me, the

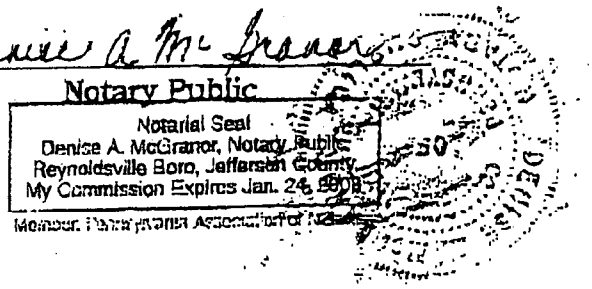
STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

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undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A. McGranor
Notary Public



STATE OF PENNSYLVANIA:
: SS
COUNTY OF JEFFERSON :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared RAYMOND A. SMITH and SHIRLEY B. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A. McGranor
Notary Public

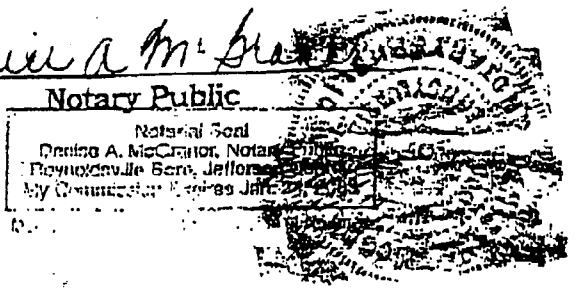


EXHIBIT 3

THIS DEED,

MADE THE 27th day of February, in the year two thousand two (2002),

BETWEEN CHARLES M. COLONY, DOROTHY I. COLONY and ERIC E. EMINHIZER, trading and doing business as FERGUSON VALLEY HARDWOODS, with its principal place of business at 501 Electric Avenue, Lewistown, Mifflin County, Pennsylvania, Grantor

AND

CHRISTOPHER SCOTT ILYES and MARY GALLAGHER ILYES, his wife, of 404 Debbi Ct., Hanover, PA 17331; JAY SCOTT ALDINGER and JANET LOUISE LAWRENCE/ALDINGER, his wife, of 2178 Gleim Ct., Enola, PA 17025; JEFFREY THOMAS COOKERLY and JENNIFER RENEE COOKERLY, his wife, of 405 Debbi Ct., Hanover, PA 17331; SCOTT WILLIAM MILLER and MICHELLE LYNN MILLER, his wife, of 813 Market St., Mt. Wolf, PA 17347, Grantees

WITNESS, that in consideration of Fifty Five Thousand ($55,000.00) Dollars, in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantees,

ALL THAT CERTAIN piece, parcel or tract of land situate in the Townships of Becarria and Gulich, County of Clearfield and State of Pennsylvania, bounded and described on Schedule "A" attached.

SUBJECT, HOWEVER, to all exceptions, reservations, restrictions, leases, interests, covenants, agreements, rights-of-way and easements contained in, and/or conveyed and/or granted by, prior instruments of writing of record in the chain of title, insofar as they may still be in force and effect; all easements apparent on the premises; municipal zoning ordinances; building codes; laws, ordinances or governmental regulations relating to sewage disposal; and, all laws, ordinances and regulations relating to subdivisions.

TOGETHER WITH the appurtenances.

BEING the premises which Ferguson Valley Hardwoods, became seized by deed of R. Wesley Smith and Samantha L. Smith, his wife; Raymond A. Smith and Shirley B. Smith, his wife, dated December 22, 2000, and recorded in the Recorder's Office of Clearfield County, Pennsylvania, at Instrument Number 200100027.

SCHEDULE A

ALL THAT CERTAIN 100.8645 acres tract of land located in Gulich Township and Beccaria Township, Clearfield County, Pennsylvania, which is shown as Lot 6 of a two sheet Plan of Subdivision of Ferguson Valley Hardwoods, prepared for Ferguson Valley Hardwoods by Colony & Company Surveying & Engineering, dated January 9, 2001, said Plan of Subdivision recorded in Instrument No. 2001 07907 to Map File No. 2317 Clearfield County Records, said tract of land being more fully bounded and described as follows:

BEGINNING at a set rebar in line of Lot 1 of said Plan of Subdivision at corner of Lot 2 of said Plan of Subdivision, said set rebar lying S 86° 37' 28" W 632.88' from a found square concrete monument at common corner of Lot 1, lands of Jacob George Ford Sales, Inc. and lands of John Dominicus; thence by Lot 2 S 01° 54' 41" W passing through a set rebar at 3668.58' a total distance of 3703.58' to a point in line of Lot 3 of said Plan of Subdivision, said point being in centerline of T-534 (Wippers Road), a 33' right-of-way leading from SR 2001 (Beaver Dam Road) to T-535 (Dakota Ridge Road); thence by Lot 3 and Lot 4 of said Plan of Subdivision and along centerline of T-534 (Wippers Road) the following 22 courses: 1) N 39° 08' 03" W 112.82'; 2) by a curve to the left with a Long Chord of N 41° 48' 34" W 189.03', a Radius of 2025.00', and an Intersection Angle of 05° 21' 01" a total distance of 189.10'; 3) N 44° 29' 05" W 71.03'; 4) by a curve to the left with a Long Chord of N 46° 47' 43" W 104.82', a Radius of 1300.00', and an Intersection Angle of 04° 37' 16" a total distance of 104.85'; 5) N 49° 06' 20" W 265.61'; 6) by a curve to the right with a Long Chord of N 37° 56' 09" W 120.10', a Radius of 310.00', and an Intersection Angle of 22° 20' 22" a total distance of 120.87'; 7) N 26° 45' 58" W 53.51'; 8) by a curve to the left with a Long Chord of N 39° 02' 37" W 141.20', a Radius of 332.00', and an Intersection Angle of 24° 33' 19" a total distance of 142.28'; 9) N 51° 19' 17" W 63.10'; 10) by a curve to the right with a Long Chord N 39° 12' 23" W 111.65', a Radius of 266.00', and an Intersection Angle of 24° 13' 48" a total distance of 112.49'; 11) N 27° 05' 29" W 54.77'; 12) by a curve to the left with a Long Chord of N 47° 23' 23" W 150.56', a Radius of 217.00', and an Intersection Angle of 40° 35' 49" a total distance of 153.76'; 13) N 67° 41' 18" W 120.55'; 14) by a curve to the right with a Long Chord of N 67° 03' 45" W 59.43', a Radius of 2720.00', and an Intersection Angle of 01° 15' 07" a total distance of 59.43' to a point at the intersection of the centerline of T-534 (Wippers Road) with the centerline of Muddy Run, said point being a common corner of Lot 3 and Lot 4 of said Plan of Subdivision, said point also marking the boundary line between Gulich Township and Beccaria Township; 15) thence by Lot 4, entering Beccaria Township and along centerline of T-534 and by a curve to the right with a Long Chord of N 65° 44' 48" W 65.50', a Radius of 2720.00', and an Intersection Angle of 01° 22' 47" a total distance of 65.50'; 16) N 65° 03' 24" W 137.22'; 17) by a curve to the right with a Long Chord of N 53° 35' 13" W 212.77', a Radius of 535.00', and an Intersection Angle of 22° 56' 21" a total distance of 214.20'; 18) N 42° 07' 03" W 106.40'; 19) by a curve to the right with a Long Chord of N 34° 49' 57" W 131.88', a Radius of 520.00', and an Intersection Angle of 14° 34' 12" a total

distance of 132.23'; 20) N 27° 32' 50" W 75.19'; 21) by a curve to the left with a Long Chord of N 29° 27' 32" W 66.05', a Radius of 990.00', and an Intersection Angle of 03° 49' 24" a total distance of 66.06'; 22) N 31° 22' 15" W 93.58' to a point in said centerline of T-534, being a corner of Lot 5 of said Plan of Subdivision; thence departing centerline of T-534 and by Lot 5 N 31° 31' 28" E passing through a set rebar at 50.00' and at 1180.00' a total distance of 1201.69' to a point in centerline of Muddy Run marking the boundary of Gulich Township and Beccaria Township; thence along centerline of Muddy Run and by Lot 5 the following 11 courses: 1) S 86° 14' 17" W 100.07'; 2) N 03° 10' 11" W 22.61'; 3) N 30° 58' 44" E 63.72'; 4) N 03° 07' 26" W 90.52'; 5) N 51° 07' 33" W 149.94'; 6) N 28° 40' 26" W 208.11'; 7) N 03° 49' 13" E 48.49'; 8) N 48° 32' 31" E 169.68'; 9) N 07° 39' 17" W 66.20'; 10) N 21° 04' 43" W 167.19'; 11) N 56° 45' 22" W 75.93' to a point in centerline of Muddy Run and in line of Lot 1 of said Plan of Subdivision, said point lying N 86° 37' 28" E 26.42' from a set rebar in common line of Lot 1 and Lot 5; thence departing the centerline of Muddy Run and by Lot 1 entering Gulich Township N 86° 37' 28" E 1540.70' to a set rebar, being the POINT OF BEGINNING.

CONTAINING: 100.8645 Acres.

TOGETHER WITH and SUBJECT TO a 100' Right-of-Way centered on the centerline of T-534 (Wippers Road) for placement of utilities as noted on aforesaid Plan of Subdivision.

CERTIFICATE OF RESIDENCE

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

2178 Gleim Court; Enola, PA 17025

Attorney for Grantee

COMMONWEALTH OF PENNSYLVANIA

ss:

COUNTY OF MIFFLIN

On this, the 22nd day of February, 2002, before me, the undersigned officer, personally appeared CHARLES M. COLONY, DOROTHY I. COLONY and ERIC E. EMINHIZER, individually and as partners of FERGUSON VALLEY HARDWOODS, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

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

Notarial Seal
Sharon F. Morris, Notary Public
Derry Twp., Mifflin County
My Commission Expires Apr. 9, 2005
Member, Pennsylvania Association of Notaries

Notary Public

RECORDED in the Office for Recording of Deeds, etc., in and for said County, in Record Book _____, Page _____.

WITNESS my hand and official seal this _____ day of _____, 200__.

Recorder of Deeds

NOTICE – Grantee (hereinafter, whether one or more, called "Grantee") hereby agrees that he may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal.

x Debby Thomas Cooley
x Christoph Scott Illy
x Mary Gallagher Illy POA
x Jennifer Renee Cooley
x Janet Lawrence Aldrich
x Gary Scott Aldrich POA
x Michelle Lynn Miller
x Scott William Miller

NOTE – THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACEOF THE LAND AND ANY HOUSE, BUILDING OR OTHER SUTRCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT R MODIVFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.]

REN L. STARCK
TER AND RECORDER
ARFIELD COUNTY
ennsylvania

ISTRUMENT NUMBER
200203112
RECORDED ON
27, 2002
12:40 PM
Total Pages: 6

DING FEES - $21.00
DER
/ IMPROVEMENT $1.00
DER
/EMENT FUND $1.00
TRANSFER $550.00
WRIT TAX $0.50
RIA TOWNSHIP $137.50
H TOWNSHIP $137.50
OLE SCHOOL $137.50
ICT
NNON VALLEY $137.50
S
$1,123.50
CUSTOMER
SON, DAVID

AND the said Grantor will **SPECIALLY WARRANT** the property hereby conveyed.

GRANTOR certifies that no hazardous waste, within the meaning of the Solid Waste Management Act of 1980, is presently being disposed of or has ever been disposed of by the Grantor or to the Grantor's actual knowledge in or upon the premises above described.

IN WITNESS WHEREOF, the said Grantor has hereunto set its hand and seal, the day and year first above-written.

Sealed and delivered in the presence of

Sharon Moore

Chas M. Colony

CHARLES M. COLONY, individually and as a partner of Ferguson Valley Hardwoods

Sharon Moore

Dorothy I. Colony

DOROTHY I. COLONY, individually and as a partner of Ferguson Valley Hardwoods

Sharon Moore

E E E

ERIC E. EMINHIZER, individually and as a partner of Ferguson Valley Hardwoods

UNIFORM CLEARFIELD COUNTY BAR ASSOCIATION CERTIFICATE OF TITLE

TO: Christopher Scott Ilyes and Mary Gallagher Ilyes; Jay Scott Aldinger and Janet Louise Lawrence/Aldinger; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly; Scott William Miller and Michelle Lynn Miller

CERTIFICATION

The undersigned does hereby certify the record title of Christopher Scott Ilyes and Mary Gallagher Ilyes, his wife; Jay Scott Aldinger and Janet Louise Lawrence/Aldinger, his wife; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly, his wife; Scott William Miller and Michelle Lynn Miller, his wife, whose property is located in Becarria and Gulich Townships, Clearfield County and recorded to Instrument Number 200203112, to be good and marketable and free and clear of all liens and encumbrances of record which would be disclosed by a search of the indices of the records of the Court House, at Clearfield, Pennsylvania, with any exceptions hereinafter noted, covering the period from fifty (50) years ago to this date.

EXCEPTIONS

1st Lien Mortgage to The Juniata Valley Bank in the original principal amount of $80,000.00 dated February 27, 2002 and recorded in Clearfield County to Instrument Number 200203113 on February 27, 2002.

This certificate embraces the following:

Miscellaneous agreements, grants, releases, easements, mechanic's liens, municipal liens, mortgages, liens of record, taxes are entered or recorded in any of the offices of the said Court House, but does not embrace liens or other matters not entered of record in the indices of said offices.

This certificate covers only matters disclosed by the indices of the Court House records of Clearfield County, Pennsylvania. It specifically does not cover any deficiency int he quantity of land, improvements on the premises, violation of zoning ordinances or building restrictions, boundary line disputes, nor taxes of any nature whatsoever which have accrued and are actually owing but which have not been entered or record, nor does it cover any matters which might be disclosed by either a survey or a physical inspection of the premises. No mechanic's or municipal liens were filed of record as of the date of this certificate, but your attention is specifically directed to the possibility that the same might be filed at a future date for any building, repair or other word already commenced.

wife; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly, his wife; Scott William Miller and Michelle Lynn Miller, his wife, whose property is located in Becarria and Gulich Townships, Clearfield County and recorded to Instrument Number 200203112, to be good and marketable and free and clear of all liens and encumbrances of record which would be disclosed by a search of the indices of the records of the Court House, at Clearfield, Pennsylvania, with any exceptions hereinafter noted, covering the period from fifty (50) years ago to this date.

EXCEPTIONS

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This certificate shall insure only to the benefit of the person to whom it is addressed, and is issued subject to all rights of persons who may be in possession under lease, or title or claim of title not indexed of record.

DATED: February 27, 2002

David R. Thompson, Esquire

VERIFICATION AFFIDAVIT

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief.

I understand that statements herein are made subject to the penalties of 18 Pa. C.S., §4904, relating to unsworn falsifications to authorities.

Jan Lawrence

CONTRACT MINING AGREEMENT

This CONTRACT MINING AGREEMENT ("Agreement") is made and entered into as of the 23rd day of August, 2001, between Laurel Energy, L.P., of One Energy Place, Suite 7500, Latrobe, PA 15650-9628, (hereinafter called "Owner"), and Johnson Brothers Coal Company, Inc., R.D. #1, Box 580, Mahaffey PA 17757 (hereinafter called "Contractor.")

WHEREAS, Owner owns and has the right to surface mine certain coal-bearing properties located in Gulich Township, Clearfield County, Pennsylvania ("Premises"), as described in Pennsylvania Department of Environmental Protection (PaDEP) Mining Permit No. 17970119 ("SMP"); and,

WHEREAS, Contractor is the holder of the SMP, Tanoma Energy, Inc. ("Tanoma") has provided the collateral support for the bonds securing the SMP, and Owner has provided the engineering services required to prepare and obtain the SMP; and,

WHEREAS, Owner desires to engage Contractor to mine, by surface mining methods only, the seams of coal within the Premises, and Contractor is willing to undertake the mining of such coal upon the terms and conditions hereinafter set forth; and,

WHEREAS, Contractor is fully informed regarding mining operations in the area of the Premises, is skilled and experienced in mining coal in the manner contemplated hereby, and desires to mine such coal as an independent contractor for Owner and to deliver the same to Owner, pursuant to the terms and conditions herein set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein set out to be kept and performed by each of the parties, and intending to be legally bound hereby, the parties agree as follows:

1. Services to be Performed. Contractor shall, in accordance with the terms and conditions herein set forth and in the SMP, produce for Owner, by open pit or strip mining methods, the mineable coal located in and underlying the Premises, including the replacement of all soil, subsoils, and topsoil thereof. Contractor shall be responsible for the revegetation of the mined area after it reclaims the land to approximate original contour and shall replace all topsoil and subsoil. Contractor, at its expense, shall provide, repair, replace

Exhibit "B"

and maintain everything necessary to perform its operations hereunder, including without limitation, all tools, supplies, material and equipment and shall use recognized modern mining methods and practices, employ capable management, expend reasonable and necessary funds for proper health and safety measures, development, reclamation, drainage and pollution control and take all other actions necessary to enable it to achieve maximum recovery of mineable coal and to deliver the same to Owner as herein set forth.

1.1 Mineable Coal Defined. As used herein, the term "mineable coal" shall mean coal which, when reached in the course of Contractor's mining operations can be mined and removed by the use of modern mining machinery and prudent mining techniques and is of sufficient quality to be marketable at a reasonable profit to Owner.

1.2 Conduct of Operations. Contractor shall promptly commence and diligently prosecute its operations hereunder in a careful, skillful and workmanlike manner, in accordance with recognized modern mining methods and practices, in strict compliance with all applicable federal, state and local laws, rules, regulations, ordinances, and permits, and so as to secure the greatest possible recovery of mineable coal.

1.3 Reclamation. All reclamation activity will be completed by the end of the planting season following the removal of all mineable coal.

1.4 Thin Seams. Contractor agrees to load any seams encountered during its mining of the Premises that are 12 inches or greater in thickness.

2. Permits and Bonds. Contractor has obtained the SMP, Owner will provide the road bonding required for the mining contemplated hereby, and the Owner and Tanoma will provide the collateral support for the related permit and road bonding (together the "Bonds"). Contractor will reimburse Owner for the ongoing expenses incurred by Owner in maintaining and complying with the provisions of the Bonds.

2.1 Bond Recoupment Payment. Contractor agrees to pay Owner the sum of One Dollar and Twenty Five Cents ($1.25) ("Bond Recoupment Payment") per ton of coal shipped from the Premises. The right to receive the Bond Recoupment Payments from Contractor will be transferred and paid over by Owner to Tanoma

the purchaser of the Coal from Owner and the party that provided the collateral to support the Bonds. Tanoma shall maintain an account in which all Bond Recoupment Payments made by Contractor under this Agreement, or Bond Recoupment Payments made by Contractor under any other Contract Mining Agreement between Owner and Contractor will be recorded ("Reclamation Account"). Whenever the Reclamation Account exceeds the total amount of all of the bonds for permits issued by the PaDEP for work performed by Contractor for Owner, and for which Tanoma has provided the collateral to support the bonds ("Tanoma Bonds"), Tanoma will pay to Contractor a sum equal to the amount the balance in the Reclamation Account exceeds the Tanoma Bonds. The Bond Recoupment Payment shall not effect Contractor's obligation to completely reclaim the Premises to achieve Owner's full bond release at the conclusion of mining.

2.2 Contractor Bonds. Prior to commencing operations hereunder, Contractor, at its own expense, shall obtain and maintain in its own name, all other permits, licenses, governmental approvals and identification numbers, including but not limited to an MSHA identification number, which are necessary for such operations.

2.3 Recognized Contractor. Contractor shall execute such documents as may be necessary for Contractor's designation by DEP as the Recognized Contractor for the mining operation on the Premises.

3. Haul Road. Contractor, at its own expense, shall construct and maintain a road, satisfactory to Owner, for the transportation of coal from the Premises. Contractor shall be responsible for constructing and maintaining driveways suitable to access Township roads needed for coal hauling purposes.

4. Drainage Controls. Contractor, at its own expense, shall construct and maintain all sediment ponds, diversion ditches and other temporary and permanent structures necessary for the control of surface waste water and run-off in accordance with Contractor's mining plans, and all applicable federal, state and local laws, rules, regulations, ordinances and permits.

5. Quantity. Commencing with the date of this Agreement, Contractor shall make deliveries of raw coal to Owner at a monthly rate of Four thousand (4,000) to Six thousand (6,000) tons as directed by Owner. Contractor and Owner both recognize that monthly tonnage may vary due to changing sales opportunities. Contractor agrees to keep a monthly record for Owner of surface mine tonnage produced from each coal seam on each mining phase.

6. Sampling By Owner. Owner reserves that right to sample coal at the Premises prior to it being shipped, and to have sample(s) analyzed by an independent third party laboratory for payment purposes, which analysis shall be binding upon the parties hereto.

7. Payment For Services. Owner shall pay Contractor, on behalf of Owner, as full compensation for Contractor's work performed under this Agreement for each net ton of 2,000 lbs. of coal mined by Contractor and delivered to Owner during any calendar month, such sums as are shown on the Schedule attached hereto as Exhibit A. Owner will review on a quarterly basis the sums shown on Exhibit A to determine if market conditions require any adjustment. Any such adjustment shall be communicated in writing to Contractor at least thirty (30) days before it becomes effective. Promptly following the last day of each calendar month, Contractor shall invoice Owner for all coal mined by Contractor from the Premises during the preceding calendar month. Owner shall pay Contractor, the amount of each invoice by the 25th of the month following the month of production, provided that Contractor submits its invoice in a timely manner. Contractor agrees that the Owner may reduce any amount due to Contractor under this Agreement, at any time, by any sums owed by Contractor to Owner or to Tanoma or its affiliates.

8. Title To Coal. Owner is and shall remain the sole and exclusive owner of all coal mined by Contractor pursuant to this Agreement, and Owner shall have the sole right to sell the coal produced by the Contractor.

9. *Force Majeure*. If either party hereto is unable to perform, in whole or in part, any of its obligations under this Agreement by reason of *force majeure*, as hereinafter defined, and if such party promptly gives notice thereof to the other party, including sufficient information as to the cause and expected duration of such *force majeure* condition, then the obligations of the party giving such notice shall be suspended during the duration of such *force majeure* to the extent made necessary thereby. Any party claiming *force majeure* shall eliminate the cause of such *force majeure* with all reasonable dispatch. Any deficiencies in deliveries of coal hereunder caused by *force majeure* shall not be made up except by mutual consent of the parties hereto. The term "*Force Majeure*", as used herein, shall mean any causes beyond the reasonable control of the party affected thereby, such as acts of God, acts of the public enemy, insurrections, riots, strikes, labor disputes, fires, explosions, floods, embargoes, orders or acts of civil or military authority, governmental regulation or legislation, or other causes of a similar nature which wholly or partially prevent the mining or delivery of coal by Contractor or the receiving or marketing of the coal by Owner. "*Force Majeure*" shall not include equipment breakdowns, vacation periods, or planned shutdowns for inspection.

10. Weights. The weight of all coal mined by Contractor from the Premises shall be determined by scales located at the facility of the purchaser of the coal. Owner shall promptly furnish copies of all weigh slips or scale weights to Contractor. Unless weights are questioned by the Contractor within thirty (30) days following the date that Owner furnishes original weigh slips or scale weights, such weights shall be final and conclusive as between the parties for all purposes.

11. Inspections. Owner shall have the right, at any and all times, to enter upon, examine and survey Contractor's operations and inspect, examine all books, accounts, statements, maps and plans of Contractor for the purpose of verifying Contractor's compliance with the terms and conditions of this Agreement.

12. Independent Contractor. Contractor shall perform the work required by this Agreement without direction or control by Owner, except as may be necessary for Owner to protect its property or insure conformity with mining plans. Nothing herein shall be deemed to create a partnership between the parties hereto, to convey to either party, by operation of

law or otherwise, any interest in, right to, or ownership of, any property of the other party, or to constitute Contractor as an agent of Owner for any purpose, it being understood that Contractor is an independent contractor

13. Responsibility for Employees. Contractor, solely and exclusively, shall employ, direct, supervise, discharge and fix the compensation and working conditions and practices of its employees and shall be solely responsible for payment of their compensation. Contractor, solely and exclusively, shall be responsible for, and shall exercise complete control of its employees in all matters, disputes or grievances arising out of or in any way connected with Contractor's operations.

14. Workmen's Compensation; Black Lung Benefits. Contractor shall obtain and maintain Workmen's Compensation coverage, including coverage for occupational disease, for its employees in accordance with the laws of Pennsylvania and shall obtain and maintain insurance with Owner named as an additional insured thereon for, or otherwise guarantee to Owner's satisfaction, the payment of Federal Black Lung insurance to its employees in accordance with applicable federal laws. Contractor shall furnish written evidence of such Workmen's Compensation and Black Lung insurance coverage prior to commencing operations hereunder and thereafter shall furnish the same upon request of Owner.

15. Indemnification. Contractor shall fully indemnify and save harmless Owner and its directors, officers, partners, employees and agents, successors and assigns, from and against any and all fines, penalties or other assessments which are levied upon or assessed against Owner under any applicable federal, state or local law, rule, regulation or ordinance including without limitation the Federal Mine Safety and Health Act of 1977, the Surface Mining Control and Reclamation Act of 1977, The Clean Streams Law of Pennsylvania, and/or the Surface Mining Conservation and Reclamation Act of Pennsylvania by reason or as the result of any failure by Contractor to strictly comply with the provisions of said laws, rules, regulations and ordinances and any amendments thereto. Owner shall promptly notify Contractor of all citations, notices and orders issued and all fines, penalties or other assessments levied upon or against Owner as a result of or in any way connected with Contractor's performance or its obligations under this Agreement. Owner shall have the right to retain from payments due to Contractor hereunder sufficient funds to cover any fines,

penalties or other assessments which are or may be levied upon or assessed against Owner by reason of any citation, notice or order issued to Owner as a result of any failure of Contractor, or any of its employees or agents to strictly comply with the provisions of the aforesaid laws, rules, regulations and ordinances. Such funds may be retained by Owner until such time as a final assessment is determined. Contractor further shall indemnify and hold harmless Owner and its directors, officers, partners, employees and agents, successors and assigns from and against all claims, demands, actions, causes of action and liability of any nature whatsoever for property damage and/or for personal injury, including death resulting therefrom, caused or alleged to have been caused, directly or indirectly, by any act or omission on the part of the Contractor, or its employees and agents, or in any way connected with Contractor's performance of its obligations and/or exercise of the rights and privileges granted under this Agreement.

16. Insurance. Contractor shall obtain and maintain Comprehensive General Liability Insurance, including contractual Liability Insurance with limits of liability of not less that $1,000,000 for property damage and $1,000,000 per person/$1,000,000 per occurrence for bodily injury and with a deductible not exceeding Ten Thousand Dollars ($10,000), if obtainable, and otherwise the lowest deductible obtainable. Owner and Tanoma shall be named as an additional insured thereunder. Such insurance shall not be deemed a limitation on any liability of Contractor provided for in this Agreement but shall be additional security therefore. Prior to commencing operations hereunder, Contractor shall provide Owner with a certificate or certificates evidencing such insurance, together with written assurance of the insurance company or companies that Owner will be advised in writing not less than thirty (30) days prior to any cancellation of any such insurance.

17. Term. The initial term of this Agreement shall be a period of one (1) year, beginning on the day and year first above written, and if not sooner terminated, the term of this Agreement shall thereafter be automatically extended for successive periods of one (1) year each until terminated as hereunder set forth. Contractor shall remain responsible for all reclamation obligations after termination of this Agreement pursuant to this paragraph 17 or paragraph 18 following.

18. Remedies.

18.1. Termination For Default. In the event Contractor (a) fails to comply with any of the terms and conditions of this Agreement for a period of ten (10) days after receipt of written notice from Owner, and such failure to comply is not excused under Section 9 Force Majeure hereof, or (b) Contractor is finally adjudicated a bankrupt, files a voluntary petition in bankruptcy, or makes a general assignment for the benefit of creditors, or liquidates itself or its assets, or if a receiver is appointed on account of its insolvency, or (c) Contractor's operations result in the issuance of more than five (5) citations, notices or orders because of Contractor's failure to comply with applicable state and local laws, rules, regulations and ordinances, regardless of whether the condition giving rise to any such citation, notice or order is a force majeure under Section 9 Force Majeure, or Contractor fails to mine and deliver more than 4,000 tons for three consecutive months, Owner shall have the right to terminate this Agreement by giving notice of such termination to Contractor in writing. Subparagraph (c) above shall not be constructed to include any inspection report by the Pennsylvania Department of Environmental Protection which contains a notice of violation unless such inspection report subsequently results in the assessment or proposed assessment of a civil penalty or the issuance of an abatement order to cease operations.

18.2. Termination For Lack of Markets. Notwithstanding anything to the contrary that may be contained in the Agreement, Owner further shall have the right, upon giving Contractor not less than fifteen (15) days written notice, to terminate this Agreement if, in Owner's sole judgment, Owner is unable to sell the coal mined from the Premises.

18.3. Suspension For lack of Markets. Owner shall have the right at any and all times to suspend deliveries of coal hereunder, whenever the coal in and underlying the Premises cannot, in Owner's sole judgment, be mined, removed, sold and shipped from the Premises at reasonable profit in markets then available to Owner.

18.3 Suspension For Violations of Law. In the event Contractor's operations on the Premises are in violation of any federal, state or local law, rule, regulation, ordinance or permit for a period of forty-eight (48) consecutive hours, Owner in addition to all other rights it may have under this Agreement or at law or in equity, shall have the right to require the Contractor to suspend its operations on the Premises until such violation is corrected. Contractor shall immediately suspend its operations if so requested by Owner.

19. Surrender on Termination. Contractor agrees, upon termination or cancellation of this Agreement by either party, to transfer or surrender the SMP, as Owner shall direct.

19.1 Power of Attorney. To effectuate the rights and interests in this paragraph 19, Contractor hereby irrevocably appoints the Owner its true and lawful attorney, with power of substitution, for the Contractor and in the Contractors name, or in the Owner's name or otherwise, for its use and benefit, (i) to assign, transfer, surrender, cancel, or terminate and take any other action with respect to or otherwise deal with the SMP held by Contractor, as fully and completely as if the Owner were the permittee or licensee thereunder, and (ii) to make, execute, acknowledge, and file any documents or instruments which may be required in or to effectuate such assignment, transfer, cancellation, termination, or other action with respect to such permit.

19.2 Survival of Power of Attorney. The power of attorney granted in paragraph 19.1 shall survive termination of this Agreement and shall survive the liquidation, dissolution, death, or incapacity of the Contractor. The powers conferred on the Owner by this paragraph are solely to protect its interests and shall not impose any duties upon the Owner to exercise any such powers. Contractor agrees to execute and deliver to Owner an instrument in recordable form, as provided for in Pennsylvania law, to effectuate the purposes of this paragraph 19.

20. Depletion. It is specifically understood and agreed by Owner and Contractor that (a) all coal mined hereunder and the economic interest therein be and at all times shall remain the property of Owner, (b) no leasehold or other estate or interest in and to the coal nor any economic interest therein is hereby granted to Contractor, (c) Owner shall retain and have all rights to claim the entire depletion allowance for state or federal income tax purposes or other purposes attributable to the coal mined by Contractor hereunder, (d) Contractor shall not make any claim for any portion of such depletion allowance for state or federal income tax purposes or for any other purpose, and (e) Owner's sole right to such depletion allowance has been fully considered by Owner and Contractor in fixing the price for coal to be mined and delivered hereunder.

21. Payment of Fees. Owner shall pay the excise tax imposed by the Federal Black Lung Benefits Revenue Act, the reclamation fee imposed by the Federal Surface Mining Control and Reclamation Act of 1977, and any surface or coal royalties due which are applicable to coal mined by Contractor from the Premises.

22. Investigation of Premises. Contractor accepts the Premises hereinabove described in their existing condition and knowledge that Contractor has made an investigation to determine existing conditions, limitation of areas involved, equipment necessary to conduct and complete operations, law affecting performance hereunder, and latent dangers and dangerous conditions. OWNER MAKES NO IMPLIED OR EXPRESS WARRANTY OR REPRESENTATION CONCERNING THE EXISTENCE, QUALITY, MINEABILITY OR MERCHANTABILITY OF THE COAL SEAM(S) WITHIN THE PREMISES, AND CONTRACTOR COVENANTS AND AGREES THAT NO REPRESENTATIONS, STATEMENTS OR WARRANTIES, EXPRESS OR IMPLIED, HAVE BEEN MADE BY OR ON BEHALF OF OWNER REGARDING THE PREMISES, THEIR CONDITION, THE USE OR OCCUPATION THAT MAY BE MADE THEREOF OR THE INCOME THEREFROM. Owner shall in no event assume or be liable for any loss incurred by Contractor under this Agreement. Owner does not assume any responsibility or liability for the present or future condition of the Premises, and Owner shall not be liable to Contractor for any damage to or destruction of the Premises, or Contractor's property or the property of

any other person due to fire, flood, or any other accident or natural catastrophe which occurs on or within the Premises.

23. Assignment. This Agreement shall not be assigned in whole or in part by Contractor without the written consent of Owner, which consent may be denied by Owner in its sole judgment, and any such assignment without the prior written consent of Owner shall be void and of no force and effect. Any change in ownership of Contractor by 20% or more shall be deemed an assignment by Contractor hereunder.

24. Notices. All notices required or permitted to be given in writing under this Agreement shall be deemed given when delivered to the receiving party personally or by United States Certified Mail, Return Receipt Requested, postage prepaid, addressed as follows:

(a) To Owner:

Laurel Energy, L.P.
One Energy Place, Suite 7500
Latrobe, PA 15650-9628

(b) To Contractor:

Johnson Brothers Coal Company, Inc.
R.D. #1, Box 580
Mahaffey, PA 17757

or (c) to such other person(s) and address(es) as the parties may from time to time designate in writing.

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

26. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof unless it substantially and adversely affects the value of this Agreement to one of the parties; and in the absence of any such

substantial and adverse effect, this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

27. Entire Agreement. This Agreement constitutes the entire contract between Owner and Contractor and supersedes all other prior negotiations, undertakings, notices, memoranda and agreements, whether oral or written, with respect to the subject matter hereof.

28. Amendments. Any modification or amendment of the terms and provisions of this Agreement shall be valid and effective only if and when made in writing and duly executed on behalf of the parties hereto.

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

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

ATTEST:

LAUREL ENERGY, L.P., by
Laurel Mountain Management, Inc., its
General Partner

By _____
Michael J. Walker, Executive Vice President

ATTEST:

JOHNSON BROTHERS COAL COMPANY, INC.

By _____
Leslie Johnson, President

TANOMA ENERGY, INC. joins in the execution of the above Contract Mining Agreement between Laurel Energy, L.P. and Johnson Brothers Coal Company, Inc., for the sole purpose of acknowledging its intent to comply with the provisions of Section 2.1, to the extent they are applicable to it.

TANOMA ENERGY, INC.

By_____
Michael J. Walker, Executive Vice President

EXHIBIT A

PAYMENT FOR SERVICES

COAL SUPPLY PRICING SCHEDULE

Product: Smith #1 Crop

Quality:

Moisture:	10.00%
Ash:	16.50%
Sulfur:	.80%
BTU:	11,000

Price: $14.00 F.O.B. Mine Site

Premium/Penalty:

BTU: ± $0.25 per 100 BTU above/below 11,000 BTU, fractions pro rate on any daily analysis.

Product: Smith #1 C'

Quality:

Moisture:	6.00%
Ash:	15.00%
Sulfur:	1.00%
BTU:	12,200

Price: $20.00 F.O.B. Mine Site

Premium/Penalty:

BTU: ± $0.25 per 100 BTU above/below 12,200 BTU, fractions pro rate on any daily analysis.

*** All quality is determined by daily analysis taken by "Owner".

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100955
NO: 05-1351-CD
SERVICE # 1 OF 1
WRIT TO JOIN ADDITIONAL DEFENDANT

PLAINTIFF: JAN LAWRENCE, CHRISand MARY ILYES, JEFF COOKERLY and SCOTT ALDINER

vs.
DEFENDANT: MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY and LAUREL ENERGEY, LP, Addl. Deft.

SHERIFF RETURN

NOW, November 08, 2005, SHERIFF OF WESTMORELAND COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN WRIT TO JOIN ADDITIONAL DEFENDANT ON LAUREL ENERGEY, LP.

NOW, November 17, 2005 AT 8:54 AM SERVED THE WITHIN WRIT TO JOIN ADDITIONAL DEFENDANT ON LAUREL ENERGEY, LP, DEFENDANT. THE RETURN OF WESTMORELAND COUNTY IS HERETO **ATTACHED** AND MADE PART OF THIS RETURN. WESTMORELAND COUNTY SHERIFF SERVED A "COPY" OF THE WRIT THAT WAS SENT FOR SERVICE. STATED THEY DO NOT SERVE ORIGINALS.

FILED
013:18/3d
FEB 14 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100955
NO: 05-1351-CD
SERVICES 1
WRIT TO JOIN ADDITIONAL DEFENDANT

PLAINTIFF: JAN LAWRENCE, CHRISand MARY ILYES, JEFF COOKERLY and SCOTT ALDINER

vs.

DEFENDANT: MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY and LAUREL ENERGEY, LP, Addl. Deft.

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	NADDEO	17686	10.00
SHERIFF HAWKINS	NADDEO	17686	30.00
WESTMORELAND CO.	NADDEO	17704	36.20

Sworn to Before Me This

_____ Day of _____ 2006

_____

So Answers,

Chester A. Hawkins
Sheriff

1W955

Rx

SCAN PC
SCAN Rx

CHRIS SCHERER, SHERIFF OF WESTMORELAND COUNTY
2 NORTH MAIN STREET
GREENSBURG, PA 15601
(724) 830-3457 Fax (724) 830-3660

DATE: 11-14-05

PG _____
LAST DAY TO SERVE: 11-30-05

CASE# Clearfield County 05-1351-CD

PLAINTIFF: JAN LAWRENCE, et Al.
VS.

DEFT(S): _____

SERVE: LAUREL ENERGY, LP
(DEFT(S)/GARNISHEE)

ADDRESS: 1 ENERGY PLACE Ste 7000
LATROBE, PA 15650

- ☐ NOTICE/COMPLAINT
- ☐ SUMMONS
- ☐ REVIVAL OR SCI FA
- ☐ SEIZURE OR POSSESSION
- ☐ INTERROGATORIES
- ☐ EXECUTION, GARNISHEE
- ☐ HANDBILL
- ☐ NOTICE SALE/DEBTORS RIGHT
- ☒ OTHER Writ of Addtl Defendant
- ☐ LETTER MAILED _____

ATTY: JAMES A. NADDEO
ADDRESS: 211½ East Locust St.
P.O. Box 552 Clearfield PA 15830
PHONE: 814-765-1601

INDICATE TYPE OF SERVICE

- ☐ PERSON IN CHARGE
- ☐ CERTIFIED MAIL
- ☐ PERSONAL ONLY
- ☐ SEIZE/STORE
- ☐ DEPUTIZE
- ☐ OTHER _____
- ☐ POST

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY and RETURN that on the 17th day of November 2005, at 854 o'clock A.M./P.M. Address Above/Address Below, County of Westmoreland Pennsylvania I have served in the manner Described below:

- ☐ Defendant(s) personally served _____
- ☐ Adult in charge of Defendant's residence at time of service (name & relationship) _____
- ☒ Manager/other person authorized to accept Sam Shirley - controller
- ☐ Agent or person in charge of Defendant(s) office or usual place of business _____
- ☐ Other _____
- ☐ Property Posted _____

Defendant Not Found because: ☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other _____

- ☐ Attempts made by leaving Sheriff's Card No response _____
- ☐ Certified Mail _____ ☐ 1st Class Mail _____ ☐ Ordinary Mail/Certificate of Mailing _____

ATTEMPTS _____ / _____ / _____ / _____

DEPUTY'S REMARKS:

DEPUTY'S SIGNATURE: SHarell

Advanced monies received	West'd Sheriff's Costs	Deputized Cty Costs	TOTAL COSTS RECORDED
$ 100.00	$ 36.20	$	$ 36.20

Refund	Additional Amt Owed
$ 63.80	$

NOW: _____ 20 ____ **I, SHERIFF OF WESTMORELAND COUNTY, PA do hereby deputized the Sheriff of** _____ **County to execute this Writ and make return thereof according to law.**

Deputized Cty Ck #_____ **Advance Amt $**_____
Deputized Notary Ck $_____

_____
SHERIFF

AFFIRMED and subscribed to before me this
_____ **day of** _____ **20**_____

_____
Notary Public/Prothonotary
Prothonotary (White Copy) **Attorney (Canary Copy)**

_____ _____
Deputized Sheriff **Date**
Chris Scherer 11-17-05
Signature of Sheriff (Westmoreland Co) **Date**
Sheriff (Pink Copy) **Deputized Sheriff (Gold Copy)**

CHESTER A. HAWKINS
SHERIFF

Sheriff's Office
Clearfield County

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

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

ROBERT SNYDER
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 100955

TERM & NO. ' 05-1351-CD

JAN LAWRENCE, CHRISand MARY ILYES, JEFF COOKERLY and SCOTT ALDINER

WRIT TO JOIN ADDITIONAL DEFENDANT

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY and LAUREL ENERGEY, LP, Addl. Deft.

SERVE BY: 11/30/05

MAKE REFUND PAYABLE TO JAMES A NADDEO, ESQ.

SERVE: LAUREL ENERGEY, LP

ADDRESS: 1 ENERGY PLACE, SUITE 7000, LATROBE, PA 15650

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF WESTMORELAND COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, November 08, 2005.

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

WRIT

TO: LAUREL ENERGY, LP

You are notified that Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company, have joined you as an additional defendant in this action, which you are required to defend.

Prothonotary

By _____

DATED: October 31, 2005

FILED

FEB 14 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

PROOF OF SERVICE ON RETURN OF RULE

Filed on Behalf of this Party:

Laurel Energy, LP, Additional Defendant

Counsel of Record for this Party:

Lynn E. Bell, Esquire
Pa I.D. #38588

Davies, McFarland & Carroll, P.C.
Firm I.D. #281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED no cc
m/11:27/bl
MAR 02 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

PROOF OF SERVICE ON RETURN OF RULE

TO: WILLIAM A. SHAW, PROTHONOTARY

PLEASE TAKE NOTICE that on the 8th day of February, 2006, a Rule to file Complaint was served upon James A. Naddeo, Esquire, counsel for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company. The Rule and Return Receipt is attached.

Davies McFarland & Carroll, P.C.

By: _____

Lynn E. Bell, Esquire / LEB
Attorney for Laurel Energy, LP.,
Additional Defendant

{D0223247:1}

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

Jan Lawrence
Chris Ilyes
Mary Ilyes
Jeff Cookerly
Scott Aldinger

Vs.

Case No. 2005-01351-CD

Moravian Run Reclamation Co., Inc.
Johnson Brothers Coal Company
Defendants
and
Laurel Energy, LP
Additional Defendant

RULE TO FILE COMPLAINT

TO: Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: January 30, 2006

7001 2510 0001 4768 0961

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

CLEARFIELD PA 16830 OFFICIAL USE

Postage	$ $0.39
Certified Fee	$2.40
Return Receipt Fee (Endorsement Required)	$1.85
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$ $4.64

PITTSBURGH PA GATEWAY STA FEB 2006 USPS

Postmark Here

02/08/2006

Sent To: James A. Naddeo, Esquire
Street, Apt. No.; or PO Box No.: 207 East Market Street, PO Box 552
City, State, ZIP+4: Clearfield, PA 16830

PS Form 3800, January 2001

SENDER: *COMPLETE THIS SECTION*

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

1. Article Addressed to:

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

CLEARFIELD PA FEB 10 2006 USPS

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Delores King ☐ Agent ☐ Addressee

B. Received by (Printed Name) D. King C. Date of Delivery

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

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Transfer from service label)* 7001 2510 0001 4768 0961

PS Form 3811, August 2001 Domestic Return Receipt 102595-01-M-0381

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 28th day of Feb, 2006:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	✓
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
Lynn E. Bell, Esquire
Attorneys for Laurel Energy, LP.,
Additional Defendant

FILED

MAR 02 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	
	*	Type of Pleading:
	*	**CETIFICATE OF SERVICE**
	*	Filed on behalf of: Defendant Moravian Run Reclamation Co., Inc. and Defendant Johnson Brothers Coal Company
	*	Counsel of Record for this party:
	*	James A. Naddeo, Esquire 207 East Market Street PO Box 552 Clearfield, PA 16830 (814) 765-1601

FILED 2cc Atty Naddeo
0/3:28cm
MAR 03 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of the Notice of Intention to Enter Default on behalf of Moravian Run Reclaimation, Co. was served on the following persons and in the following manner on the 3rd day of March, 2006:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-1416

James A. Naddeo
Attorney for Defendant
Moravian Run Reclamation
Co., Inc.

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

No. 05-1351-CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendant Johnson Brothers Coal Company

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

FILED 2cc Atty Naddeo
01/3:28 cm
MAR 03 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of the Notice of Intention to Enter Default on behalf of Johnson Brothers Coal Company, Inc. was served on the following and in the following manner on the 3rd day of March, 2006:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-1416

James A. Naddeo
Attorney for Defendant
Johnson Brothers Coal
Company

FILED

MAR 03 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

ANSWER AND NEW MATTER PURSUANT TO PA R.C.P. 2252 (D) TO COMPLAINT OF ORIGINAL DEFENDANT JOHNSON BROTHERS COAL COMPANY AGAINST ADDTIOINAL DEFENDNAT LAUREL ENERGY, LP

TO: ALL PARTIES

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED ANSWER AND NEW MATTER PURSUANT TO PA R.C.P. 2252 (d) TO COMPLAINT OF ORIGINAL DEFENDANT WITHIN TWENTY (20) DAYS FROM THE SERVICE HEREOF OR JUDGMENT MAY BE ENTERED AGAINST YOU.

DAVIES, McFARLAND & CARROLL, P.C.

By: Lynn E. Bell
Lynn E. Bell, Esquire

Filed on Behalf of this Party:

Laurel Energy, LP, Additional Defendant

Counsel of Record for this Party:

Lynn E. Bell, Esquire
Pa I.D. #38588

Davies, McFarland & Carroll, P.C.
Firm I.D. #281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED NO CC
APR 21 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
Plaintiffs,	)	
vs.	)	No.: 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant	)	

ANSWER AND NEW MATTER PURSUANT TO PA R.C.P. 2252 (d) TO COMPLAINT OF ORIGINAL DEFENDANT JOHNSON BROTHERS COAL COMPANY AGAINST ADDITIONAL DEFENDANT LAUREL ENERGY, LP

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., by and through its counsel, Davies, McFarland & Carroll, P.C. who files the within Answer and New Matter Pursuant to Pa. R.C.P. 2252 (d) to Complaint of Original Defendant Johnson Brothers Coal Company against Additional Defendant Laurel Energy, L.P., stating as follows:

1. After a reasonable investigation, Additional Defendant, Laurel Energy, L.P., is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.

2. The Plaintiffs' Complaint speaks for itself and to the extent the allegations are set forth in paragraph 2 of the Complaint of Original Defendant, Johnson Brothers Coal, are supported by the Complaint filed by Lawrence, et al. then said allegations are admitted to have been made in the Lawrence, et al. Complaint. To the extent the allegations contained in paragraph 2 are inconsistent with the Lawrence, et al. Complaint, said allegations are denied.

3. Paragraph 3 is admitted that on August 23, 2001 a Contract Mining Agreement was entered into between Johnson Brothers and Laurel Energy.

4. Paragraph 4 is denied. Paragraph 8 of the Contract Mining Agreement speaks for itself. Paragraph 8 of said Agreement makes reference to coal which was mined.

5. After a reasonable investigation Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5.

6. Paragraph 6 is denied. The Contract Mining Agreement entered into on August 23, 2001 made no mention nor provided any permission for Johnson Brothers to remove pulp wood and/or saw timber from the property addressed therein.

7. The response to paragraph 6 is incorporated herein by reference in response to Paragraph 7. The Contract Mining Agreement speaks for itself with regard to

the payment of coal royalties and to whom said royalties were to be paid. It further speaks for itself regarding the removal of pulp wood and/or saw timber.

8. Paragraph 8 is denied and placed at issue in accordance with Pa. R.C.P. 1029.

9. Paragraph 9 is denied and placed at issue in accordance with Pa. R.C.P. 1029.

10. In response to the demands made by Johnson Brothers in the "Wherefore" clause of their Complaint against Laurel Energy, it is denied Johnson Brothers are entitled to any of those damages.

WHEREFORE, Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., prays this Honorable Court to enter judgment on its behalf and against Plaintiffs and to dismiss Plaintiffs' Complaint with prejudice.

NEW MATTER PURSUANT TO PA R.C.P. 2252 (d)
AGAINST ORIGINAL DEFENDANTS
(Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company)

1. Additional Defendant, Laurel Energy, L.P. denies that it is or may be liable to Moravian Run Reclamation Co., Inc. and/or Johnson Brothers Coal Company on any claim asserted against it in this action. In the alternative, Additional Defendant hereby incorporates by reference the averments of Plaintiffs' Complaint, without admission to the same, and avers that, if and in the event it is found liable, than Original Defendants, Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company, are solely liable, jointly and/or severally liable with Additional Defendant, Laurel

Energy, L.P. or liable over to Laurel Energy, L.P. for indemnification and/or contribution.

WHEREFORE, Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., prays this Honorable Court to enter judgment on its behalf and against Plaintiffs and to dismiss Plaintiffs' Complaint with prejudice.

Davies McFarland & Carroll, P.C.

By: _____

Lynn E. Bell, Esquire
Attorney for Laurel Energy, L.P.,
Additional Defendant

(108952)

VERIFICATION

I, Michael J. Walker, have read the foregoing *Answer and New Matter pursuant to Pa. R.C.P. 2252 (d) to Complaint of Original Defendant Johnson Brothers Coal Company against Additional Defendant Laurel Energy, L.P.* The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, which provide that if I make knowingly false averments, I may be subject to criminal penalties.

I am authorized to make this verification on behalf of Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., because of my position as Executive Vice President of Laurel Mountain Management, Inc., the sole general partner of Laurel Energy II, LP.

Michael J. Walker
Executive Vice President
Laurel Mountain Management, Inc., sole general partner of Laurel Energy II, LP
(successor in interest to Laurel Energy, L.P.)

Date: April 20, 2006

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 20th day of April, 2006:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	✓
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
Lynn E. Bell, Esquire
Attorneys for Laurel Energy, LP.,
Additional Defendant

FILED
APR 21 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

ANSWER TO COMPLAINT OF ORIGINAL DEFENDANT MORAVIAN RUN RECLAMATION CO., INC. AGAINST ADDTIOINAL DEFENDNAT LAUREL ENERGY, LP

Filed on Behalf of this Party:

Laurel Energy, LP, Additional Defendant

Counsel of Record for this Party:

Lynn E. Bell, Esquire
Pa I.D. #38588

Davies, McFarland & Carroll, P.C.
Firm I.D. #281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED
MAY 12 2006
0/12:00/w
William A. Shaw
Prothonotary/Clerk of Courts
NO C/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
Plaintiffs,	)	
vs.	)	No.: 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant	)	

ANSWER TO COMPLAINT OF ORIGINAL DEFENDANT MORAVIAN RUN RECLAMATION CO., INC. AGAINST ADDITIONAL DEFENDANT LAUREL ENERGY, LP

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., by and through its counsel, Davies, McFarland & Carroll, P.C. who files the within Answer to Complaint of Original Defendant Moravian Run Reclamation Co., Inc. against Additional Defendant Laurel Energy, L.P., stating as follows:

1. After a reasonable investigation, Additional Defendant, Laurel Energy, L.P., is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.

2. The Plaintiffs' Complaint speaks for itself and to the extent the allegations are set forth in paragraph 2 of the Complaint of Original Defendant, Moravian Run Reclamation Co., Inc., are supported by the Complaint filed by Lawrence, et al. then said allegations are admitted to have been made in the Lawrence, et al. Complaint. To the extent the allegations contained in paragraph 2 are inconsistent with the Lawrence, et al. Complaint, said allegations are denied.

3 After a reasonable investigation Additional Defendant is without knowledge or information to form a belief as to the truth of the allegations contained in paragraph 3.

4 With regard to the allegations contained in paragraphs 4, 5 and 6, Exhibits B and C speak for themselves and are incorporated herein by reference in response to the allegations.

5 Paragraph 7 is admitted in part and denied in part. It is admitted that Laurel Energy, L.P. entered into a Contract Mining Agreement with Johnson Brothers Coal Company.

6 Paragraphs 8-10 are denied and placed at issue in accordance with Pa. R.C.P. 1029. It is denied that Moravian Run Reclamation Co., Inc. was entitled to any indemnity or defense.

WHEREFORE, Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., prays this Honorable Court to enter judgment on its behalf and against Plaintiffs and to dismiss Plaintiffs' Complaint with prejudice.

Davies McFarland & Carroll, P.C.

By: _____

Lynn E. Bell, Esquire
Attorney for Laurel Energy, L.P.,
Additional Defendant

VERIFICATION

I, Lynn E. Bell, Esquire, have filed the foregoing Answer to Complaint of Original Defendant Moravian Run Reclamation Co., Inc. against Additional Defendant Laurel Energy, LP. on behalf of Laurel Energy, L.P. The statements therein are based upon information received from Laurel Energy, LP. and are believed to be correct to the best of its knowledge or information and belief. This attorney verification is being made pursuant to Pa. R.C.P. 1024(c).

Date: 5/11/06

Lynn E. Bell, Esquire

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 11th day of May, 2006:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	✓
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
Lynn E. Bell, Esquire
Attorneys for Laurel Energy, LP.,
Additional Defendant

FILED

MAY 12 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	Type of Pleading: **ANSWER TO NEW MATTER**
	*	Filed on behalf of: Defendant Johnson Brothers Coal Company
	*	Counsel of Record for this party:
	*	James A. Naddeo, Esquire 207 East Market Street PO Box 552 Clearfield, PA 16830 (814) 765-1601

FILED 2cc
013:21BN Atty Naddeo
JUN 07 2005
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants.	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

ANSWER TO NEW MATTER

NOW COMES the Original Defendant, Johnson Brothers Coal Company, Inc., and by their attorney, James A. Naddeo, Esquire, sets forth the following:

1. States a conclusion of law to which no answer is required. To the extent that an answer may be required said allegation is generally denied.

WHEREFORE, Original Defendants claim judgment as set forth in their Complaint against Defendant Laurel Energy.

James A. Naddeo
Attorney for Original
Defendant, Johnson Brothers
Coal Company

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared Leslie P. Johnson, who being duly sworn according to law, deposes and states that he is the owner of Johnson Brothers Coal Company and that as such officer he is authorized to execute this Affidavit and further that the facts set forth in the foregoing Answer to New Matter are true and correct to the best of his knowledge, information and belief.

Leslie P. Johnson

SWORN and SUBSCRIBED before me this 6th day of ~~April~~ June, 2006.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2007

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of the Answer To New Matter on behalf of Johnson Brothers Coal Company, Inc. was served on the following and in the following manner on the 7th day of June, 2006:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-1416

James A. Naddeo
Attorney for Defendant
Johnson Brothers Coal
Company

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

MOTION FOR CLOSE OF DISCOVERY

Filed on Behalf of this Party:

Laurel Energy, LP, Additional Defendant

Counsel of Record for this Party:

Lynn E. Bell, Esquire
Pa I.D. #38588

Lauren R. Ames, Esquire
Pa I.D. #89270

Davies, McFarland & Carroll, P.C.
Firm I.D. #281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED NO CC
APR 30 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
Plaintiffs,	)	
vs.	)	No.: 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant	)	

MOTION FOR CLOSE OF DISCOVERY

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., by and through its counsel, Davies, McFarland & Carroll, P.C. who files the within Motion for Close of Discovery, stating as follows:

1. Plaintiffs filed a Complaint in the within action on or about August 31, 2005. On October 17, 2005, original defendant Johnson Brothers Coal Company filed an Answer and New Matter. In their Complaint, Plaintiffs allege they learned in August 2002, that the original defendant Johnson Brothers Coal Co. mined and cut timber from their property without their permission.

2. Clarion County local rule 212.2(a)(2) provides that a praecipe for trial can be filed if a certificate is filed certifying that "an order of the Court has been entered limiting the discovery to a period ending more than thirty (30) days prior to the filing or the praecipe."

3. The within action has been pending since August 2005.

4. Significant information and numerous documents have been exchanged among the parties in discovery.

5. Additional Defendants now seek that this Honorable Court enter an Order directing that discovery be completed.

6. Additional Defendants seek that discovery be completed within thirty (30) days.

WHEREFORE, Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., prays this Honorable Court enter an ordering directing that all discovery shall be completed within thirty (30) days.

Davies McFarland & Carroll, P.C.

By: _____

Lynn E. Bell, Esquire
Lauren R. Ames, Esquire
Attorney for Laurel Energy, L.P.,
Additional Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 27th day of April, 2007:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
Lynn E. Bell, Esquire
Lauren R. Ames, Esquie
Attorneys for Laurel Energy, LP.,
Additional Defendant

FILED
APR 30 2007
William A. Shaw
Prothonotary/Clerk of Courts

1A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
Plaintiffs,	)	
vs.	)	No.: 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant	)	

SCHEDULING ORDER

AND NOW, to-wit, on this 1 day of May, 2007, the Defendant, Laurel Energy, L.P., having filed a Motion for Close of Discovery, it is hereby

ORDERED, ADJUDGED and DECREED that oral argument will be heard by Judge Ammerman on said motion on May 30, 2007 at 2:30 :00 AM/(PM).

BY THE COURT:

J.

FILED 1 cc
01:30 PM Atty
MAY 01 2007 Ames

William A. Shaw
Prothonotary/Clerk of Courts

{D0267007:1}

FILED

MAY 0 1 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/1/07

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

RESPONSE TO REQUESTS FOR ADMISSION

Filed on Behalf of this Party:

Laurel Energy, LP, Additional Defendant

Counsel of Record for this Party:

Lynn E. Bell, Esquire
Pa I.D. #38588

Lauren R. Ames, Esquire
Pa I.D. #89270

Davies, McFarland & Carroll, P.C.
Firm I.D. #281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED no cc
m/ 11:10/BA
MAY 14 2007
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

RESPONSE TO REQUESTS FOR ADMISSION

AND NOW, comes, Additional Defendant, Laurel Energy, L.P., by and through its attorneys, Davies, McFarland & Carroll, P.C., who files the within Response to Requests for Admission, stating as follows:

1. On or about January 10, 2003 the Plaintiffs forwarded a Notice of Default to B&B Land Company, Moravian Run Reclamation Co., Inc., Johnson Brothers Coal Company, and Penn Grampian Coal Company, and requested payment of royalties, as well as the records identified in paragraph 5 of the Smith, et al. lease.

ADMITTED _____ DENIED _____ OTHER: X

ANSWER: Defendant has made a reasonable inquiry regarding this Request for Admission and the information known and readily obtainable is insufficient to enable it to admit or deny the request.

2. A request was made of Laurel Energy, L.P. on April 7, 2003 for a verification of the amount of coal removed from the Plaintiffs' property.

ADMITTED _____ DENIED _____ OTHER: X

ANSWER: Defendant has made a reasonable inquiry regarding this Request for Admission and the information known and readily obtainable is insufficient to enable it to admit or deny the request. Laurel Energy, L.P. merged into Laurel Energy, II, L.P, successor in interest on December 9, 2005. Prior to April 7, 2003 assets of Laurel Energy, L.P. were sold.

3. A request was made of Laurel Energy, L.P. on August 10, 2004 for a review of records to determine the amount of coal mined on the Plaintiffs' property.

ADMITTED _____ DENIED _____ OTHER: X

ANSWER: Defendant has made a reasonable inquiry regarding this Request for Admission and the information known and readily obtainable is insufficient to enable it to admit or deny the request. Laurel Energy, L.P. merged into Laurel Energy, II, L.P., successor in interest on December 9, 2005. Prior to August 10, 2004 assets of Laurel Energy, L.P. were sold.

4. A request was made on November 22, 2004 of Laurel Energy, L.P. to supply to the Plaintiffs the tonnage and the number of trucks loaded with coal for each month when mining was conducted.

ADMITTED _____ DENIED _____ OTHER: X

ANSWER: Defendant has made a reasonable inquiry regarding this Request for Admission and the information known and readily obtainable is insufficient to enable it to admit or deny the request. Laurel Energy, L.P. merged into Laurel Energy, II, L.P., successor in interest on December 9, 2005. Prior to November 22, 2004 assets of Laurel Energy, L.P. were sold.

5. Laurel Energy, L.P. has never provided the Plaintiffs with the documents Plaintiffs requested from Laurel Energy, L.P.

ADMITTED _____ DENIED X OTHER: _____

ANSWER: Since the commencement of litigation, Laurel Energy, II, L.P., successor in interest to Laurel Energy, L.P. has provided Plaintiffs' counsel with documents in its possession regarding the amount of coal removed from the property and offered to pay the royalties which are outstanding.

6. Laurel Energy, L.P. has never paid any royalty to the Plaintiffs for the coal which it mined on the Plaintiffs' property.

ADMITTED X DENIED _____ OTHER: _____

ANSWER: Royalties were paid to the prior landowners and payment has been offered by Laurel Energy II, L.P. to the current landowners which has been refused.

7. Laurel Energy, L.P. is bound by the lease between Smith, et al. and B&B Land Company, as a result of an Option Agreement entered into between Moravian Run Reclamation Company and Laurel Energy, L.P. on June 15, 2001.

ADMITTED X DENIED _____ OTHER: _____

ANSWER:

8. Laurel Energy, L.P. has never paid a royalty to the Plaintiffs as the landowner.

ADMITTED X DENIED _____ OTHER: _____

ANSWER: Royalties were paid to the prior landowners and payment has been offered by Laurel Energy II, L.P. to current landowners which has been refused.

9. Laurel Energy, L.P. never provided the Plaintiffs with an opportunity to cut timber and logs on their property.

ADMITTED X DENIED _____ OTHER: _____

ANSWER: It was the understanding of Laurel Energy, L.P. that prior owners removed all timber of any value.

10. Laurel Energy, L.P. was aware as early as February 18, 2003 that it had not paid the Plaintiffs royalties for the coal removed from their property.

ADMITTED _____ DENIED _____ OTHER: X

ANSWER: It is admitted in part and denied in part. Royalties were advanced to prior landowners before coal was removed from the property.

Davies McFarland & Carroll, P.C.

By: Lynn E. Bell /DPC
Lynn E. Bell, Esquire
Attorney for Additional Defendant,
Laurel Energy, L.P.

(108952)

VERIFICATION

I, Samuel R. Shirley, have read the foregoing *Response to Request for Admissions*. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, which provide that if I make knowingly false averments, I may be subject to criminal penalties.

I am authorized to make this verification on behalf of Laurel Energy, L.P. because of my position as Controller.

Samuel R. Shirley
(Signature)
Samuel R. Shirley
(Print Name)
Controller
(Title)

Date: May 10, 2007

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 11th day of May, 2007:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: Lynn E. Bell /DR
Lynn E. Bell, Esquire
Lauren R. Ames, Esquie
Attorneys for Laurel Energy, LP.,
Additional Defendant

FILED
MAY 14 2007
William A. Shaw
Prothonotary/Clerk of Courts

CM

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
Plaintiffs,	)	
vs.	)	No.: 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant	)	

FILED
MAY 30 2007
0/11:45/wm
William A. Shaw
Prothonotary/Clerk of Courts
Cert to Atty's
Gino
Moore
&
L. Brew

ORDER OF COURT

AND NOW, to-wit this 30th day of MAY, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendant's for Close of Discovery is hereby granted. It is further ordered that all discovery shall be completed within thirty (30) days from the date of this Order.

BY THE COURT:

J.

FILED

MAY 30 2007

William A. Shaw
Prothonetary/Clerk of Courts

DATE: 5-30-07

/ You are responsible for serving all appropriate parties.

/ The Prothonotary's office has provided service to the following parties:

/ Plaintiff(s)

/ Defendant(s)

/ Plaintiff(s) Attorney

/ Defendant(s) Attorney

/ Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

NOTICE OF SERVICE OF DISCOVERY DIRECTED TO PLAINTIFFS

Filed on Behalf of this Party:

Laurel Energy, LP, Additional Defendant

Counsel of Record for this Party:

Lynn E. Bell, Esquire
Pa I.D. #38588

Lauren R. Ames, Esquire
Pa I.D. #89270

Davies, McFarland & Carroll, P.C.
Firm I.D. #281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED NoCC.
m/10:55 um
JUN 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

NOTICE OF SERVICE

TO: PROTHONOTARY

PLEASE TAKE NOTICE that on the 11th day of June 2007, Interrogatories and Request for Production of Documents Directed to Plaintiffs on behalf of Defendant, Laurel Energy, LP, was served upon Plaintiffs' counsel, Robert P. Ging, Jr., Esquire, 2095 Humbert Road, Confluence, PA 15424, and Parties of record.

Davies McFarland & Carroll, P.C.

By: _____

Lynn E. Bell, Esquire
Lauren R. Ames, Esquire
Attorneys for Laurel Energy, LP.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 11th day of June, 2007:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____

Lynn E. Bell, Esquire
Lauren R. Ames, Esquie
Attorneys for Laurel Energy, LP.,
Additional Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

NOTICE OF SERVICE

Filed on Behalf of this Party:

Laurel Energy, LP, Additional Defendant

Counsel of Record for this Party:

Lynn E. Bell, Esquire
Pa I.D. #38588

Lauren R. Ames, Esquire
Pa I.D. #89270

Davies, McFarland & Carroll, P.C.
Firm I.D. #281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED No cc.
m/ 10:50cm
JUN 22 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

NOTICE OF SERVICE

TO: PROTHONOTARY

PLEASE TAKE NOTICE that on the 20th day of June 2007, Answers to Interrogatories and Responses to Request for Production of Documents, were served upon Plaintiffs' counsel, Robert P. Ging, Jr., Esquire, 2095 Humbert Road, Confluence, PA 15424, and Parties of record.

Davies McFarland & Carroll, P.C.

By: _____

Lynn E. Bell, Esquire
Lauren R. Ames, Esquire
Attorneys for Laurel Energy, LP.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 20th day of June, 2007:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
Lynn E. Bell, Esquire
Lauren R. Ames, Esquie
Attorneys for Laurel Energy, LP.,
Additional Defendant

FILED
SEP 27 2007
11:55
William A. Shaw
Prothonotary/Clerk of Courts
No C/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

MOTION FOR STATUS/SETTLEMENT CONFERENCE

Filed on Behalf of this Party:

Additional Defendant Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P.

Counsel of Record for this Party:

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588

LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270

A. MICHAEL GIANANTONIO, ESQ.
Pa I.D. No.: 89120

DAVIES, MCFARLAND & CARROLL, P.C.
Firm I.D. No.: 281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222
Telephone No.: (412) 281-0737

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
	)	No.: 05-1351-CD
Plaintiffs,	)	
v.	)	
MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant.	)	

CERTIFICATION PURSUANT TO LR 208.2(d)

The undersigned certifies that he attempted to obtain concurrence in the Motion from opposing counsel. Attorney Ging does not concur on the presentation of the Motion. Attorney Nadeo has no objection to the Motion.

By: _____
A. Michael Gianantonio

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
Plaintiffs,	)	No.: 05-1351-CD
v.	)	
MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP,	)	
Additional Defendant.	)	

MOTION FOR STATUS/SETTLEMENT CONFERENCE

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., ("Laurel"), by its undersigned attorneys, Davies, McFarland & Carrol, P.C., and requests this Honorable Court entertain a status/settlement conference on the above matter:

1. This civil action involves a dispute concerning coal royalties, alleged timber removal and reclamation of real property.

2. On November 22, 2004, Plaintiffs issued a written demand to Laurel in the amount of $15,000 to fully resolve this matter. Attached hereto as Exhibit "A" is a true and correct copy of Plaintiffs' November 22, 2004, correspondence.

3. As reflected by Ex. A, this demand was resultant from Plaintiffs' calculation of coal royalties owed.

4. On May 11, 2006, in an effort to amicably resolve this matter, Laurel forwarded electronic records of coal shipments; these records were indicative of coal royalties owed based upon the tonnage of coal removed from Plaintiffs' property. Attached hereto as Exhibit "B" is a true and correct copy of Attorney Bell's May 11, 2006, correspondence. Included with Ex. B is a true and correct copy of said electronic records.

5. As demonstrated by Ex. B, Laurel was prepared—and remains so today—to pay the amount of $6,743.10 to fully resolve this matter.

6. On August 25, 2006, Plaintiff wrote in response to Attorney Bell's May 11, 2006, correspondence in which he requested additional information to evaluate the claim. Attached hereto as Exhibit "C" is a true and correct copy of Plaintiffs' August 25, 2006, correspondence.

7. On September 29, 2006, Attorney Bell provided the additional information requested by Plaintiffs. Attached hereto as Exhibit "D" is a true and correct copy of Attorney Bell's September 29, 2006, correspondence. Included with Ex. D is a true and correct copy of the additional records requested by Plaintiffs.

8. Since Attorney Bell's September 29, 2006, correspondence, Plaintiffs raised their demand to $67,500; Plaintiffs have not placed this demand in writing as of this date nor have they presented evidence substantiating the drastic increase in their demand.

9. As demonstrated by the correspondence above, efforts to settle this matter have not proven successful; accordingly, as Laurel remains prepared to pay on all coal

royalties owed, Laurel requests this Honorable Court to entertain a status/settlement conference in an effort to amicably resolve this matter between the parties.

WHEREFORE, Defendant, Laurel Energy, LP, respectfully requests that this Honorable Court enter an Order setting forth a date upon which a status/settlement conference shall be held in this matter.

JURY TRIAL DEMANDED

Respectfully submitted,

DAVIES McFARLAND & CARROLL, P.C.

By: _____

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588
LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270
A. MICHAEL GIANANTONIO, ESQ.
Pa I.D. No.: 89120

DAVIES, MCFARLAND &
CARROLL, P.C.

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

Telephone No.: (412) 281-0737

Attorney for Additional Defendant:
Additional Defendant Laurel Energy,
L.P., now known as Laurel Energy II, LP,
successor in interest to Laurel Energy,
L.P.

LAW OFFICE OF:

ROBERT P. GING, JR., P.C.
COUNSELOR AND ATTORNEY AT LAW
2095 Humbert Road
Confluence, PA 15424-2371
(814) 395-3661

November 22, 2004

Gil Widenhofer
Laurel Energy, L.P.
1 Energy Place Suite 9000
Latrobe, PA 15650

RE: COOKERLY

Dear Gil,

I have had an opportunity to review the Lease Agreement between R. Wesley Smith et al., and B & B Land Company of Clearfield, subsequent to our discussion on November 4th.

As I understand from our discussion your records indicate that the tonnage of coal removed from my clients' property was 8,933.78 tons. The royalty on this tonnage at $1.50 per ton is $13,400.67.

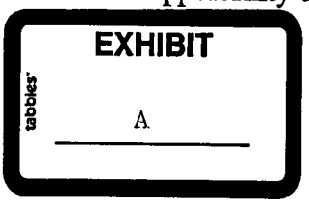
I have reviewed the lease with respect to certain items which you indicate to be a deduction, and would like to initially address money owed to Hess and Fisher. There is no provision in the lease which would require a deduction from the royalty owed to my clients for money owed to Hess and Fisher.

With respect to advance royalties paid to the Smiths, those payments were to be adjusted under Paragraph 3 of the lease if there was a change in ownership. The mining company did not determine whether or not there was a change in ownership at the time mining was conducted.

Paragraph 4 provides that the lessee will recoup advance payments as a credit against tonnage royalty, however, to the extent that payments were made at times when they were made to individuals who may not have been owners of the property, I do not believe that recoupment would be appropriate.

The royalty payments to my clients were to be automatic, and despite the fact that over two years have gone by since the mining occurred no payments have been made.

Paragraph 9 relating to timber removal required lessee to arrange for cutting and removal of paper wood and saw timber, and for arranging for monthly remittances to the lessors. This was not done. Had this been done, my clients would have been aware prior to the mining that the mining was to take place, and would have had an opportunity to protect their interests.



Paragraph 11 requires the lessee to supply to the lessors tonnage on the number of trucks loaded with coal for the previous month, at the first of each month and this was never done.

Finally, I note that as of June 2, 2000 the obligation to pay advance royalties was removed from the original lease by an amendment to the lease agreement.

Given the numerous breaches in the lease agreement, and the fact that my clients were never made aware that mining was to take place on property which they owned at the time of the mining, I am proposing, as a settlement for all outstanding obligations, royalties, and the value of the timber, a settlement in the amount of $15,000.00. While I understand your position that you have paid other parties certain royalties, at the time of the transaction it was my clients and not another party who deserved to be paid the royalties, they were not paid, they were not notified, and the lease was not complied with.

In the event that you are willing at this point in time to resolve this matter, please advise me whether or not you are willing to accept the offer of $15,000.00.

I would appreciate you contacting me on or before November 30th.

I am not proposing the commencement of a settlement negotiation at this point, but rather am proposing a settlement for all outstanding issues, to put this matter behind both of our clients.

Should you have any questions please do not hesitate to contact me.

Bob Ging

BG/rae
c/Jan Lawrence

DAVIES, McFARLAND & CARROLL, P.C.
ATTORNEYS AT LAW

THE TENTH FLOOR, ONE GATEWAY CENTER
PITTSBURGH, PENNSYLVANIA 15222-1416
(412) 281-0737
Fax (412) 261-7251

LYNN E. BELL
Direct Dial: (412) 338-4729
E-Mail: lbell@dmcpc.com

May 11, 2006

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

RE: Jan Lawrence Chris and Mary Eilyes, Jeff Cookerly and Scott Aldiner vs. Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company and Laurel Energy, LP.
Clearfield County/Docket No.: 05-1531-CD
Our File No.: 108952

Dear Mr. Ging:

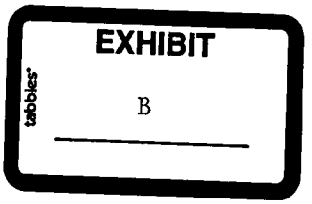
From the documents which have been produced thus far and from a new partial document I just obtained from my client, I believe the following can be established:

1. On April 15, 1995, the Smiths entered into a Release Agreement with B&B Land Company to pay a royalty rate of $1.50 per net ton or 5% of the pit selling price for merchantable and mineable coal, whichever amount is greater, for all coal mined and removed from the leased premises. There is also a provision governing the removal of timber but specific numbers were not set forth. The terms of the lease was four years with automatic extensions of one year until the exhaustion of the coal.

2. On June 2, 2000 there was an Amendment to Lease Agreement granting an additional four years from the original term and advanced royalties did not need to be paid.

3. On October 17, 2000 a Memorandum Lease was signed between Smith acknowledging that the land originally leased to B&B Land Company was subsequently transferred to Moravian Run Reclamation Co., Inc. The term was for three years.

4. A Transfer of Lease was entered into between B&B Land Company and the Smiths indicating that the transfer was made to Moravian Run.



5. There was a Transfer of Lease Agreement on October 23, 2000 and therein Moravian Run agreed to pay Penn-Grampian Coal Company the royalties that were due to the Smiths for money advanced. The amount due was $6,657.58. Moravian Run and then later Laurel Energy reimbursed the $6,657.58 and the remaining amount was to be paid to the Lessor.

6. In September 2002, 3,726.68 tons of coal were removed at $1.50 a ton which provided a royalty amount of $5,590.02. Because of the prepaid royalties, there were no royalties paid in September of 2003.

   In October of 2002 ,3,623.15 tons of coal were removed at $1.50 per ton which provided a royalty amount of $5,434.732. Because of the prepaid royalties, $1.067.56 was deducted making a royalty of $4,367.17 payable. A check for one-half of that amount was sent to R. Wesley and Samantha L. Smith in November of 2002 and was returned as a voided check.

   In November of 2002 1,583.95 tons were removed at $1.50 per ton and the royalty amount was $2,375.93. There were no deductions so the entire amount was due.

   There was a total of 8,933.78 tons with a royalty payment due of $13,468 minus the prepaid royalty amount of $6,657.58 for a total amount due to the R. Wesley Smith and Raymond A. Smith of $6,743.10.

Laurel Energy is willing to pay the $6,743.10 to the rightful owners of the property which was mined.

I am enclosing three pages from Laurel Energy indicating the dates, loads and tonnage removed from the Wesley and Raymond Smith property along with the calculation concerning the amounts to be paid. I can submit an Affidavit from the Controller of Laurel Energy II, LP.

It is my understanding that you had some discussions with Gil Widenhofer prior to filing suit regarding timber. I am willing to approach my client concerning authority for payment of a reasonable fee.

Please advise regarding this offer. Given the amount of money involved, can we transfer this matter to arbitration.

Very truly yours,

Lynn E. Bell

LEB/sdw
Enc.

cc: James A. Naddeo, Esquire (w/enc.)

Filename: 0209Smith

R. Wesley and Samantha L. Smith

- and -

Raymond A. and Shirley B. Smith

Smith Job Shipments:

DATE	LOADS	TONS	ROYALTY	AMOUNT
09/04/02	14	350.85		
09/12/02	20	498.10		
09/13/02	2	53.90		
09/16/02	11	277.95		
09/16/02	6	153.60		
09/17/02	1	26.30		
09/18/02	1	24.80		
09/18/02	1	17.60		
09/19/02	20	493.90		
09/19/02	4	104.50		
09/23/02	16	408.15		
09/23/02	2	45.90		
09/24/02	1	28.20		
09/26/02	37	928.13		
09/26/02	1	24.45		
09/30/02	12	290.35		
	149	3,726.68	$ 1.50	$ 5,590.02

Strip Surface Royalty: $1.50/n.t. or 5% F.O.B. mine whichever is greater

Payable: 10/25/02

R. Wesley and Samantha L. Smith (50%) = $ 2,795.01
Raymond A. and Shirley B. Smith (50%) = $ 2,795.01

Filename: 0210Smith

R. Wesley and Samantha L. Smith

* Done - gave to Debbie for A/P approval 11/14/02

- and -

Raymond A. and Shirley B. Smith

Smith Job Shipments:

DATE	LOADS	TONS	ROYALTY	AMOUNT
10/01/02	9	226.70		
10/04/02	2	53.65		
10/04/02	3	74.25		
10/05/02	9	219.55		
10/05/02	1	23.35		
10/11/02	1	24.20		
10/14/02	25	619.40		
10/14/02	3	78.75		
10/15/02	2	48.65		
10/17/02	4	96.60		
10/18/02	19	468.95		
10/18/02	1	24.10		
10/22/02	6	147.55		
10/22/02	3	72.30		
10/23/02	8	194.15		
10/24/02	12	302.95		
10/25/02	20	492.90		
10/30/02	18	455.15		
	146	3,623.15	$ 1.50	$ 5,434.73
		Less: Royalty Advances:		$ (1,067.56)
				$ 4,367.17

Strip Surface Royalty: $1.50/n.t. or 5% F.O.B. mine whichever is greater

Payable: 11/25/02

R. Wesley and Samantha L. Smith (50%) =	$ 2,183.59
Raymond A. and Shirley B. Smith (50%) =	$ 2,183.59

Filename: 0211Smith

R. Wesley and Samantha L. Smith
- and -
Raymond A. and Shirley B. Smith

Smith Job Shipments:

DATE	LOADS	TONS	ROYALTY	AMOUNT
11/01/02	1	24.90		
11/04/02	25	612.00		
11/04/02	2	49.25		
11/04/02	2	50.70		
11/05/02	2	49.40		
11/07/02	9	220.45		
11/08/02	2	46.55		
11/11/02	17	452.20		
11/12/02	3	78.50		
	63	1,583.95	$ 1.50	$ 2,375.93

Strip Surface Royalty: $1.50/n.t. or 5% F.O.B. mine whichever is greater

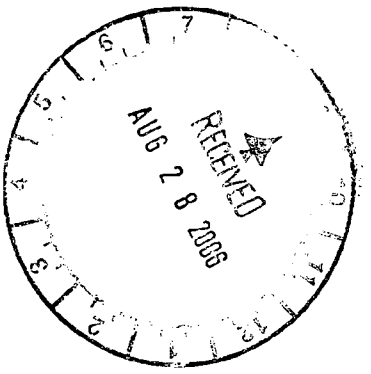
Payable: 12/25/02

R. Wesley and Samantha L. Smith (50%) =	$	1,187.97
Raymond A. and Shirley B. Smith (50%) =	$	1,187.97

LAW OFFICE OF:

ROBERT P. GING, JR., P.C.
COUNSELOR AND ATTORNEY AT LAW
2095 Humbert Road
Confluence, PA 15424-2371
(814) 395-3661

August 25, 2006



Lynn E. Bell, Esquire
10TH Floor
One Gateway Center
Pittsburgh, PA 15222

RE: JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER VS. MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY
CASE NO. 05-1351-CD

Dear Lynn,

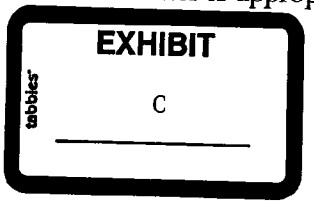
Thank you for your August 23, 2006 letter again forwarding me a copy of your May 11, 2006 letter. I am enclosing my letter to Laurel Energy dated November 22, 2004, setting forth a number of concerns which still have not been resolved.

While you continue to provide me summaries of what you believe the actual royalties owed to my clients are, the lease requires you to supply tonnage on the number of trucks loaded with coal for each month. Your client was required to maintain certified truck weigh scales which we have never seen.

The royalty was to be based on $1.50 per net ton, or 5% of the pit selling price per net ton, whichever is greater. We have no idea what you received per net ton at the pit selling price. This is the information which I have been seeking to obtain from your clients since 2004, and which still has not been provided. Once this information has been provided we will know whether or not the summaries attached to the various correspondence are accurate, and reflect the royalty actually owed to my clients.

We still have not resolved the timber issue, and as I indicated to you previously, there was an issue of proper reclamation on the site.

I do not believe at the present time the matter is appropriate for arbitration, due to the fact



that the potential reclamation liability could exceed arbitration limits.

I thank you for your anticipated courtesy and cooperation.

Bob Ging

BG/rae
c/Jan Lawrence

DAVIES, McFARLAND & CARROLL, P.C.
ATTORNEYS AT LAW

THE TENTH FLOOR, ONE GATEWAY CENTER
PITTSBURGH, PENNSYLVANIA 15222-1416
(412) 281-0737
Fax (412) 261-7251

LYNN E. BELL
Direct Dial: (412) 338-4729
E-Mail: lbell@dmcpc.com

September 29, 2006

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

RE: Jan Lawrence Chris and Mary Eilyes, Jeff Cookerly and Scott Aldiner vs. Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company and Laurel Energy, LP.
Clearfield County/Docket No.: 05-1531-CD
Our File No.: 108952

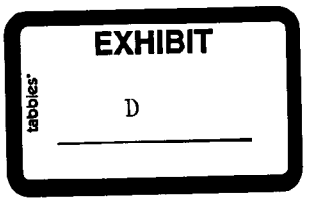
Dear Mr. Ging:

You requested information on the pit selling price per ton by month.

	SEPT.	**OCT.**	**NOV.**
C Prime	$26.05	$26.79	$26.50
Crop Coal	$20.69	$18.74	$18.91

At. 5% F.O.B. Mine:

	SEPT.	**OCT.**	**NOV.**
C Prime	$1.30	$1.34	$1.33
Crop Coal	$1.03	$0.94	$0.95



Therefore, payment of $1.50 per net ton was the greater amount. With this information, please advise regarding your demand.

Very truly yours,

Lynn E. Bell

LEB/sdw
Enclosure

cc: James A. Naddeo, Esquire (w/enc.)

Laurel Energy, L.P.

ORIGINAL

One Energy Place, Suite 7500 Latrobe, PA 15650
Phone (724) 537-5731 Fax (724) 537-5820

***** INVOICE *****

INVOICE NUMBER: 0000380-IN
INVOICE DATE: 09/30/02

DUE DATE: 10/16/02

SOLD TO: 11-0000900
Tanoma Energy, Inc
One Energy Place, Ste 1000
Latrobe 15650
PA

REMIT TO:
LAUREL ENERGY, L.P.
One Energy Place, Suite 7500
Latrobe, PA 15650

CONFIRM TO:
Amy Wojtas

DESCRIPTION:
Smith #1

CUSTOMER P.O.:

	NET TONS	$ / TON
Sept 2002 - C prime	2975.88	26.050
Sept - Crop coal	750.80	20.690
	3,726.68	

Laurel Energy, L.P.

ORIGINAL

One Energy Place, Suite 7500 Latrobe, PA 15650
Phone (724) 537-5731 Fax (724) 537-5820

***** INVOICE *****

INVOICE NUMBER: 0000389-IN
INVOICE DATE: 11/06/02

DUE DATE: 11/13/02

SOLD TO: 11-0000900
Tanoma Energy, Inc
One Energy Place, Ste 1000
Latrobe 15650
PA

REMIT TO:
LAUREL ENERGY, L.P.
One Energy Place, Suite 7500
Latrobe, PA 15650

CONFIRM TO:
Amy Wojtas

DESCRIPTION:
Smith to Stiner

CUSTOMER P.O.:
#2011/2012

October- 2002	NET TONS	$ / TON
Coal - Smith #1-C prime	3350.40	26.792
Coal - Smith #1-Crop	272.75	18.745
	3,623.15	

Laurel Energy, L.P.

ORIGINAL

One Energy Place, Suite 7500 Latrobe, PA 15650
Phone (724) 537-5731 Fax (724) 537-5820

***** INVOICE *****

INVOICE NUMBER: 0000404-IN
INVOICE DATE: 11/30/02

DUE DATE: 12/11/02

SOLD TO: 11-0000900
Tanoma Energy, Inc
One Energy Place, Ste 1000
Latrobe 15650
PA

REMIT TO:
LAUREL ENERGY, L.P.
One Energy Place, Suite 7500
Latrobe, PA 15650

CONFIRM TO:
Amy Wojtas

DESCRIPTION:
Smith Div#3 to Stiner

CUSTOMER P.O.:
2011/2012

November - 2002	NET TONS	$ / TON
Coal - Smith #1 -Nov 02	1217.00	26.505
Coal - Smith #1- crop	366.95	18.912
	1,583.95	

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
Plaintiffs,	)	No.: 05-1351-CD
v.	)	
MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant.	)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2007, a status/settlement conference will be held in this matter on November, 15 _____, 2007, in Chambers _____ at 9:30 A.m.

_____, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
	)	No.: 05-1351-CD
Plaintiffs,	)	
v.	)	
MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant.	)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2007, upon consideration of the foregoing Motion for Status/Settlement Conference, it is hereby ordered that:

(1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;

(2) the respondent shall file an answer to the motion within _____ days of this date;

(3) the motion shall be decided under Pa.R.Civ.P. 206.7;

(4) depositions and all other discovery shall be completed within _____ days of this date;

(5) an evidentiary hearing on disputed issues of material fact shall be held on _____, in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. _____.

(6) argument shall be held on _____, in Courtroom No. _____ of the Clearfield County Courthouse, Clearfield, Pennsylvania and

(7) notice of the entry of this order shall be provided to all parties by the moving party.

_____, J.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 24th day of September 2007:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc., and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIE
A. MICHAEL GIANANTONIO, ESQ.

Attorneys for Laurel Energy, LP,
Additional Defendant

FILED

SEP 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

UA

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

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER, Plaintiffs	*	
vs.	*	NO. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY, Defendants	*	
and	*	
LAUREL ENERGY, LP, Additional Defendant	*	

ORDER

NOW, this 28th day of September, 2007, the Court being in receipt of and having reviewed the Motion for Settlement Conference filed on behalf of Additional Defendant Laurel Energy, LP by Lynn E. Bell, Esquire, it is the ORDER of this Court that said Motion be and is hereby denied.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED 3cc
01/9:37/BN Atty Bell
OCT 02 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

OCT 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/2/07

X You are responsible for serving all appropriate parties.

___ The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

ORDER OF COURT

AND NOW, this 25 day of October, 2007, it is hereby ordered that Additional Defendant's Motion to Compel Discovery is hereby granted. Plaintiffs shall file full and complete Answers to Interrogatories and Responses to Requests for Production of Documents within ~~fifteen~~ twenty (20) days.

By the Court:

J.

FILED 4CC
012:00BOY Atty Gianantonio
OCT 26 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

OCT 26 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/26/07

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

MOTION TO COMPEL DISCOVERY

Filed on Behalf of this Party:
Additional Defendant Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P.

Counsel of Record for this Party:

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588

LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270

A. MICHAEL GIANANTONIO, ESQ.
Pa I.D. No.: 89120

DAVIES, MCFARLAND & CARROLL, P.C.
Firm I.D. No.: 281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

Telephone No.: (412) 281-0737

FILED NO CC
m/12:25/01
OCT 24 2007
GK
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
	)	No.: 05-1351-CD
Plaintiffs,	)	
v.	)	
MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant.	)	

CERTIFICATION PURSUANT TO LR 208.2(d)

The undersigned certifies that he attempted to obtain concurrence in the Motion from opposing counsel. Attorney Ging does not concur on the presentation of the Motion.

By: _____
A. Michael Gianantonio

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	CIVIL DIVISION No.: 05-1351-CD

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION C O., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant.

MOTION TO COMPEL DISCOVERY

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., ("Laurel"), by its undersigned attorneys, Davies, McFarland & Carrol, P.C., and files the within Motion to Compel Discovery, stating as follows:

1. This civil action involves a dispute concerning coal royalties, alleged timber removal and reclamation of real property.

2. On June 13, 2007, Laurel served Plaintiffs with Interrogatories and a Request for Production of Documents.

3. To date, Plaintiffs have failed to respond to Laurel's discovery requests.

WHEREFORE, Defendant, Laurel Energy, LP, respectfully requests that this Honorable Court enter an Order directing Plaintiffs to provide discovery responses within fifteen (15) days.

JURY TRIAL DEMANDED

Respectfully submitted,

DAVIES McFARLAND & CARROLL, P.C.

By: _____

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588
LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270
A. MICHAEL GIANANTONIO, ESQ.
Pa I.D. No.: 89120

DAVIES, MCFARLAND &
CARROLL, P.C.

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

Telephone No.: (412) 281-0737

Attorney for Additional Defendant:
Additional Defendant Laurel Energy, L.P.,
now known as Laurel Energy II, LP,
successor in interest to Laurel Energy, L.P.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

ORDER OF COURT

AND NOW, this _____ day of _____, 2007, upon consideration of the foregoing Motion to Compel Discovery, it is hereby ordered that:

(1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;

(2) the respondent shall file an answer to the Motion within 20 days of this date;

(3) the Motion shall be decided under Pa.R.Civ.P. 206.7;

(4) depositions and all other discovery shall be completed within _____ days of this date;

(5) an evidentiary hearing on disputed issues of material fact shall be held on _____, in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. _____;

(6) argument shall be held on November 27, 2007, in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania; and, @ 11:00 A.M.

(7) notice of the entry of this Order shall be provided to all parties by the moving party.

_____, J.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 22nd day of October, 2007:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc., and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____

LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
A. MICHAEL GIANANTONIO, ESQ.

Attorneys for Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., Additional Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

NOTICE OF SERVICE OF ADDITIONAL DEFENDANT'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED (SECOND SET) TO PLAINTIFFS

Filed on Behalf of this Party:

Additional Defendant Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P.

Counsel of Record for this Party:

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588

LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270

A. MICHAEL GIANANTONIO, ESQ.
Pa I.D. No.: 89120

DAVIES, MCFARLAND & CARROLL, P.C.
Firm I.D. No.: 281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

Telephone No.: (412) 281-0737

FILED NO CC
m/ 12:48/01
JAN 04 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

NOTICE OF SERVICE OF ADDITIONAL DEFENDANT'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED (SECOND SET) TO PLAINTIFFS

TO: PROTHONOTARY

Please take notice that on the 3rd day of January, 2008, Additional Defendant Laurel Energy, L.P.'s Interrogatories and Requests for Production of Documents (Second Set) were served upon Plaintiffs' counsel and all counsel of record by first-class mail, postage prepaid.

Respectfully submitted,

DAVIES McFARLAND & CARROLL, P.C.

By: _____

LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
A. MICHAEL GIANANTONIO, ESQUIRE

Attorneys for Laurel Energy, L.P.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 3rd day of January, 2008:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc., and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____

LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
A. MICHAEL GIANANTONIO, ESQ.

Attorneys for Laurel Energy, L.P.

FILED
JAN 04 2008
William A. Shaw
Prothonotary/Clerk of Courts

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

PRAECIPE FOR TRIAL

Filed on Behalf of this Party:

Laurel Energy, LP, Additional Defendant

Counsel of Record for this Party:

Lynn E. Bell, Esquire
Pa I.D. #38588

Lauren R. Ames, Esquire
Pa I.D. #89270

Davies, McFarland & Carroll, P.C.
Firm I.D. #281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED NO CC
m/ 11:34/01
JAN 10 2008
(GK)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
Plaintiffs,	)	
vs.	)	No.: 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant	)	

PRAECIPE FOR TRIAL

TO: PROTHONOTARY OF CLEARFIELD COUNTY

Kindly place this matter on the trial list.

Counsel for Additional Defendant Laurel Enegy, L.P. certifies the following:

1) No motions are outstanding and discovery is completed and the case is ready for trial;

2) An Order of Court has been entered closing discovery more than thirty (30) days prior to the filing of this praecipe;

3) The case is to be heard by jury;

4) Notice of this Praecipe has been given to attorneys representing other parties.

JURY TRIAL DEMANDED.

Davies McFarland & Carroll, P.C.

By: _____

Lynn E. Bell, Esquire
Lauren R. Ames, Esquire
Attorney for Laurel Energy, L.P.,
Additional Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 8 day of Jan, 2008:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____

Lynn E. Bell, Esquire
Lauren R. Ames, Esquie
Attorneys for Laurel Energy, LP.,
Additional Defendant

FILED
JAN 10 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER	:	
vs.	:	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, and LAUREL ENERGY, LP.,	:	

ORDER

AND NOW, this 15th day of January, 2008, it is the Order of the Court that a pre-trial conference in the above-captioned matter shall be and is hereby scheduled for **Monday, March 3, 2008 at 11:00 A.M.** in Judges Chambers, Clearfield County Courthouse, Clearfield, PA.

Additionally, Jury Selection in this matter shall be and is hereby scheduled for April 4, 2008 at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED
01:39 BY
JAN 15 2008
William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys:
R. Ewing
Naddeo
L Bell

FILED
JAN 15 2008
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/15/08

____ You are responsible for serving all appropriate parties.

__X__ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) __X__ Plaintiff(s) Attorney ____ Other

____ Defendant(s) __X__ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs vs. MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	CASE NO. 05-1351-CD
	TYPE OF PLEADING: **MOTION FOR CONTINUANCE OF THE PRE-TRIAL CONFERENCE**
	FILED ON BEHALF OF: Plaintiffs
	COUNSEL OF RECORD: ROBERT P. GING, JR., ESQUIRE Pa. Id. No. 25459 2095 Humbert Road Confluence, PA 15424-2371 (814) 395-3661

FILED NO CC
m/12:59 BK
FEB 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	)	

MOTION FOR CONTINUANCE
OF THE PRE-TRIAL CONFERENCE

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Motion for Continuance.

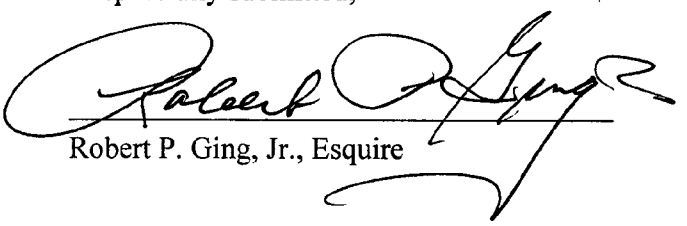
1. This case is currently scheduled for Pre-Trial Conference on March 3, 2008.

2. Counsel for the Plaintiffs will be out of the continental United States on that date and unavailable to attend the Pre-Trial Conference.

3. Counsel for the Plaintiffs has contacted counsel for the Defendants and the Defendants do not object to a continuance of the Pre-Trial Conference.

WHEREFORE, the Court is respectfully requested to enter the attached Order.

Respectfully submitted,



Robert P. Ging, Jr., Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Continuance was served on the following parties at their respective addresses on this date via U.S. First Class, Postage Pre-Paid Mail.

Lynn E. Bell, Esquire
10TH Floor
One Gateway Center
Pittsburgh, PA 15222

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

DATED: February 8, 2008

Respectfully submitted,

Robert P. Ging, Jr., Esquire

FILED
FEB 11 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	)	

ORDER

AND NOW, this 12 day of Feb, 2008, it is the Order of the Court that the Pre-Trial Conference in the above matter shall be continued from March 3, 2008 to March 27, 2008 at 10:00 a.m. in Judge's Chambers, Clearfield County Courthouse, Clearfield, Pennsylvania. Counsel for the Plaintiffs shall serve a copy of this Order on all Defendants.

BY THE COURT

Judge

FILED 4CC
012:14 BA Atty Greg
FEB 12 2008 (GK)
William A. Shaw
Prothonotary/Clerk of Courts

FILED

FEB 1 2 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/12/08

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

CA

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

JAN LAWRENCE CHRIS AND MARY ILYES, JEFF COOKERLY AND SCOTT ALDINGER, Plaintiffs	*	
vs.	*	NO. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY Defendants	*	
and	*	
LAUREL ENERGY, LP.,	*	

FILED
MAR 28 2008
3:45/cs
William A. Shaw
Prothonotary/Clerk of Courts
Cert to Atty Geo & L. Bar

ORDER

NOW, this 27th day of March, 2008, following Pre-Trial Conference among Counsel and the Court it is the ORDER of this Court as follows:

1. Counsel for the Plaintiffs shall have until no later than May 1, 2008 to file a Motion for Partial Summary Judgment relating to the Court interpreting the contract in question as to the payment of royalties;

2. Defendant Laurel Energy, LP., shall have no later than May 15, 2008 to file an answer to the Plaintiff's Motion for Partial Summary Judgment. The Court will thereafter schedule the same for oral argument and establish a briefing schedule.

3. The above captioned matter shall proceed non-jury at the agreement of the parties. The case is hereby continued until the Fall Term of Court, 2008. Following the Court's ruling on the Plaintiff's Motion for Partial Summary Judgment either party may request the Court Administrator to schedule the same for trial.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

DATE: 3-28-01

___ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) X Plaintiff(s) Attorney ___ Other

___ Defendant(s) X Defendant(s) Attorney

___ Special Instructions:

FILED
MAR 28 2001
William A. Shaw
Prothonotary/Clerk of Courts

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	
vs.	CASE NO. 05-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	
and	
LAUREL ENERGY, L.P., Additional Defendant	
	TYPE OF PLEADING: **MOTION FOR PARTIAL SUMMARY JUDGMENT**
	FILED ON BEHALF OF: Plaintiffs
	COUNSEL OF RECORD: ROBERT P. GING, JR., ESQUIRE Pa. Id. No. 25459 2095 Humbert Road Confluence, PA 15424-2371 (814) 395-3661

FILED NO CC
M/11:28 BY
MAY 05 2008 GK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	)	

MOTION FOR PARTIAL SUMMARY JUDGMENT

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Motion for Partial Summary Judgment.

1. Plaintiffs are the owners of a piece of property in Beccaria and Gulich Townships, which was acquired from Ferguson Valley Hardwoods.

2. Ferguson Valley Hardwoods acquired the property from R. Wesley Smith et ux. and Raymond A. Smith et ux.

3. On or about April 15, 1995 R. Wesley Smith et ux., and Raymond A. Smith et ux. entered into a Lease Agreement with B & B Land Company of Clearfield, Pennsylvania, a copy of which is

attached hereto as Exhibit 1.

4. The Lease provides for payments of $1.50 per net ton or 5% of the pit selling price provided that the Lessors owned **either** 100% of the surface rights, 100% of the coal, or both the surface and coal.

5. R. Wesley Smith and Raymond A. Smith owned 100% of the surface rights in 1995 when they entered into the Lease. R. Wesley Smith and Raymond A. Smith acquired the property in question in 1978 by deed recorded at Volume 760, page 419 in the record books of Clearfield County, a copy of which is attached hereto and incorporated herein by reference and deed dated December 8, 2000, Instrument No. 200018533, attached hereto as Exhibit 2. The Smiths did not own the coal at the time they entered into the Lease, however they were guaranteed $1.50 per ton or 5% of the pit selling price due to their ownership of 100% of the surface.

6. The coal was severed from the surface rights by deed dated February 7, 1936 and recorded at Volume 344, page 585 in the record books of Clearfield County, Pennsylvania, a copy of which is attached hereto and incorporated herein by reference as if fully set forth as Exhibit 3.

7. A second severance deed conveying the remainder of the coal was executed in September of 1942, and is recorded at deed book Volume 347, page 436. A copy of this deed is attached hereto and incorporated by reference as Exhibit 4.

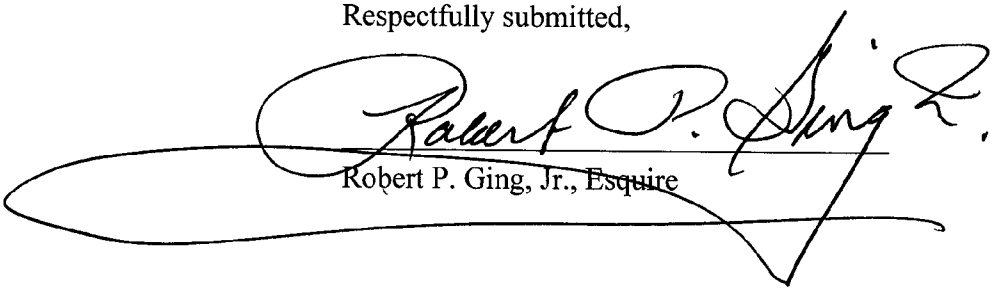
8. There are no genuine issues of material fact with respect to the clear right of the Plaintiffs, as successors in interest to the Smiths, and owners of 100% of the surface rights, to a royalty in the amount of $1.50 a ton or 5%.

9. As alleged in the Plaintiffs' Complaint, verified in accordance with the Pennsylvania

Rules of Civil Procedure, the Defendants refused and continue to refuse to pay the royalty to the Plaintiffs.

WHEREFORE, this Honorable Court is respectfully requested to enter Partial Summary Judgment in favor of the Plaintiffs, and enter the attached Order.

Respectfully submitted,



Robert P. Ging, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	)	

ORDER

AND NOW, to wit, this _____day of _____, 2008, it appearing that the Plaintiffs are successors in interest to R. Wesley Smith et ux. and Raymond A. Smith et ux., it is hereby Ordered that the Plaintiffs, as successors in interest to the Smiths are 100% owners of the surface rights, and are entitled to a royalty in the amount of $1.50 per ton, or 5% of the pit price, whichever is greater, and judgment is entered in favor of the Plaintiffs on this issue.

BY THE COURT

_____

Frederic J. Ammerman, President Judge

EXHIBIT 1

Original Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 15th day of April, 1995 by and between R. Wesley Smith and Samantha Smith, his wife of R.D. 2, Box 39, Reynoldsville, Pennsylvania 15851 and Raymond A. Smith and Shirley B. Smith, his wife of R.D. 1, Box 211-A, Reynoldsville, Pennsylvania 15851, party of the first part, hereinafter referred to as "LESSORS";

A N D

B & B LAND COMPANY, of Clearfield, Pennsylvania, party of the second part, hereinafter referred to as "LESSEE".

W I T N E S S E T H:

THE LEASE

1. That for and in consideration of the sum of One Dollar ($1.00) paid by the LESSEE to the LESSORS, the receipt whereof is hereby acknowledged, the LESSORS do hereby let, lease and demise unto the LESSEE, its succesors and assigns, the right with such terms, covenants and conditions as hereinafter set forth, to mine and remove all the mineable and merchantable coal in, under and upon that certain tract in the Township of Beccaria and in the Township of Gulich title to which is vested in the LESSORS which tract of land is Parcel #1 - 290 acres in Gulich Township under Ray and Wesley Smith which is shown on Tax Map No. 118-K7-9 and Parcel #2 - 200 acres in Beccaria Township under Ray and Wesley Smith, which is shown on Tax Map No. 101-K17-8. Also, 110.56

110.56 acres in Beccaria Township under William O'Shall, Tax Map No. 101-K17-1.

The LESSORS covenant that they own either the coal or the surface (right of surface support) of the described premises, and do hereby grant and convey the full and complete rights for the mining and removing of the coal in, under and upon the above described premises by all modern mining methods, including but not limited to surface stripping, with the right of ingress, egress and regress, into, upon the under said lands for the purpose of examining, testing, mining, stripping and removing said coal, together with the right to locate and erect such chutes, tipples, buildings, pipe lines, pole lines and other structures as may be necessary for the use and working of mines or strippings, and with the right to deposit spoil therefrom upon the surface with the right to redeposit the same, and with all rights and privileges necessary and convenient in mining, digging, stripping, removing and transporting said coal without liability for any and all damage done to said lands or buildings or the water therein or thereon, caused by the mining, stripping and removal of all said coal, or the exercise of any or all of the mining rights aforesaid.

LESSORS hereby lease unto the LESSEE the right of ingress, egress and regress in and to the leased premises any time within five (5) years after the termination of this lease for the purpose of backfilling or planting trees or otherwise complying with the mining laws of the Commonwealth of Pennsylvania. But this right of re-entry for a period of five (5) years is for the

purpose alone and shall vest in LESSEE no rights whatsoever in the coal, in the mining of coal, or in the property. In addition, LESSORS agree to execute the required written consents on the form furnished by the Commonwealth of Pennsylvania concerning re-entry for backfilling, planting, reclamation and inspection.

2. Term and Effective Date: This lease shall become effective as of the 15th day of April, 1995, by the LESSEE and shall continue for a period of four (4) years with automatic extensions of one (1) year terms from year to year to exhaustion of the coal provided the premises are being actively mined at the end of the original term and each yearly extention thereof. Active mining shall be defined to mean mining operations upon the premises on a regular five (5) days per week.

3. Tonnage Royalty: LESSEE shall pay to LESSORS royalty at the rate of One Dollar and Fifty Cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton for all merchantable and mineable coal, whichever amount is greater, for all coal mined and removed from the premises. All payments of royalty shall be made on or before the 25th day of each calendar month for all coal mined and removed in the preceding calendar month and shall be accompanied by a statement showing the tonnage mined and royalty due. All payments are to be made to the LESSORS without demand or to any other party or parties LESSORS in writing designate as an agent for receiving payments.

All payments of royalty as herein provided are based on either one hundred percent (100%) ownership of surface (right of

surface support) coal or both surface and coal. In the event LESSORS should own less than one hundred percent (100%) of said surface and/or coal rights said sums shall be adjusted in accordance with the percentage of ownership.

4. Minimum Royalty: LESSEE shall pay to LESSORS the sum of Two Hundred Dollars ($200.00) per month as a minimum royalty for each month that the within lease is in full force and effect. All payments of minimum royalty shall be recoupable by the LESSEE as a credit against tonnage royalty from production as herein provided.

5. Tonnage Measurements: Royalty and other payments shall be based on certified truck scale weights or railroad weights, and all coal mined and removed from the premises shall be weighed on such scales. LESSEE hereby authorizes LESSORS or its agent, to examine any and all of the LESSEE'S records and to examine the records of any truck scale weights or railroad weights concerning the coal which was hauled or shipped from the described premises and the right to make copies of his findings.

6. Mining Methods: LESSEE agrees that all mining operations shall be conducted in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that LESSORS (at its own risk) shall have access to the operation and scale records of LESSEE at all times in person or by duly authorized agent.

7. Taxes: All taxes upon the premises herein demised shall be paid by LESSORS, and all taxes that may be levied, imposed, charged or assessed upon improvements, equipment, or

mining machine placed upon the demised premises by LESSEE for the mining, removing, processing or transportation of the coal shall be paid by LESSEE. Should any federal, state or local subdivision impose any tax upon the mining of coal, the coal mined, or otherwise, said taxes shall be paid by LESSEE.

8. Insurance: LESSEE agrees to keep in force during the term of this lease general liability insurance with a reputable insurance company in the sum of at least One Million Dollars. Upon request LESSEE shall furnish to LESSORS a certificate of said insurance which shall name LESSORS as an additional insured.

9. Timber Removal: If on investigation it appears that there is any appreciable quantity of paper wood or saw timber remaining on the leased premises, the LESSEE will at the request of the LESSORS arrange for the cutting and removal of such paper wood and saw timber by reliable people, subject to the approval of the LESSORS, and will supervise the cutting of such timber and pulpwood, arranging for monthly remittances to the LESSORS at the same time that royalties hereunder are due. The LESSEE shall refrain from destroying pulpwood or saw timber in the progress of its strip mining operations, if these is reasonable opportunity to arrange to have such timber cut off in advance of such operations.

10. Books and Records: LESSEE shall and will keep complete and accurate books of account, showing the amount of coal produced from the said property, and at the time for payment of the monthly royalties hereinbefore mentioned, shall furnish accurate statements of all coal mined and produced during the

preceding calendar month; shall and will keep all mining maps, books, plans and records necessary in operating said leased coal; and shall and will furnish LESSORS, or its duly authorized agent or employee, at any reasonable time, upon request, access to all books of account, records, weigh sheets, maps and plans and will also give LESSORS, or its duly authorized agent or employee, at reasonable request, access to any and all portions of the said leased premises and to the operations in connection with the same.

11. LESSEE agrees to supply to LESSORS, at the first of each month, tonnage on the number of trucks loaded with coal for the previous month.

12. Default in Royalties and Breach of Term: It is understood and agreed that in the event the LESSEE should default in any payment provided for herein when said payments become due, or should LESSEE be in default in any other respect and continue in such default for a period of thirty (30) days after being notified in writing of such default by LESSORS, then, in either event, at the option of the LESSORS, this Lease shall cease and terminate and LESSEE hereby authorizes any attorney of any court of record to appear for it and in its name to confess a judgment against it in an amicable action of ejectment to the end that a writ of habere facias possession may issue forthwith for the delivery of possession to LESSORS together with clause of fieri facias for royalties in arrears and costs.

13. Supplemental "C": LESSORS hereby agrees to execute, acknowledge and deliver to LESSEE within ten (10) days after the

exercise of the within option in quadruplicate the form know as Supplemental "C" required by the Department of Environmental Resources (DER) of the Commonwealth of Pennsylvania and thereafter any other forms required in order to secure the permits necessary for mining operations.

14. Force Majeure: LESSEE shall not be deemed in default for failure to perform any of its obligations under this Agreement during periods in which performance is partially or wholly prevented by any cause, condition or matter beyond LESSEE'S control, such as, and not by way of limitation, strikes, riots, accidents, governmental laws, lack of satisfactory markets for coal from the leased premises and acts of God.

15. No Assignment or Transfer: LESSEE agrees not to mortgage or encumber the leased premises with liens of any kind, or sell, or assign, or setover or sublet the whole or any part of the herein leased premises, or subcontract for the mining thereof, without the express written consent of the LESSOR first had and obtained, which, shall not be unreasonably withheld. It is further agreed and provided that any lawful levy and sale on execution or other legal processes, as well as any assignments or sale in bankruptcy, voluntary or involuntary proceedings, or any receivership created, shall be deemed and taken to be an assignment or subletting within the meaning of this lease agreement, and at the option the LESSORS shall work an immediate forfeiture, without notice, and thereupon possession may be immediately taken by the LESSORS without further formality.

It is understood, however, that anything to the contrary in the foregoing paragraph notwithstanding, LESSEE shall have the right to assign the within lease to LESSEE'S mining company, Penn-Grampian Coal Company or to Al Hamilton Contracting Company or any of its assigns.

16. Memorandum of Lease: Upon exercise of the within option by LESSEE, LESSORS agrees to execute, acknowledge and deliver to LESSEE a "memorandum of Lease" suitable for recording, which Memorandum retains the privacy of this document but gives public notice of the fact that the within lease has been executed. Said Memorandum shall contain a description of the property, the purpose of the lease, the length of the term and the fact that it incorporates the within lease by reference thereto. LESSEE agrees to prepare said Memorandum and deliver it to LESSORS and LESSORS agrees to execute, acknowledge and deliver to LESSEE the said Memorandum within ten (10) days of the receipt thereof.

17. Cancellation: The LESSEE shall have the right to cancel this Agreement at any time upon giving thirty (30) days written notice to the LESSORS, whereupon all accrued royalties including paid past minimum royalties shall be due and payable.

18. Notices: A written notice addressed to B & B Land Company, P.O. Box 249, Clearfield, Pennsylvania, 16830, and sent by certified mail, shall be deemed received by the LESSEE as of one day after the date of mailing. A written notice addressed to Raymond A. Smith, R.D. 1, Box 211-A, Reynoldsville, Pennsylvania

15851 and sent by certified mail shall be deemed received by the LESSORS as of one day after the date of mailing.

19. Water monitoring shall begin within ninety (90) days of the signing of the Agreement.

20. Anything to the contrary herein notwithstanding, mining shall commence within six (6) months after all required permits have been approved by D.E.R., otherwise the within lease shall terminate upon the expiration of thirty (30) days written notice by LESSORS to LESSEE should LESSEE fail to commence mining within said thirty (30) days.

21. This lease agreement is binding on the parties hereto, their heirs, executors, administrators, successors and assigns.

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

ATTEST:

Denise A. McGraw

LESSORS:

R. Wesley Smith

Samantha L. Smith

Raymond A. Smith

Shirley E. Smith

ATTEST:

William L. Long
Partner

LESSEES:
B & B LAND COMPANY
By

Andrew J. Sutton
Partner

EXHIBIT 2

THIS DEED

MADE the 4th day of May, 1978, BETWEEN ZELLA MAE LEONARD and JOHN H. LEONARD, her husband; ROY R. WAGNER and BERTHA WAGNER, his wife; LEWIS WAGNER and PATRICIA WAGNER, his wife; WINIFRED O. WAGNER, Widow, individually and Executrix of the Last Will and Testament of W. J. or WILLIAM J. WAGNER, deceased; BETTY LOUISE SHOMO and BUD L. SHOMO, her husband; THOMAS E. WAGNER and AMELIA A. WAGNER, his wife; RAYMOND L. WAGNER and LINDA L. WAGNER, his wife, all of the Township of Reade, County of Cambria and State of Pennsylvania, parties of the first part, Grantors,

AND

R. WESLEY SMITH of Reynoldsville, Jefferson County, Pennsylvania, as to a one-fourth (1/4th) interest; RAYMOND A. SMITH of DuBois Clearfield County, Pennsylvania, as to a one-fourth (1/4th) interest, and JOSEPH A. OWENS, of Penfield, Clearfield County, Pennsylvania, as to a one-half (1/2) interest, parties of the second part, Grantees.

WITNESSETH, that in consideration of Eighty Thousand Four Hundred Dollars ($80,400.00) in hand paid the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey to the said Grantees,

ALL that certain piece of land situate in Gulich Township (should be partly in Beccaria Township), Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a post on Henderson Clearing, thence South along line of lands of William Conrad, Moshannon Lumber Company and Jack Glasgow Heirs five (5) degrees ten (10) minutes West 6530.3 feet to post on line of land of D. D. Lewis; thence along said Lewis North 84 degrees 40' West 2943 feet to post on line of Forest Wonderly; thence along said Wonderly North 4 degrees 20' East 1508.1 feet to post; thence along same North 85 degrees 45' West 893 feet to post on line of land of T. C. Lee; thence along

lands of said Lee, William McCoy, William Shaw and John Herdman North 4 degrees 30' East 4660 feet to post on bank of Muddy Run; thence along said Run South 59 degrees 40' East 284.5 feet to post; thence across said Run and along line of William Henderson North eighty-seven (87) degrees 45' East 3677 feet to post and place of beginning. Containing 527 acres, more or less.

SUBJECT to the exceptions, reservations, restrictions and conditions contained in prior conveyances.

BEING the same piece or parcel of land the title to which became vested in Arthur L. Wagner, William J. Wagner, Zella Leonard, Roy R. Wagner and Lewis A. Wagner by Deed of Minnie V. Wagner, Widow, Executrix and sole devisee under the Last Will and Testament of Lester E. or L. E. Wagner, deceased. The said Arthur L. Wagner died intestate on the 3rd day of December, 1962, leaving to survive him his wife, Dorothy I. Wagner, and three children, Betty Louise Shomo, Thomas E. Wagner and Raymond L. Wagner. The said Dorothy I. Wagner died on the 5th day of May, 1971, testate, and by the provisions of her Last Will and Testament, left her entire estate, real, personal and mixed, to her three children, Betty Louise Shomo, Thomas E. Wagner and Raymond L. Wagner. The said William J. or W. J. Wagner died testate on the 10th day of January, 1978, and by the provisions of his Last Will and Testament gave all his property, real, personal and mixed, unto his wife, Winifred O. Wagner.

NOTICE

The undersigned grantee (grantees) hereby certifies that he/they know and understand that he/they may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal.

Witness signatures of grantee (grantees) this 17th day of May 1978

Witness

(SEAL)

R. Wesley Smith (SEAL)

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

AND the grantors do hereby covenant and agree that they will warrant generally the premises hereby conveyed.

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

Signed, sealed and delivered in the presence of:

Zella Mae Leonard (SEAL)
Zella Mae Leonard 178-10-6070

John H. Leonard (SEAL)
John H. Leonard 170-12-4832

Roy R. Wagner (SEAL)
Roy R. Wagner 196-14-7101

Bertha Wagner (SEAL)
Bertha Wagner 193-36-9339

Lewis Wagner (SEAL)
Lewis Wagner 1208-32-0184

Patricia Wagner (SEAL)
Patricia Wagner 162-32-9724

Winifred O. Wagner (SEAL)
Winifred O. Wagner (162-12-7623)
Individually and Executrix of the Last Will and Testament of W.J. or William J. Wagner, deceased.

Betty Louise Shomo (SEAL)
Betty Louise Shomo 190-28-1918

Bud L. Shomo (SEAL)
Bud L. Shomo 178-28-7727

Thomas E. Wagner (SEAL)
Thomas E. Wagner
201-32-8439

4

VOL 760 PAGE 422

Amelia A. Wagner (SEAL)
Amelia A. Wagner 174-34-7653

Raymond L. Wagner (SEAL)
Raymond L. Wagner 187-30-5571

Linda L. Wagner (SEAL)
Linda L. Wagner 172-36-5204

STATE OF PENNSYLVANIA I
COUNTY OF CAMBRIA ISS:

On this, the 4th day of May, 1978, before me, the undersigned officer, personally appeared ZELLA MAE LEONARD JOHN H. LEONARD, her husband , ROY R. WAGNER and BERTHA WAGNER, his wife. LEWIS WAGNER and PATRICIA WAGNER, his wife, WINIFRED O. WAGNER, Widow, individually and Executrix of the Last Will and Testament of W. J. or WILLIAM J. WAGNER, deceased, BETTY LOUISE SHOMO and BUD L. SHOMO, her husband, THOMAS E. WAGNER and AMELIA A. WAGNER, his wife, RAYMOND L. WAGNER and LINDA L. WAGNER, his wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

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

Margaret M. Kachik
Notary Public

My commission expires: 1-26-1979

5

VOL 760 PAGE 423

I hereby certify that the precise residence of the within named Grantees is % R. Wesley Smith, 324 Fourth Street, Reynoldsville, PA 16851

May 18, 1978

For Grantees

Commonwealth of Pennsylvania }
County of ~~Cambria~~ } SS:

Recorded on this day of ,1978, in the Recorder's Office of Clearfield County, in Deed Book Vol. at page

Given under my hand and the seal of said Office, the date above written.

Recorder

Entered of Record May 18 1978, 1:10 Cecil Burns, Recorder

CLEARFIELD CO. SS
ENTERED OF RECORD 5-18-78
Time 1:10 PM
By Jeffrey R. Belnette
Fees 14.00
Cecil A. Burns, Recorder

5.

6

QUIT - CLAIM DEED – NEW OR SHORT FORM Published by The Flanksnbom Stationery Co., Williamsport, Pa.

AFFIDAVIT No. 33555

This Indenture,

MADE the 8th day of December
in the year ~~nineteen hundred and~~ two thousand (2000)

BETWEEN ALBERTA W. OWENS, wife of Joseph A. Owens, currently and during the year of 1992, of Penfield, Pennsylvania, Party of the First Part, GRANTOR,

A
N
D

R. WESLEY SMITH and SAMANTHA L. SMITH, his wife, as tenants by the entireties, an undivided one-half interest; RAYMOND A. SMITH and SHIRLEY B. SMITH, his wife, as tenants by the entireties, an undivided one-half interest; all of Reynoldsville, Pennsylvania, Parties of the Second Part, GRANTEES.

WITNESSETH, in consideration
of the sum of ----ONE AND 00/100 ($1.00) DOLLAR----------
receipt whereof is hereby acknowledged,
the said grantor does hereby release and quit claim to the said grantees

ALL that certain piece of land situate in Gulich Township (should be partly in Beccaria Township), Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a post on Henderson Clearing, thence South along line of lands of William Conrad, Moshannon Lumber Company and Jack Glasgow Heirs five (5) degrees ten (10) minutes West 6530.3 feet to post on line of land of D. D. Lewis; thence along said Lewis North 84 degrees 40' West 2943 feet to post on line of Forest Wonderly; thence along said Wonderly North 4 degrees 20' East 1508.1 feet to a post; thence along same North 85 degrees 45' West 893 feet to post on line of land of T. C. Lee; thence along Lands of said Lee, William McCoy, William Shaw and John Herdman North 4 degrees 30' East 4660 feet to post on bank of Muddy Run; thence along said Run South 59 degrees 40' East 284.5 feet to post; thence across said Run and along line of William Henderson North eighty seven (87) degrees 45' West 3677 feet to post and place of beginning. CONTAINING 527 acres, more or less.

SUBJECT to the exceptions, reservations, restrictions and conditions contained in prior conveyances.

BEING the same premises which was conveyed to R. Wesley Smith et ux et al by deed of R. Wesley Smith et al dated June 2, 1992, and recorded in Clearfield County Deed Book 1517, Page 335.

The purpose of this deed is to add a spousal joinder which was omitted in the above referenced deed. Alberta W. Owens is currently and was the wife of Joseph A. Owens, a grantor in the above recited deed, in June 1992.

For the purpose of the Pennsylvania Realty Transfer Tax Act, this deed is corrective in nature; therefore, there is no transfer tax due or owing.

NTS

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania
INSTRUMENT NUMBER
200018533
RECORDED ON
Dec 18, 2000
8:48:45 AM
RECORDING FEES - $13.50
RECORDER
COUNTY IMPROVEMENT $1.00
FUND
RECORDER
IMPROVEMENT FUND $1.00
STATE WRIT TAX $0.50
TOTAL $16.00
CUSTOMER
BRANDON, JOHN

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania
INSTRUMENT NUMBER
200018533
RECORDED ON
Dec 18, 2000
8:48:45 AM
RECORDING FEES - $13.50
RECORDER
COUNTY IMPROVEMENT $1.00
FUND
RECORDER
IMPROVEMENT FUND $1.00
STATE WRIT TAX $0.50
TOTAL $16.00
CUSTOMER
BRANDON, JOHN

EXHIBIT 3

344/585

Deed

CLEARFIELD COUNTY COMMISSIONERS

TO

COUNTY NATL. BANK AT CLFD. TR.

We, W. V. CARR, IRA JAY AND J. O. KESSLER, COUNTY COMMISSIONERS OF THE COUNTY OF CLEARFIELD, STATE OF PENNSYLVANIA, SEND GREETING:

Whereas, the County Commissioners of said County of Clearfield, in pursuance of the several Acts of Assembly in that behalf made and provided, at a County Treasurer's sale of unseated lands, for taxes, made on the 7th day of February 19 36, did purchase all that certain parcel of unseated lands, situate in the Township of Gulich County and State aforesaid, containing 469 A. Coal Rt., and sold as the property of Clearfield Creek Coal Co.,

there having been no bid made by any person sufficient to pay taxes, interest and costs.

And Whereas, the then County Treasurer of Clearfield County did make a deed to the County Commissioners, and to their successors in office, for the aforesaid parcel of land, subject, however, to the right of redemption granted by law; and the said parcel of land so purchased has remained unredeemed, for the period designated by law.

And Whereas, W. V. CARR, IRA JAY and J. O. KESSLER, said County Commissioners, having given due and timely notice, according to the several Acts of Assembly in relation thereto, of their power to sell, and of the time and place of sale, and all such matters as are required by law, did agreeably to law, on the 15th day of April, 1942, expose to public sale by public vendue or outcry, in Court Room No. 1 at the Court House at Clearfield, aforesaid, the aforesaid tract of land, and the aforesaid County Commissioners sold the whole of the aforesaid parcel of land to County National Bank at Clearfield, Trustee for the sum of $31.00, lawful money of the United States, it being the highest bidder, and that the highest and best price bidden for the same.

Now, Know Ye, that we, the said W. V. CARR, IRA JAY and J. O. KESSLER, County Commissioners as aforesaid, in consideration of the premises and of the aforesaid sum of $31.00 in hand paid by the said County National Bank at Clearfield, Trustee, the receipt whereof is hereby acknowledged, do hereby grant and convey, to the said County National Bank at Clearfield, Trustee and to their heirs successors and assigns, according to the laws of the Commonwealth of Pennsylvania in such cases made and provided, for all such estate, right, title and interest as has been acquired by the first above mentioned purchase from the County Treasurer of the County of Clearfield, and as we, the said County Commissioners, have a right to convey, all that above mentioned and described parcel of land situate as aforesaid in Gulich Township, with the appurtenances;

To Have and to Hold the aforesaid parcel of land for all such estate, right, title and interest as the said County Commissioners of the County of Clearfield have a right to convey, unto the said grantee, and to their heirs successors and assigns, to and for the only proper use and behoof of the said grantee, and to their heirs successors and assigns, forever.

In Witness Whereof, we, the said County Commissioners of Clearfield County, have hereunto set our hands and caused the official seal of said County, duly attested, to be affixed, this 25th day of May 1942.

ATTEST

Fred B. Reed (Off. seal)
Chief Clerk

W. V. Carr
Ira Jay
J. O. Kessler
County Commissioners

STATE OF PENNSYLVANIA }
COUNTY OF CLEARFIELD } SS:

On this, the 1 day of June, 194 2, before me, Chas. S. Strong Justice of the Peace the undersigned officer, personally appeared W. V. CARR, IRA JAY and J. O. KESSLER, known to me to be the persons described in the foregoing deed, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

In Witness Whereof, I have hereunto set my hand and official seal.

Chas. S. Strong, J.P. (Off. seal)

My Commission Expires January 1st, 19

Entered of Record Sep. 12 A. D. 19 42. Recorded by Geo. R. Goss Recorder

84

EXHIBIT 4

347/438 parcel 5

as the grantors may have in said property.

AND the said grantors, do hereby covenant and agree to and with the said grantee, that they, the grantors, their heirs, executors and administrators Shall and will Specially Warrant and forever Defend the herein above described premises, with the hereditaments and appurtenances, unto the said grantee, his heirs and assigns against the said grantors, and against every other person lawfully claiming or who shall hereafter claim the same or any part thereof, by, from or under them, or any of them, their heirs and assigns.

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

Sealed and delivered in the presence of Chetwin M. Hurd L. S.

Melvin J. Hurd Chelsea B. Hurd L. S.

Edna M. Hurd

State of Pennsylvania

County of Clearfield

On this, the 11 day of June, 1942, before me, the undersigned officer, personally appeared Chetwin M. Hurd and his wife, Chelsea M. Hurd, known to me (or satisfactorily proven) to be the person whose names are subscribed to the within instrument, and acknowledged that they have executed the same for the purposes therein contained.

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

Leslie A. Tozer (Off. Seal)

Justice of the Peace

Title of Officer

My Commission Expires First Monday in January 1946.

I Hereby Certify that the precise residence of the grantee or grantees is Bailey Road, Curwensville, Clearfield County, Penna., and the actual condideration passing in this dead is $10.~~00~~ xx

Entered of Record Sep. 19 1942 9:45 A.M.

Recorded and Compared by

Geo. A. Gingher M. M. D.

Recorder

DEED

COUNTY NATIONAL BANK AT CLFD., TR.

TO

CENTRAL HANOVER BANK & TRUST CO. OF NEW YORK CITY ET AL

THIS INDENTURE, Made this 15 day of September, 1942, between THE COUNTY NATIONAL BANK AT CLEARFIELD, Trustee, party of the first part, hereinafter called Grantor AND CENTRAL HANOVER BANK & TRUST CO., of New York City; Marcella F. Chaplin, 67 Morton Street, New York City; John McI. Smith, William B. McCaleb and Capital Bank & Trust Company, Liquidating Trustees of the Trusteed Assets of the Commonwealth Trust Company, Harrisburg, Pennsylvania; Roy I. Fulton, Roy C. Kindig and Jane K. Kindig, husband and wife, as tenants by entireties,

and Clara B. Moore, all of Clearfield, Pennsylvania; Carolyn M. Mullen, 1716 Crenshaw Boulevard, Los Angeles, California; Otto P. Schwarzschild, 9 Putnam Avenue, Greenwich, Connecticut; and Philip B. Reed, W. Wallace Smith and The County National Bank at Clearfield, Clearfield, Pennsylvania, parties of the second part, hereinafter called Grantees

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One ($1.00) Dollar unto it well and truly paid by the said parties of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said parties of the second part, their heirs and assigns forever, in the following proportions:

Central Hanover Bank & Trust Co.,	40/168
Marcella F. Chaplin,	10/168
Liquidating Trustees of Commonwealth Trust Co.,	10/168
Roy I. Fulton,	27/168
Roy C. Kindig and Jane K. Kindig, husband and wife, as tenants by entireties	10/168
Clara B. Moore,	4/168;
Carolyn M. Mullen,	5/168;
Philip B. Reed,	20/168;
Otto P. Schwarzschild,	10/168;
W. Wallace Smith,	24/168;
The County National Bank at Clearfield,	8/168;

All the right, title and interest of the party of the first part in and to the following described real estate:

(1) 164 Acres, coal right, Beccaria Township Clearfield County, Pennsylvania, lately assessed as unseated land in the name of Clearfield Creek Coal Company, a more accurate description of said premises being represented to be as follows:

Being all the coal in, under and upon the following described tract of land, situate in the Townships of Gulich and Beccaria, - Beginning at a fallen maple corner of the Peter Getz and Jeremiah Mosher tracts; thence south 87° 30' East 228 perches to pointers; thence south 2° 30' West 136 perches to pointers; thence north 86° 15' West 228.2 perches to line of Jeremiah Mosher survey; thence north 2° 30' East 131 perches to a fallen maple, and the place of beginning; containing 190 acres and 38 perches, and being a part of a survey in the name of Peter Getz.

(2) 200 acres, coal right, Beccaria Township, Clearfield County, Pennsylvania, lately assessed as unseated land in the name of Clearfield Creek Coal Company, a more accurate description of said premises being represented to be as follows:

Beginning at the northeast corner of the tract in the name of Frederick Hornman and being the corner (common) of the four tracts in the names of Frederick Hornman, John Witmer, John Bean and William Bausman; thence west along division line between Frederick Hornman and William Bausman surveys 177 perches to a post; thence south 80 perches to a post; thence

1½° west along the division line of the John Whitmer and Frederick Hornman tracts 80 perches to a post by land conveyed in 1876 by G.D. Morgan to S. D. Robinson; thence east along said land, south 88½° east 120 perches to a post in the middle of the said John Whitmer tract; thence north 1½° east along the land conveyed by Morgan to P. Flynn 160 perches more or less to a post on the division line between the John Witmer and the John Bean survey; thence along the said division line by land of Lemuel Root north 88½° west 120 perches to the place of beginning; containing in all 208½ acres, net measure, and being a part of two larger tracts surveyed in the names of Frederick Hornman and John Witmer, and known , now or formerly as the John Shoff property.

(3) 100 Acres, Coal Right, Bencaria Township, Clearfield County, Pennsylvania, lately assessed as unseated land in the name of Clearfield Creek Coal Company, a more accurate description of said premises being represented to be as follows:

Beginning at a fallen maple corner of the Peter Getz and Jeremiah Mosher tracts; thence south 2° 30' west 131.1 perches to pointers; thence north 86° 15' West 70½ perches to a stone corner; thence north 1° 45' East 80 ½ perches to pointers; the corner of Miles Davis' land; thence north 2° east 52 perches to pointers; thence south 88° east 72 perches to a fallen maple and place of beginning; containing 58 acres and 104 perches, and being part of a larger tract of land surveyed in the name of Jeremiah Mosher.

(4) 366 Acres, coal and mineral right, Gulich Township, Clearfield County, Pennsylvania, lately assessed as unseated land in the name of Clearfield Creek Coal Company, a more accurate description of said premises being represented to be as follows:

√ (2) Beginning at a hemlock; thence by the Edward Hand survey east 235 perches to a hemlock on the corner of land of S. W. Smith; thence by land of same north 241 perches to a post near a pine, also a corner of land of S. W. Smith; thence by land formerly of Hardman Philips west 235 perches to stones; thence by the George Moore survey south 241 perches to the place of beginning; containing 353 acres and 155 perches;

Excepting and reserving out of the above twenty-six town lots known on the plan of Janesville as lots numbered, four, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty-one, thirty-two, thirty-three, thirty-four, forty-three, forty-four and forty-five, respectively.

And further excepting and reserving, twenty-eight town lots in said Janesville in addition to the twenty-six above reserved out of said tract warranted in the name of John Moore, which said twenty-eight lots were sold and conveyed or agreed to be conveyed by James Flynn, Anthony Flynn and Patrick Flynn prior to their deed of conveyance to the said William A. Wallace, dated December 15, 1866.

(b) being all the coal in, under and upon the following described tract of land situate in the township of Gulich, and bounded and described as follows:- on the west and north by lands of said Flynns, on the east by land of H. Alleman, and on the south by land of William J. Conrad; beginning at a stone heap on the plank road; thence along said road north 38° west 39 perches to stones; thence along land of H. Alleman 88 degrees west 98 perches to a post; thence south 5° west _____ to a post; thence south 88° east 128 perches to a stone heap and place of beginning; containing 21 acres, and being part of a survey in the name of Edward Hand, and being known as the Conrad lot.

(c) Beginning at a post on the road leading from Allenan to Janesville; thence along the said road north 41½° west 20 perches to a post; thence along land of William J. Conrad north 40½° east 112 perches to stones; thence south 2½° west 103 perches to stones or hemlock; thence north 88° west 61 perches to a post and the place of beginning; containing 25½ acres, and being part of a survey in the name of Edward Hand, and being known as the Conrad lot.

(5) 469 acres, coal right, Gulich Township, Clearfield County, Pennsylvania, lately assessed as unseated land in the name of Clearfield Creek Coal Company, a more accurate description of said premises being represented to be as follows:

Beginning at a fallen maple corner of the Peter Getz and Jeremiah Mosher tracts; thence north 2° 30' east 349 perches to pointers; thence south 87° 30' east 228 perches to pointers; thence south 2° 30' west 349 perches to pointers; thence north 87° 30' west 228 perches to a fallen maple, and the place of beginning; containing 496 acres and 112 perches, net measure, and being all the tract known as the David Barton survey.

(6) 90 acres, coal right, Jordan Township, Clearfield County, Pennsylvania, lately assessed as unseated land in the name of Clearfield Creek Coal Company, a more accurate description of said premises being represented to be as follows:

ALL that certain coal right known as the Moshannon vein or seam, together with the vein or seam of coal overlying the Moshannon vein or seam and commonly known as the "Cap vein" or "Rider vein" in, under and upon that certain tract of land situate in Jordan Township aforesaid, and being a part of the John Dunwoody survey, contained with the following boundaries, Beginning at a white pine on the division line between the John Dunwoody survey and the Jonathan Jones survey; thence south 37½° east 114.5 perches to a post; thence south 52½° west 124.5 perches to a post; thence north 37½° west 114.5 perches to a post; thence north 52½° east 122.5 perches to a white pine and the place of beginning. Containing 88 acres and 60 perches, more or less.

Being the same premises which the County Commissioners by six different deeds dated May 25th 1942 and recorded in Deed Book 344 at pages 581, 583, 585, 587, 589, 591 granted and conveyed to the County National Bank, Trustee.

The party of the first part intends to convey by this deed only such right, title and interest as it acquired by the aforementioned deeds from the County Commissioners, dated _____ and recorded as aforesaid, and makes no warranty of any kind as to the premises or real estate described and granted above, and intended so to be.

The County National Bank at Clearfield, Trustee, the said party of the first part, does hereby constitute and appoint H. M. McGarvey to be its attorney, for it and in its name and as and for its corporate act and dead, to acknowledge this Indenture before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgement, to the intent that the same may be duly recorded.

This deed is made under and by virtue of a resolution of the Board of Directors of the party of the first part, duly passed at a meeting thereof duly and legally held on the 15 day of September 1942.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed by its President or Vice President, and its corporate seal to be hereunto fixed, duly

attested by its Cashier or Assistant Cashier, the day and year first above written.

The County National Bank at Clearfield,
Trustee
By R. I. Fulton
President

ATTEST:
H. M. McGarvey (Corp. Seal)
Cashier

State of Pennsylvania :
: SS:
County of Clearfield :

On this the 16 day of September, 1942, before me, L. N. Rougeux, the undersigned officer, personally appeared H. M. McGarvey, known to me to be the person whose name is subscribed as attorney in fact for The County National Bank at Clearfield, Trustee, and acknowledged that he executed the same as the act of his principal for the purposes therein contained.

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

L. N. Rougeux (Off. Seal)
L. N. Rougeux
Notary Public
My Commission Expires January 27, 1945

I hereby certify, that the precise address of the grantees herein is as follows; Central Hanover Bank & Trust Co., New York, N.Y.; Marcella F. Chaplin, 67 Morton St., New York, N.Y.; Liquidating Trustees of Commonwealth Trust Co., Harrisburg, Pa.; Roy I. Fulton, Clearfield, Pa.; Roy C. Kindig and Jane K. Kindig, Clearfield, Pa.; Clara B. Moore, Clearfield, Pa.; Carolyn M. Mullen, 1716 Crenshaw Boulevard, Los Angeles, California; Otto P. Schwarzchild, 9 Putman Avenue, Greenwich, Connecticut; Philip B. Reed, Clearfield, Pa.; W. Wallace Smith, Clearfield, Pa.; The County National Bank at Clearfield, Clearfield Pa.

R. I. Fulton
President

Entered of Record Sep. 19 1942 9:46 A.M.
Recorded and Compared by
Geo. N. Taylor
M. M. D.
Recorder

DEED :
SAMUEL BLOOM EST. BY ADMR. :
TO :
GEORGIA McMURRAY :

THIS DEED,

Made the 19th day of September in the year Nineteen Hundred and Forty-Two. BETWEEN James P. McKeehan, Administrator of the Estate of Samuel Bloom, deceased, late of Berwindale, Clearfield County, Pennsylvania, party of

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Partial Summary Judgment was served on the following parties at their respective addresses on this date via U.S. First Class, Postage Pre-Paid Mail.

Lynn E. Bell, Esquire
10TH Floor
One Gateway Center
Pittsburgh, PA 15222

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

DATED: May 1, 2008

Respectfully submitted,

Robert P. Ging, Jr., Esquire

FILED

MAY 05 2008

William A. Shaw
Prothonotary/Clerk of Courts

VA

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	*	
vs	*	NO. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY Defendants	*	
and	*	
LAUREL ENERGY, L.P., Additional Defendants	*	

ORDER

NOW, this 6th day of May, 2008, upon consideration of the Plaintiffs' Motion for Partial Summary Judgment filed by Robert P. Ging, Jr., Esquire, it is the ORDER of this Court that argument on said Motion be and is hereby scheduled for the 19th day of May, 2008 at 9:00 A.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

Judge J Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED
02:34 BY
MAY 06 2008
William A. Shaw
Prothonotary/Clerk of Courts

1CC Attys:
R. Ging
Naddeo
L. Bell

FILED

MAY 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/6/08

____You are responsible for serving all appropriate parties.

__X__The Prothonotary's office has provided service to the following parties:

____Plaintiff(s) __X__ Plaintiff(s) Attorney ____Other

____Defendant(s) __X__ Defendant(s) Attorney

____Special Instructions:

FILED
MAY 15 2008
11:50/w
William A. Shaw
Prothonotary/Clerk of Courts
No. cc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs vs. MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	CASE NO. 05-1351-CD
	TYPE OF PLEADING: **MOTION FOR CONTINUANCE**
	FILED ON BEHALF OF: Plaintiffs
	COUNSEL OF RECORD: ROBERT P. GING, JR., ESQUIRE Pa. Id. No. 25459 2095 Humbert Road Confluence, PA 15424-2371 (814) 395-3661

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	
and	)	
LAUREL ENERGY, L.P., Additional Defendant	)	

MOTION FOR CONTINUANCE

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Motion for Continuance.

1. On May 6, 2008 the Court scheduled argument on Plaintiffs' Motion for Summary Judgment for May 19, 2008 at 9:00 a.m.

2. Counsel for the Plaintiffs has a conflict that day, having previously been scheduled for depositions, in a case where discovery closes on May 30th. That case is currently pending in Indiana County, with a trial date of July 14th.

3. Counsel for the Defendants do not object to the continuance.

Respectfully submitted,

Robert P. Ging, Jr., Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Continuance was served on the following parties at their respective addresses on this date via U.S. First Class, Postage Pre-Paid Mail.

Lynn E. Bell, Esquire
10TH Floor
One Gateway Center
Pittsburgh, PA 15222

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

DATED: May 13, 2008

Respectfully submitted,

Robert P. Ging, Jr., Esquire

FILED
MAY 15 2008
William A. Shaw
Prothonotary/Clerk of Courts

CA

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER, Plaintiffs	*	
vs.	*	NO. 05-1351-CD
MORAVIAN RUN RECLAMATION CO. INC., and JOHNSON BROTHERS COAL CO., Defendants	*	
and	*	
LAUREL ENERGY, L.P., Additional Defendants	*	

FILED

MAY 16 2008 (GP)
013:50 (L)
William A. Shaw
Prothonotary/Clerk of Courts
Cert to Ging
Mandio
L. Ben

ORDER

NOW, this 16th day of May, 2008, the Court being in receipt of the Plaintiffs' Motion for Continuance filed by Robert P. Ging, Jr., Esquire, it is the ORDER of this Court that the Motion for Continuance be and is hereby GRANTED and that argument on the Plaintiffs' Motion for Summary Judgment is rescheduled from May 19, 2008 to **June 3rd, 2008 at 3:00 p.m.** in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED
MAY 16 2008
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5-16-08

__ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

__ Plaintiff(s) X Plaintiff(s) Attorney __ Other

__ Defendant(s) X Defendant(s) Attorney

__ Special Instructions:

MAY 21 2008

Certificate of Service

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER, Plaintiffs	*	
vs.	*	NO. 05-1351-CD
MORAVIAN RUN RECLAMATION CO. INC., and JOHNSON BROTHERS COAL CO., Defendants	*	
and	*	
LAUREL ENERGY, L.P., Additional Defendants	*	

ORDER

NOW, this 16th day of May, 2008, the Court being in receipt of the Plaintiffs' Motion for Continuance filed by Robert P. Ging, Jr., Esquire, it is the ORDER of this Court that the Motion for Continuance be and is hereby GRANTED and that argument on the Plaintiffs' Motion for Summary Judgment is rescheduled from May 19, 2008 to **June 3rd, 2008 at 3:00 p.m.** in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 16 2008

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

FILED NO CC
m/11:24/5K
MAY 27 2008

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was served on the following parties at their respective addresses on this date via U.S. First Class, Postage Pre-Paid Mail.

Lynn E. Bell, Esquire
10TH Floor
One Gateway Center
Pittsburgh, PA 15222

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

DATED: May 22, 2008

Respectfully submitted,

Robert P. Ging, Jr., Esquire

FILED

MAY 27 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE CHRIS AND MARY JLYES, JEFF COOKERLY AND SCOTT ALDINGER	:	
vs.	:	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY AND LAUREL ENERGY, LP.,	:	

ORDER

AND NOW, this 28th day of May, 2008, it is the ORDER of the Court that due to a conflict with the Court schedule, argument on Plaintiffs' Motion for Partial Summary Judgment shall be and is hereby rescheduled from June 3, 2008 to **Friday, July 18, 2008 at 1:30 P.M.** in Courtroom No. 1, Clearfield County Courthouse.

FILED
012:00 BOI
MAY 28 2008
William A. Shaw
Prothonotary/Clerk of Courts
1 CC Attys: Bell
Ging
Naddeo

BY THE COURT:

Fredric J. Ammerman
President Judge

FILED

MAY 28 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/28/08

____ You are responsible for serving all appropriate parties.

__X__ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) __X__ Defendant(s) Attorney

____ Special Instructions:

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT

Filed on behalf of:
Defendant Moravian Run Reclamation Co., Inc.

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: May 30, 2008

FILED 2cc Atty Naddeo
0/10:42 am
MAY 30 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, L.P., Additional Defendant.	*	

RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT

NOW COMES the Defendant, Moravian Run Reclamation Co., Inc. (hereinafter referred to as "Moravian Run"), and by its attorney, James A. Naddeo, Esquire, and sets forth the following response to the partial motion for summary judgment filed by Plaintiffs:

1. Admitted.

2. Admitted.

3. Admitted.

4. No answer is required in that said Lease Agreement speaks for itself.

5. Admitted.

6. States a conclusion of law to which no answer is required.

7. States a conclusion of law to which no answer is required.

8. States a conclusion of law to which no answer is required. To the extent an answer may be required it is denied that Plaintiffs are entitled to judgment as a matter of law with regard to the payment of royalties under the Lease as attached to Plaintiffs Motion for Partial Summary Judgment as Exhibit 1. Defendant, Moravian Run, is not liable to Plaintiffs for the amounts alleged by Plaintiffs with regard to royalty payments. As assignor, Defendant's liability to Plaintiff for royalties ceased upon the assignment of said lease by Moravian Run to Laurel Energy, L.P. Goss v. The Woodland Fire Brick Company, 4 Pa. Super. 167 (1897).

9. Admitted in so far as Moravian Run has not made payment to Plaintiffs.

WHEREFORE, Defendant, Moravian Run, respectfully requests that Your Honorable Court deny Plaintiffs' Partial Motion for Summary Judgment.

Respectfully submitted,

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Moravian Run

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of the Response to Motion for Partial Summary Judgment filed on behalf of Moravian Run Reclaimation, Co. was served on the following persons and in the following manner on the 30th day of May, 2008:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-1416

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Moravian Run

FILED

MAY 30 2008

William A. Shaw
Prothonotary/Clerk of Courts

LA

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

PETITION TO WITHDRAW AS COUNSEL

Filed on behalf of:
Petitioner,
James A. Naddeo

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: May 30, 2008

FILED 3cc Atty Naddeo
03:47 BM
MAY 30 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, L.P., Additional Defendant.	*	

FILED
o 11:45a.m. GK
JUN 04 2008
William A. Shaw
Prothonotary/Clerk of Courts

3cc Atty Naddeo

ORDER

AND NOW, this 3rd day of JUNE, 2008, upon consideration of the forgoing Petition, it is hereby ordered that:

(1) a rule is hereby issued upon Respondent, Johnson Brothers Coal Company, to Show Cause why the Petitioner, James A. Naddeo, is not entitled to the relief requested;

(2) the Respondent shall file an answer to the petition within twenty (20) days of service upon the Respondent;

(3) the petition shall be decided under Pa. R.C.P. No. 206.7;

(4) notice of the entry of this order shall be provided to all parties by the Petitioner.

NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION, YOU MUST TAKE ACTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE AN ANSWER IN WRITING WITH THE PROTHONOTARY SETTING FOUR YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU AND SERVE A COPY ON THE ATTORNEY FOR PERSON FILING THE PETITION. 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 THE RELIEF REQUESTED BY THE PETITIONER. 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
Second & Market Street
CLEARFIELD, PA 16830
(814) 765-2641

BY THE COURT,

Judge

FILED

JUN 0 4 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6-4-08

X You are responsible for serving all appropriate parties.

____The Prothonotary's office has provided service to the following parties:

____Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____Defendant(s) Attorney

____Special Instructions:

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, L.P., Additional Defendant.	*	

PETITION TO WITHDRAW AS COUNSEL

NOW COMES James A. Naddeo, Esquire, attorney of record for the Defendant, Johnson Brothers Coal Company, and sets forth the following:

1. That a Defendant in the above-captioned action is Johnson Brothers Coal Company (hereinafter "Johnson Brothers") whose last known address is 1390 Lee Run Road, Mahaffey, Pennsylvania 15757.

2. That Johnson Brothers consulted your Petitioner on or about October 20, 2005, and requested that your Petitioner file pleadings on its behalf to the above-captioned term and number.

3. That over the course of litigating this matter Petitioner has filed numerous documents and pleadings, corresponded

with counsel and attended Conferences in this matter on behalf of Johnson Brothers.

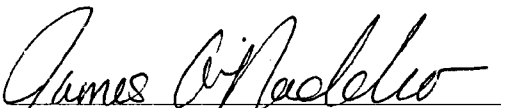
4. That Petitioner has not been paid any counsel fees from Johnson Brothers.

5. That Johnson Brothers filed for bankruptcy in the Western District for Pennsylvania to Nc. 07-70409.

WHEREFORE, Petitioner respectfully requests Your Honorable Court to enter a Rule upon Defendant, Johnson Brothers Coal Company, to show cause why Petitioner should not be allowed to withdraw as counsel.

Respectfully submitted,

NADDEO & LEWIS, LLC

By 

James A. Naddeo, Esquire
Attorney for Defendant

FILED

MAY 30 2008

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

ADDITIONAL DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Filed on Behalf of this Party:
Laurel Energy, LP

Counsel of Record for this Party:

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588

LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270

JENNINGS L. HART, III, ESQUIRE
Pa. I.D. No.: 200060

DAVIES, McFARLAND & CARROLL, P.C.
Firm I.D. No.: 281
One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED NO CC
m/11:32/BA
JUN 04 2008
William A. Shaw
Prothonotary/Clerk of Courts
GK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

ADDITIONAL DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P. (collectively "Laurel"), by and through its counsel, Davies, McFarland & Carroll, P.C., who files the within Motion for Partial Summary Judgment, stating as follows:

1. Plaintiffs filed their Complaint in this action on or about August 31, 2005. Complaint attached hereto as Exhibit "A".

2. The Complaint avers that in February, 2002, the Plaintiffs purchased a piece of property located in Clearfield County which, unbeknownst to them, was subject to a lease agreement for the surface mining of that property. *See* Exhibit "A".

3. Plaintiffs' suit seeks royalty payments and other damages relating to the removal of the coal pursuant to that lease agreement. *See* Exhibit "A".

4. Paragraph 19 of Plaintiffs' Complaint states:

> Paragraph 6 of the lease required that lessee conduct all mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. The Defendants and their successors in interest failed to conduct mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry, **have failed to reclaim and re-vegetate the site, to implement sedimentation and erosion controls, and to assure that there was no mine drainage emanating from the mined area.**

Exhibit "A", paragraph 19 (emphasis added). *See also* Lease Agreement attached hereto as Exhibit "B".

5. The Lease Agreement made no provision for reclamation or replanting beyond the requirements of the laws of the Commonwealth of Pennsylvania. *See* Exhibit "B".

6. The Surface Mining Conservation and Reclamation Act, 52 P.S. § 1396.4, requires that prior to surface mining a party must apply to the Department of Environmental Protection ("the Department" or "DEP") for and be granted a surface mining permit. 52 P.S. § 1396.4

7. The application process includes submission of a reclamation plan and posting of bonds to ensure that reclamation is completed in accordance with the reclamation plan and the laws of the Commonwealth of Pennsylvania. 52 P.S. § 1396.4(a)(2) and (d).

8. Once the Department is satisfied that the reclamation activities covered by the bond or a portion of the bond have been accomplished in accordance with 52 P.S. § 1396.4, the Department may release the applicable portion of the bond. 52 P.S. § 1396.4(g).

9. The Act provides for the release of the bond in three stages:

(1) At **Stage I**, when **the operator has completed the backfilling, regrading and drainage control of a bonded area in accordance with his approved reclamation plan**, the release of up to sixty percent of the bond for the applicable permit area, so long as provisions for treatment of pollutional discharges, if any, have been made by the operator.

(2) At **Stage II**, when **revegetation has been successfully established on the affected area in accordance with the approved reclamation plan**, the Department shall retain that amount of bond for the revegetated area which would be sufficient for the cost to the Commonwealth of reestablishing revegetation. Such retention of bond shall be for the duration of liability under the bond as prescribed in subsection (d). No part of the bond shall be released under this subsection so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of law or until soil productivity for prime farmlands has returned to equivalent level of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to subsection (a)(2)I. Where a permanent impoundment is to be retained, that portion of bond under this subsection may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the department.

(3) At **Stage III**, when **the operator has completed successfully all mining and reclamation activities and has made provisions with the Department for the sound future treatment of pollutional**

> **discharges, if any, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in subsection (d).** No bond shall be fully released until all requirements of this act are fully met. Upon release of all or part of the bond and collateral as herein provided, the State Treasurer shall immediately return to the operator the amount of cash or securities specified therein.

52 P.S. § 1396.4 (g)

10. In the instant matter, Stage I of the reclamation of the property in question has been completed to the satisfaction of the Department as is evidenced by the release of the bond relating to the Stage I reclamation. Letter from Kathy W. Keyes, Pennsylvania DEP, dated November 24, 2003, attached hereto as Exhibit "C" and DEP Completion Report No. 4-03-017 attached hereto as Exhibit "D".

11. In the instant matter, Stage II of the reclamation of the property in question has been completed to the satisfaction of the Department as is evidenced by the release of the bond relating to the Stage II reclamation. Letter from Karen A. DePaoli, Pennsylvania DEP, dated July 13, 2007, attached hereto as Exhibit "E" and DEP Completion Report No. 4-03-015 attached hereto as Exhibit "F".

12. At Stage III, the final stage of the reclamation, the bond has not yet been released but, this portion of the bond may not be released until the passage of five full years after the completion of reclamation work. 52 P.S. § 1396.4 (d).

13. Despite the fact that Stage III of the bond, which relates to pollutional discharges such as mine drainage, cannot be released, inspections conducted by the DEP state that there is no indication that the water in the area has been degraded by pollution. Exhibit "D" and Exhibit "F".

14. Furthermore, should pollutional discharges occur within the statutory period, the holder of the mining permit is required to remedy the pollution or forfeit the Stage III portion of the bond to allow the state to remedy the pollution. 52 P.S. § 1396.4.

15. Given that the Lease Agreement provides for no reclamation activities or replanting beyond the statutory requirements and those requirements have been met to the full satisfaction of the DEP, there is no question of material fact as to Plaintiffs' claim for failure to "reclaim and re-vegetate the site, [and] to implement sedimentation and erosion controls" and Additional Defendant Laurel is entitled to summary judgment on that claim. *See* ***Woyetk v. Benjamin Coal Co.***, 30 Pa. Super 397, 446 A.2d 914 (1982).

16. Given that the DEP has found no evidence of pollutional discharges, Plaintiffs' claim for failure to "assure that there was no mine drainage emanating from the mined area" has no basis. Therefore there is no question of material fact as to Plaintiffs' claim and Additional Defendant Laurel is entitled to summary judgment on that claim.

17. Further argument and support are contained in Additional Defendant's Brief in Support of this Motion, which is hereby incorporated by reference.

WHEREFORE, Additional Defendant, Laurel Energy, L.P., respectfully requests that this Honorable Court enter the attached Order granting the Additional Defendant's Motion for Partial Summary Judgment.

Respectfully submitted,

DAVIES, McFARLAND & CARROLL, P.C.

By: _____

LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE

Attorney for Laurel Energy, L.P.,
Additional Defendant

Extension- Apr. 15, 05
or June 2, 03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,

Plaintiffs

vs.

CASE NO. 05-1351-CD

MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY,

- 9/27/05 - Amended
- 9/22/05

Defendants

TYPE OF PLEADING:
COMPLAINT

536 - 0735

FILED ON BEHALF OF:
Plaintiffs

COUNSEL OF RECORD:

ROBERT P. GING, JR., ESQUIRE
Pa. Id. No. 25459
2095 Humbert Road
Confluence, PA 15424-2371
(814) 395-3661

I hereby certify this to be a true and attested copy of the original statement filed in this case.

AUG 31 2005

Attest:

Prothonotary/
Clerk of Courts

PENGAD-Bayonne, N. J.
DEFENDANT'S EXHIBIT
A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO.
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

NOTICE TO DEFEND

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MidPenn Legal Services
211 ½ E. Locust Street
Clearfield, PA 16830
(800) 326-9177

IN THE COURT OF COMMON PLEAS OF BLAIR COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO.
MORAVIAN RUN RECLAMATION CO, INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

COMPLAINT

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Complaint.

1. The Plaintiffs are adult citizens of Pennsylvania, who reside in the Commonwealth of Pennsylvania at the following addresses: Jan Lawrence and Scott Aldinger, 2178 Gleim Court, Enola, PA 17025; Chris and Mary Ilyes, 2160 Esbenshade Road, York, Pennsylvania 17404; and Jeff Cookerly, 152 Linda Drive, New Oxford, Pennsylvania 17350.

2. The Defendant, Moravian Run Reclamation Co., Inc. (hereinafter "Moravian") entered into a Memorandum of Lease with B & B Land Company of Clearfield, Pennsylvania, transferring all right, title and interest to a surface mine lease in Gulich Township, Clearfield County on October 17, 2000. The lease was for property now owned by the Plaintiffs. A copy of the lease is attached

hereto as Exhibit 1 and a copy of the Memorandum of Lease is attached as Exhibit 2.

3. At all times material hereto Johnson Brothers Coal Company (hereinafter "Johnson Brothers"), R.R. 1, Box 586, Mahaffey, Pennsylvania 15757 was the permittee and contract strip mine operator for Moravian which conducted mining operations pursuant to Permit No. 17970119 on the property owned by the Plaintiffs in Gulich Township, Clearfield County.

4. On February 27, 2002 Plaintiffs were the purchasers of a piece of property located in Beccari and Gulich Townships, Clearfield County, Pennsylvania as more fully set forth in the Deed attached hereto as Exhibit 3, being Instrument No. 200203112 dated February 27, 2002.

5. Subsequent to acquiring the property the Plaintiffs began building a cabin on the property in March of 2002. On August 23, 2002 Plaintiffs returned to the property from their primary residences which were not in Clearfield County to find that the property was being surface mined by Johnson Brothers Coal Company. – mining started by this date

6. In October, 2002 a representative of Johnson Brothers Coal Company provided a copy of the lease to the Plaintiffs for the first time. – Never Saw Lease

7. Mining was conducted on the property, without notice to the Plaintiffs, and the timber remaining on the property was also cut during the mining operation.

8. At no time did the Plaintiffs give permission to either of the Defendants or their predecessors or successors in interest to conduct surface mining operations on their property, nor did the Defendants make the Plaintiffs aware that they intended to conduct surface mining on their property

COUNT I - BREACH OF CONTRACT

9. The averments of Paragraphs 1 through 8 are incorporated herein by reference as if fully set forth.

10. At all times material hereto the Defendants have breached the surface mining contract as more fully set forth herein.

11. At the time of the mining conducted by the Defendants, the prior lessors did not own the surface rights of the premises.

12. Paragraph 3 of the original lease provided for a payment from the mining company to the property owners of $1.50 per net ton or 5% of the pit selling price per all merchantable and mineable coal whichever amount is greater for all coal mined and removed on the premises.

13. The Plaintiffs have made a request for payment of the royalties set forth in Paragraph 3, however the Defendants, and their successors in interest have refused and continue to refuse to make any royalty payments.

14. Paragraph 5 of the lease requires that the Defendants maintain certified truck scale weights for all coal mined and removed from the premises. The Plaintiffs have requested truck scale weights and other records through the Defendants or their successors in interest, however the Defendants and their successors in interest have refused and continue to refuse to comply with that provision of the original lease.

15. The original lease provided that lessors, their successors in interest would have access to the operation and scale records. Plaintiffs, or the current property owners have requested on numerous occasions that such records be provided, however the Defendants and their successors in interest have refused and continue to refuse to comply with the provision of the lease.

16. Paragraph 9 of the lease requires that prior to mining any paperwood or saw timber remaining on the leased premises would be cut and removed, and payment made to the Plaintiffs, as, successors in interest to the original lessors, pursuant to that paragraph. No such payments were made, nor was the timber on the property cut and removed by reliable people subject to the approval of the lessors. Defendants gave no notice to the Plaintiffs that they intended to mine Plaintiffs' property.

17. The lessee also failed to refrain from destroying pulpwood and saw timber in the progress of its mining operations and has failed to replant the premises in accordance wit the lease and its permits.

18. Paragraph 11 requires that lessee supply to lessors monthly tonnage reports, which the Defendants and their successors in interest have refused and continue to refuse to do.

19. Paragraph 6 of the lease required that lessee conduct all mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. The Defendants and their successors in interest failed to conduct mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry, have failed to adequately reclaim and re-vegetate the site, to implement sedimentation and erosion controls, and to assure that there was no mine drainage emanating from the mined area.

WHEREFORE Plaintiffs demand judgment in an amount in excess of arbitration limits of the Court of Common Pleas of Clearfield County.

COUNT II – TRESPASS

20. The averments of paragraphs 1 through 19 are incorporated herein by reference as if fully set forth.

21. At the time that mining was commenced the original lease agreement had expired, and the Memorandum of Lease, purportedly commencing June 2, 2000, occurred after the expiration of the original lease agreement.

22. No mining occurred prior to the expiration of the original coal lease.

23. In the alternative, if the lease was not in full force and affect at the time the mining was conducted, the Defendants, and their successors in interest and/or contractors converted timber present on the property to their own use, and converted the coal on the property to their own use and trespassed on Plaintiffs' property without Plaintiffs' consent and without the benefit of a lease.

WHEREFORE, Plaintiffs respectfully request judgment in excess of the arbitration limits of the Court of Common Pleas of Clearfield County.

Respectfully submitted,

Robert P. Ging, Jr., Esquire

Original Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 15th day of April, 1995 by and between R. Wesley Smith and Samantha Smith, his wife of R.D. 2, Box 39, Reynoldsville, Pennsylvania 15851 and Raymond A. Smith and Shirley B. Smith, his wife of R.D. 1, Box 211-A, Reynoldsville, Pennsylvania 15851, party of the first part, hereinafter referred to as "LESSORS";

A N D

B & B LAND COMPANY, of Clearfield, Pennsylvania, party of the second part, hereinafter referred to as "LESSEE".

W I T N E S S E T H:

THE LEASE

1. That for and in consideration of the sum of One Dollar ($1.00) paid by the LESSEE to the LESSORS, the receipt whereof is hereby acknowledged, the LESSORS do hereby let, lease and demise unto the LESSEE, its succesors and assigns, the right with such terms, covenants and conditions as hereinafter set forth, to mine and remove all the mineable and merchantable coal in, under and upon that certain tract in the Township of Beccaria and in the Township of Gulich title to which is vested in the LESSORS which tract of land is Parcel #1 - 290 acres in Gulich Township under Ray and Wesley Smith which is shown on Tax Map No. 118-K7-9 and Parcel #2 - 200 acres in Beccaria Township under Ray and Wesley Smith, which is shown on Tax Map No. 101-K17-8. Also, 110.56

PENGAD-Bayonne, N.J.
DEFENDANT'S EXHIBIT
B

110.56 acres in Beccaria Township under William O'Shall, Tax Map No. 101-K17-1.

The LESSORS covenant that they own either the coal or the surface (right of surface support) of the described premises, and do hereby grant and convey the full and complete rights for the mining and removing of the coal in, under and upon the above described premises by all modern mining methods, including but not limited to surface stripping, with the right of ingress, egress and regress, into, upon the under said lands for the purpose of examining, testing, mining, stripping and removing said coal, together with the right to locate and erect such chutes, tipples, buildings, pipe lines, pole lines and other structures as may be necessary for the use and working of mines or strippings, and with the right to deposit spoil therefrom upon the surface with the right to redeposit the same, and with all rights and privileges necessary and convenient in mining, digging, stripping, removing and transporting said coal without liability for any and all damage done to said lands or buildings or the water therein or thereon, caused by the mining, stripping and removal of all said coal, or the exercise of any or all of the mining rights aforesaid.

LESSORS hereby lease unto the LESSEE the right of ingress, egress and regress in and to the leased premises any time within five (5) years after the termination of this lease for the purpose of backfilling or planting trees or otherwise complying with the mining laws of the Commonwealth of Pennsylvania. But this right of re-entry for a period of five (5) years is for the

purpose alone and shall vest in LESSEE no rights whatsoever in the coal, in the mining of coal, or in the property. In addition, LESSORS agree to execute the required written consents on the form furnished by the Commonwealth of Pennsylvania concerning re-entry for backfilling, planting, reclamation and inspection.

2. Term and Effective Date: This lease shall become effective as of the 15th day of April, 1995, by the LESSEE and shall continue for a period of four (4) years with automatic extensions of one (1) year terms from year to year to exhaustion of the coal provided the premises are being actively mined at the end of the original term and each yearly extention thereof. Active mining shall be defined to mean mining operations upon the premises on a regular five (5) days per week.

3. Tonnage Royalty: LESSEE shall pay to LESSORS royalty at the rate of One Dollar and Fifty Cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton for all merchantable and mineable coal, whichever amount is greater, for all coal mined and removed from the premises. All payments of royalty shall be made on or before the 25th day of each calendar month for all coal mined and removed in the preceding calendar month and shall be accompanied by a statement showing the tonnage mined and royalty due. All payments are to be made to the LESSORS without demand or to any other party or parties LESSORS in writing designate as an agent for receiving payments.

All payments of royalty as herein provided are based on either one hundred percent (100%) ownership of surface (right of

surface support) coal or both surface and coal. In the event LESSORS should own less than one hundred percent (100%) of said surface and/or coal rights said sums shall be adjusted in accordance with the percentage of ownership.

4. Minimum Royalty: LESSEE shall pay to LESSORS the sum of Two Hundred Dollars ($200.00) per month as a minimum royalty for each month that the within lease is in full force and effect. All payments of minimum royalty shall be recoupable by the LESSEE as a credit against tonnage royalty from production as herein provided.

5. Tonnage Measurements: Royalty and other payments shall be based on certified truck scale weights or railroad weights, and all coal mined and removed from the premises shall be weighed on such scales. LESSEE hereby authorizes LESSORS or its agent, to examine any and all of the LESSEE'S records and to examine the records of any truck scale weights or railroad weights concerning the coal which was hauled or shipped from the described premises and the right to make copies of his findings.

6. Mining Methods: LESSEE agrees that all mining operations shall be conducted in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that LESSORS (at its own risk) shall have access to the operation and scale records of LESSEE at all times in person or by duly authorized agent.

7. Taxes: All taxes upon the premises herein demised shall be paid by LESSORS, and all taxes that may be levied, imposed, charged or assessed upon improvements, equipment, or

mining machine placed upon the demised premises by LESSEE for the mining, removing, processing or transportation of the coal shall be paid by LESSEE. Should any federal, state or local subdivision impose any tax upon the mining of coal, the coal mined, or otherwise, said taxes shall be paid by LESSEE.

8. Insurance: LESSEE agrees to keep in force during the term of this lease general liability insurance with a reputable insurance company in the sum of at least One Million Dollars. Upon request LESSEE shall furnish to LESSORS a certificate of said insurance which shall name LESSORS as an additional insured.

9. Timber Removal: If on investigation it appears that there is any appreciable quantity of paper wood or saw timber remaining on the leased premises, the LESSEE will at the request of the LESSORS arrange for the cutting and removal of such paper wood and saw timber by reliable people, subject to the approval of the LESSORS, and will supervise the cutting of such timber and pulpwood, arranging for monthly remittances to the LESSORS at the same time that royalties hereunder are due. The LESSEE shall refrain from destroying pulpwood or saw timber in the progress of its strip mining operations, if these is reasonable opportunity to arrange to have such timber cut off in advance of such operations.

10. Books and Records: LESSEE shall and will keep complete and accurate books of account, showing the amount of coal produced from the said property, and at the time for payment of the monthly royalties hereinbefore mentioned, shall furnish accurate statements of all coal mined and produced during the

preceding calendar month; shall and will keep all mining maps, books, plans and records necessary in operating said leased coal; and shall and will furnish LESSORS, or its duly authorized agent or employee, at any reasonable time, upon request, access to all books of account, records, weigh sheets, maps and plans and will also give LESSORS, or its duly authorized agent or employee, at reasonable request, access to any and all portions of the said leased premises and to the operations in connection with the same.

11. LESSEE agrees to supply to LESSORS, at the first of each month, tonnage on the number of trucks loaded with coal for the previous month.

12. Default in Royalties and Breach of Term: It is understood and agreed that in the event the LESSEE should default in any payment provided for herein when said payments become due, or should LESSEE be in default in any other respect and continue in such default for a period of thirty (30) days after being notified in writing of such default by LESSORS, then, in either event, at the option of the LESSORS, this Lease shall cease and terminate and LESSEE hereby authorizes any attorney of any court of record to appear for it and in its name to confess a judgment against it in an amicable action of ejectment to the end that a writ of habere facias possession may issue forthwith for the delivery of possession to LESSORS together with clause of fieri facias for royalties in arrears and costs.

13. Supplemental "C": LESSORS hereby agrees to execute, acknowledge and deliver to LESSEE within ten (10) days after the

exercise of the within option in quadruplicate the form know as Supplemental "C" required by the Department of Environmental Resources (DER) of the Commonwealth of Pennsylvania and thereafter any other forms required in order to secure the permits necessary for mining operations.

14. Force Majeure: LESSEE shall not be deemed in default for failure to perform any of its obligations under this Agreement during periods in which performance is partially or wholly prevented by any cause, condition or matter beyond LESSEE'S control, such as, and not by way of limitation, strikes, riots, accidents, governmental laws, lack of satisfactory markets for coal from the leased premises and acts of God.

15. No Assignment or Transfer: LESSEE agrees not to mortgage or encumber the leased premises with liens of any kind, or sell, or assign, or setover or sublet the whole or any part of the herein leased premises, or subcontract for the mining thereof, without the express written consent of the LESSOR first had and obtained, which, shall not be unreasonably withheld. It is further agreed and provided that any lawful levy and sale on execution or other legal processes, as well as any assignments or sale in bankruptcy, voluntary or involuntary proceedings, or any receivership created, shall be deemed and taken to be an assignment or subletting within the meaning of this lease agreement, and at the option the LESSORS shall work an immediate forfeiture, without notice, and thereupon possession may be immediately taken by the LESSORS without further formality.

It is understood, however, that anything to the contrary in the foregoing paragraph notwithstanding, LESSEE shall have the right to assign the within lease to LESSEE'S mining company, Penn-Grampian Coal Company or to Al Hamilton Contracting Company or any of its assigns.

16. Memorandum of Lease: Upon exercise of the within option by LESSEE, LESSORS agrees to execute, acknowledge and deliver to LESSEE a "memorandum of Lease" suitable for recording, which Memorandum retains the privacy of this document but gives public notice of the fact that the within lease has been executed. Said Memorandum shall contain a description of the property, the purpose of the lease, the length of the term and the fact that it incorporates the within lease by reference thereto. LESSEE agrees to prepare said Memorandum and deliver it to LESSORS and LESSORS agrees to execute, acknowledge and deliver to LESSEE the said Memorandum within ten (10) days of the receipt thereof.

17. Cancellation: The LESSEE shall have the right to cancel this Agreement at any time upon giving thirty (30) days written notice to the LESSORS, whereupon all accrued royalties including paid past minimum royalties shall be due and payable.

18. Notices: A written notice addressed to B & B Land Company, P.O. Box 249, Clearfield, Pennsylvania, 16830, and sent by certified mail, shall be deemed received by the LESSEE as of one day after the date of mailing. A written notice addressed to Raymond A. Smith, R.D. 1, Box 211-A, Reynoldsville, Pennsylvania

15851 and sent by certified mail shall be deemed received by the LESSORS as of one day after the date of mailing.

19. Water monitoring shall begin within ninety (90) days of the signing of the Agreement.

20. Anything to the contrary herein notwithstanding, mining shall commence within six (6) months after all required permits have been approved by D.E.R., otherwise the within lease shall terminate upon the expiration of thirty (30) days written notice by LESSORS to LESSEE should LESSEE fail to commence mining within said thirty (30) days.

21. This lease agreement is binding on the parties hereto, their heirs, executors, administrators, successors and assigns.

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

ATTEST:

Dixie A. McGregor

LESSORS:

R Wesley Smith

Samantha L Smith

Raymonda Smith

Shirley Ann Smith

ATTEST:

William Thorp
Partner

LESSEES:
B & B LAND COMPANY
By

Andrew J Sutton
Partner

Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P. O. Box 8766
Harrisburg, PA 17105-8766
November 24, 2003

Bureau of Office Systems and Services

717-705-8026
Fax [illegible]
Hawk Run District Office

DEC - 8 2003

RECEIVED

Johnson Brothers Coal Company
RD 1 Box 580
Mahaffey PA 15757

Re: SMP No. 5412-17970119
Gulich Township, Clearfield County

Ladies and Gentlemen:

The Hawk Run District Office of the Bureau of District Mining Operations has determined that backfilling; leveling and planting were completed in accordance with the Surface Mining Conservation and Reclamation Act at the following site:

Completion Report No. 4-03-017
Landowner: R. Wesley Smith, etc.
Acreage: (Stage I bond release under Conventional Bonding)

This confirms our release of you and Lincoln General Insurance Company of partial liability and obligation incurred under the following surety bond:

Bond No.	Present Amount	Executed	Present Release	Balance
SUR006885	$106,654	05/21/02	$63,992	$42,662

The remainder of the bond will be held until the liabilities and obligations are releasable as specified in Section 4(d) of the Act, as amended.

If you require additional information or need additional help, please call Karen DePaoli at the number listed above.

Sincerely,

Kathy W. Keyes

Kathy W. Keyes
Chief
Certification, Licensing and Bonding

cc: Hawk RunDistrict Office
Inspector
Forester
U.S. Office of Surface Mining
Lincoln General Insurance Company

PENGAD-Bayonne, N. J.
DEFENDANT'S EXHIBIT
C

5600-FM-MR0033 Rev. 5/96

SU

TLC 9/19/03

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

RECLAMATION STATUS REPORT

Inspection Report

Stage I

Date Sept. 17, 2003

Report No. 463017

Weather _____

On Site Times _____

PERMITTEE	TOWNSHIP	COUNTY	PERMIT NO.
Johnson Bros. Coal ADDRESS RD 1 Box 580 Mahaffey, PA. 15757	Gulich	Clearfield	17970119
	PARTIAL ☑ VIOLATIONS NOTED ☐ FOLLOW-UP INSP. REQUIRED ☐ FOLLOW-UP ☐ PREVIOUS VIOLATIONS: COMPLIANCE ORDER ☐ AERIAL ☐ CORRECTED ☐ FTC ORDER ☐ CEASE ORDER ☐ UNCORRECTED ☐ OUTSTANDING ENFORCEMENT ☐		LICENSE NO. & EXPR. DATE
			OPERATIONAL STATUS Regrade

GENERAL MINING INFORMATION:

a. Areas-Seams-Pit Dimensions (L/W/H)-Method: NA

PERFORMANCE STANDARDS

Obs.	STANDARD	Viol.	Comp. Date
✓	8. Treatment Facilities		
✓	7. Sediment Control Measures		
✓	9. Sediment Ponds		
	31. General Backfilling		
	56. Backfilling-Final Slopes		

MINING AREA EVALUATED	26.8 ACRES
SUPPORT AREA EVALUATED	_____ ACRES
MINING AREA DELETED	_____ ACRES
SUPPORT AREA DELETED	_____ ACRES

RECLAMATION STATUS QUESTIONS	YES	NO	N/A
MINING RESTORATION			
1. Is backfilling completed as per the approved plan?	✓		
2. Is all debris, junk, and nonessential equipment removed?			✓
3. Are all coal stockpiles removed?			✓
4. For prime farmland only, are all slopes less than 8%			✓
HYDROGEOLOGIC INFORMATION			
5. Does analysis of surface & groundwater monitoring data indicate degradation ~~has~~ not occurred?		✓	
6. Do post-mining discharges on the permit meet effluent criteria?			✓
If not, indicate monitoring points or sample numbers ---			
7. Do post-mining discharges adjacent to the permit meet effluent criteria?			✓
If not, indicate monitoring points or sample numbers ---			
8. Has a Hydrogeologist evaluated the discharges associated with this permit?			✓
If yes, date of report Hydrogeologist			
9. Have Subchapter F or G requirements been met?			✓
EROSION AND SEDIMENTATION CONTROL INFORMATION			
10. Have erosion and sedimentation controls been implemented?	✓		
11. Do sediment basin discharges meet effluent criteria?	✓		
Sample Numbers --- 445415			
REQUIRED FOR COAL REFUSE DISPOSAL ONLY			
12. Is site topsoiled and planted?	✓		
RECOMMENDATIONS AND GENERAL OBSERVATIONS			
13. Is the site ready for topsoil replacement and planting?	✓		
14. DO YOU RECOMMEND APPROVAL OF THIS RECLAMATION STATUS REQUEST?	✓		

COMMENTS AND RECOMMENDATIONS

Person Contacted	Title	Discharge/Seeps ☐ yes ☑ no Samples Collected ☐ yes ☐ no Range of Samples Collected 111 to 116
Signature		Investigator Signature & I.D. No. [signature] 4454

The Operator's signature acknowledges that he has read th[illegible] and that he was given the opportunity to discuss it with the investigator. The signature does not necessarily mean he agrees with the report.

DEFENDANT'S EXHIBIT D
PENGAD-Bayonne, N. J.

CT FILE

Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 8766
15th Floor - 400 Market Street
Harrisburg, Pa. 17105-8766

Dept of Environmental Protection
Moshannon District Office
JUL 13 2007
JUL 19 2007
RECEIVED

Bureau of Office Services

717-705-8026
Fax 717-787-9241

Johnson Brothers Coal Co
R D 1 Box 580
Latrobe PA 15650

Re: SMP No. 5412-17970119
Gulich Township, Clearfield County

Ladies and Gentlemen:

The Moshannon District Office of the Bureau of District Mining Operations has determined that backfilling, leveling and planting were completed in accordance with the Surface Mining Conservation and Reclamation Act at the following site:

Completion Report No.	4-07-015
Landowner:	R. Wesley Smith, etc.
Acreage:	(Stage II bond release under Conventional Bonding)

This confirms our release of you and Lincoln General Insurance Company of partial liability and obligation incurred under the following surety bond:

Bond No.	Present Amount	Executed	Present Release	Balance
SUR006885	$42,662	05/21/02	$37,482	$5,180

The remainder of the bond will be held until the liabilities and obligations are releasable as specified in Section 4(d) of the Act, as amended.

If you require additional information or need additional help, please call Karen DePaoli at the number listed above.

Sincerely,

Karen A. DePaoli

Karen A. DePaoli, Administrative Assistant
Bonding Section
Division of Contracts, Procurement & Bonding

cc: Moshannon District Office
Inspector
Forester
U.S. Office of Surface Mining
Lincoln General Insurance Company

PENGAD-Bayonne, N. J.
DEFENDANT'S EXHIBIT
E

5600-FM-MR0035 Rev. 4/96

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

Page 1 of 1
Stage II ✓ III
Report No. 407015
Date 6/6/07

RECLAMATION STATUS REPORT
Inspection Report
Stage II and III

Weather Sunny, cool
On Site Times

PERMITTEE	TOWNSHIP	COUNTY	PERMIT NO.
Johnson Bros Coal Co	Girard	Clearfield	17970119
ADDRESS: RD 1 Box 580, Latrobe, PA 15650	PARTIAL ☒ FOLLOW-UP ☐ AERIAL ☐	VIOLATIONS NOTED ☐ FOLLOW-UP INSP. REQUIRED ☐ PREVIOUS VIOLATIONS: COMPLIANCE ORDER ☐ CORRECTED ☐ FTC ORDER ☐ CEASE ORDER ☐ UNCORRECTED ☐ OUTSTANDING ENFORCEMENT ☐	LICENSE NO. & EXPR. DATE
			OPERATIONAL STATUS: STE

GENERAL MINING INFORMATION:

a. Areas-Seams-Pit Dimensions (L/W/H)-Method:

b. Acreage evaluated: Mining Support Acreage Deleted: Mining Support

PERFORMANCE STANDARDS

Obs.	STANDARD	Viol.	Comp. Date
	8. Treatment Facilities		
	7. Sediment Control Measures		
	9. Sediment Ponds		
	31. General Backfilling		
	56. Backfilling-Final Slopes		

RECLAMATION STATUS QUESTIONS

	YES	NO	N/A
TOPSOIL AND SUBSOIL			
1. Is topsoil replaced as specified in permit?	✓		
2. Has a topsoil supplement been used?	✓		
3. Were soil test and amendment report submitted?	✓		
EROSION AND SEDIMENTATION CONTROL			
4. Is area prevented from contributing sediment?	✓		
5. Is the removal of E & S structure for area being evaluated approved? (Stage II)			✓
6. Have all temporary drainage control structures been removed? (Required for Stage III)	✓		
7. Are permanent drainage control structure being properly maintained?			✓
DISCHARGES			
8. Does surface & ground water monitoring data indicate that degradation has not occurred?	✓		
9. Do discharges on permit meet effluent criteria? If no, indicate monitoring points ---	✓		
10. Do discharge outside or permit meet effluent criteria? If no, indicate monitoring points--	✓		
11. Has a Hydrogeologist evaluated the discharges? Date of report Hydrogeologist			✓
12. Have Subchapter F or G requirements been met?			✓
REVEGETATION			
13. If the post-mining land use is other than cropland--- A. Is there a minimum of 70% cover?	✓		

	YES	NO	N/A
REVEGETATION (cont.)			
B. Does less than 1% of area have less than 30% cover?	✓		
C. Area all areas <30% cover smaller than 3000 sq. ft.?	✓		
D. Has minimum planting period obligation been met?			✓
LAND USE			
14. What is the approved land use? Forest			
15. Has the approved plan been implemented?	✓		
CROPLAND			✓
16. Has subsoil been replaced as specified in permit?			
17. Has the planted crop been approved in the permit?			
18. Is the yield for the current and preceding season at least 90% of yield stated in the permit?			
PRIME FARMLAND SOILS			✓
19. Has prime farmland soil reconstruction been achieved?			
20. Soil productivity returned to yield stated in permit? by soil survey or by crop production yield?			
FOREST LAND			
21. 400 living woody plants/acre?	✓		
22. 600 living woody plants/acre on slopes >20 degrees			✓
COMMERCIAL FOREST LAND			✓
23. 450 living trees/ acre?			
24. Minimum of 75% commercial species?			
WILDLIFE HABITAT			✓
25. 75% of area planted with a mixture of woody species? If no, have permit planting requirements been met?			
26. Minimum 400 living woody plants/acre?			
27. Stocking of woody plants >90% of permit requirement?			
28. Planting configuration & species composition as required?			
PASTURELAND			✓
29. Has the approved management plan been implemented?			
RECOMMENDATIONS			
30. Is approval of reclamation status request recommended?	✓		

FTC 6/15/07

Person Contacted Title

Signature

Discharge/Seeps ☐ yes ☐ no
Samples Collected ☐ yes ☐ no
Range of Samples Collected _____ to _____

Investigator Signature & I.D. No. 4435

PENGAD-Bayonne, N.J. DEFENDANT'S EXHIBIT F

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

CIVIL DIVISION

No.: 05-1351-CD

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant

ORDER OF COURT

AND NOW, this _____ day of _____ 2008, it is hereby ORDERED, ADJUDGED and DECREED that Additional Defendant LAUREL ENERGY, L.P.'s Motion for Partial Summary Judgment is GRANTED. It is further ORDERED that judgment is hereby entered in favor of Additional Defendant, LAUREL ENERGY, L.P., and against Plaintiffs, JAN LAWRENCE CHRIS, MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER, as to Plaintiffs' claims for failure to reclaim and revegetate the site, failure to implement sedimentation and erosion controls, and failure to assure that there was no mine drainage emanating from the mined area.

BY THE COURT:

_____ J.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 2nd day of June, 2008:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc., and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE

Attorney for Laurel Energy, L.P.,
Additional Defendant

FILED

JUN 0 4 2008

William A. Shaw
Prothonotary/Clerk of Courts

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

CIVIL DIVISION

No.: 05-1351-CD

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant.

ORDER OF COURT

AND NOW, this 5 day of June, 2008, oral argument on Additional Defendant Laurel Energy, LP's Motion for Partial Summary Judgment is hereby scheduled for the 18th day of July, 2008, at 1:30 p.m.

BY THE COURT

Fred Ammerman J.

FILED 6cc
01/12:37 BA Atty Hart
JUN 05 2008
William A. Shaw
Prothonotary/Clerk of Courts

FILED
JUN 05 2008
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/5/08

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Petitioner,
James A. Naddeo

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

FILED NO CC
01 11:03 3rd
JUN 05 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Petition to Withdraw as Counsel was served on the following persons and in the following manner on the 5th day of June, 2008:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-1416

Johnson Brothers Coal Company, Inc.
1390 Lee Run Road
Mahaffey, PA 15757

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Moravian Run

FILED

JUN 05 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

RESPONSE OF LAUREL ENERGY, LP, TO JAMES A. NADDEO, ESQUIRE'S PETITION TO WITHDRAW AS COUNSEL FOR JOHNSON BROTHERS COAL COMPANY

Filed on Behalf of this Party:
Laurel Energy, LP

Counsel of Record for this Party:

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588

LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270

JENNINGS L. HART, III, ESQUIRE
Pa. I.D. No.: 200060

DAVIES, McFARLAND & CARROLL, P.C.
Firm I.D. No.: 281
One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED NO CC
m/10:47 BA
JUN 13 2008 (GK)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

CIVIL DIVISION

No.: 05-1351-CD

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant

RESPONSE OF LAUREL ENERGY, LP, TO JAMES A. NADDEO, ESQUIRE'S PETITION TO WITHDRAW AS COUNSEL FOR JOHNSON BROTHERS COAL COMPANY

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P. (collectively "Laurel Energy"), by and through its counsel, Davies, McFarland & Carroll, P.C., who files the within Response to James A. Naddeo, Esquire's Petition to Withdraw as Counsel for Johnson Brothers Coal Company, stating as follows:

1. The averments of paragraph 1 of the Petition are admitted in part and denied in part. It is admitted that Johnson Brothers Coal Company ("Johnson Brothers") is a Defendant in this action. However, Laurel Energy is without sufficient information to affirm or deny Johnson

Brother's last know address and requests that a definitive address be supplied prior to Mr. Naddeo's withdraw, if granted.

2. Laurel Energy is without sufficient information to confirm or deny the averments of paragraph 2 of the Petition.

3. Admitted.

4. Laurel Energy is without sufficient information to confirm or deny the averments of paragraph 4 of the Petition.

5. The averments of paragraph 5 of the Petition are admitted in part and denied in part. They are admitted to the extent that Johnson Brothers did file for bankruptcy in the Western District of Pennsylvania at No. 07-704091. However, they are denied to the extent that it is implied that the bankruptcy proceeding is ongoing. The bankruptcy was discharged as of November 27, 2007. See Bankruptcy Court Final Decree attached hereto as Exhibit "A".

WHEREFORE, Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., does not oppose James A. Naddeo, Esquire's Petition to Withdraw as Counsel for Johnson Brothers Coal Company but requests a definitive address for said Defendant prior to Mr. Naddeo's withdraw and wishes to inform the parties and the Court that Johnson Brothers Coal Company is no longer involved in bankruptcy proceedings.

Respectfully submitted,

DAVIES, McFARLAND & CARROLL, P.C.

By: _____

LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE
Attorney for Laurel Energy, L.P.,
Additional Defendant

Form 129

UNITED STATES BANKRUPTCY COURT
Western District of Pennsylvania

18
cric

In re:

Bankruptcy Case No.: 07–70409–BM

Chapter: 7

Johnson Brothers Coal Company, Inc.
25–1735476
Debtor(s)

FINAL DECREE

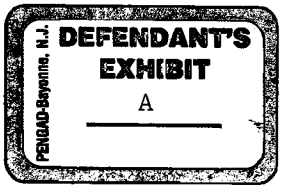
The estate of the above named debtor has been fully administered.

IT IS ORDERED THAT:

Lisa M. Swope is discharged as trustee of the estate of the above–named debtor and the bond is cancelled; the chapter 7 case of the above named debtor is closed.

Dated: 11/27/07

Bernard Markovitz
Judge



CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing Response of Laurel Energy, LP, to James A. Naddeo, Esquire's Petition to Withdraw as Counsel for Johnson Brothers Coal Company to all counsel of record in the following manner on the 10th day of June, 2008:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc., and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE

Attorney for Laurel Energy, L.P., Additional Defendant

FILED

JUN 13 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs vs. MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	CASE NO. 05-1351-CD
	TYPE OF PLEADING: **MOTION TO STRIKE ADDITIONAL DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT, AND RESPONSE THERETO**
	FILED ON BEHALF OF: Plaintiffs
	COUNSEL OF RECORD: ROBERT P. GING, JR., ESQUIRE Pa. Id. No. 25459 2095 Humbert Road Confluence, PA 15424-2371 (814) 395-3661

FILED NO CC
m/11:27/BOX
JUL 21 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	)	

MOTION TO STRIKE ADDITIONAL DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT, AND RESPONSE THERETO

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Motion to Strike the Additional Defendant's Motion for Partial Summary Judgment, and Response Thereto.

1. On or about March 27, 2008 this Honorable Court entered an Order requiring that the Plaintiffs file a Motion for Partial Summary Judgment on or before May 1, 2008, and that the Defendant Laurel Energy file an Answer on or before May 15, 2008.

2. The case had previously been listed for trial.

3. Laurel Energy did not request leave of Court to file a Motion for Summary Judgment.

WHEREFORE, in light of the fact that the Defendant has failed to comply with the Rules of Civil Procedure, and failed to demonstrate that there are no genuine issues of material fact, the Court is respectfully requested to enter the attached Order.

Respectfully submitted,

Robert P. Ging, Jr., Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Strike was served on the following parties at their respective addresses on this date via U.S. First Class, Postage Pre-Paid Mail.

Lynn E. Bell, Esquire
10TH Floor
One Gateway Center
Pittsburgh, PA 15222

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

DATED: July 17, 2008

Respectfully submitted,

Robert P. Ging, Jr., Esquire

FILED
JUL 21 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED
JUL 22 2008
6/3:20/cw
William A. Shaw
Prothonotary/Clerk of Courts
L. Bell, Ginc & Mann

JAN LAWWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER	:	
VS.	:	NO. 05-1351-CD
MORAVIAN RUN RECLAMATION COMPANY, INC. and JOHNSON BROTHERS COAL COMPANY, and LAUREL ENERGY, LP.	:	

O R D E R

AND NOW, this 18th day of July, 2008, upon agreement of counsel for all parties, it is the ORDER of this Court that James A. Naddeo, Esquire, be and is hereby permitted to withdraw as counsel for Johnson Brothers Coal Company. The Prothonotary shall note the withdrawal of Mr. Naddeo's appearance for said Defendant.

BY THE COURT,

President Judge

FILED

JUL 22 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7-22-08

___ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

X Plaintiff(s) X Plaintiff(s) Attorney ___ Other

___ Defendant(s) X Defendant(s) Attorney Mahorc

L. Da

___ Special Instructions:

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

PETITION FOR LEAVE TO FILE MOTION FOR SUMMARY JUDGMENT

Filed on behalf of:
Defendant, Moravian Run Reclamation Co., Inc.

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

Dated July 23, 2008

FILED 2 cc
JUL 23 2008 Amy Naddeo
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, L.P.,
Additional Defendant.

No. 05-1351-CD

FILED
01/4:00 BM
JUL 24 2008
William A. Shaw
Prothonotary/Clerk of Courts
2 CC Atty Naddeo

RULE

AND NOW, this 24 day of July, 2008, it is hereby ORDERED that a Rule be granted upon the Plaintiffs and Additional Defendant, to show cause why Petitioner's request for leave to a file a motion for summary judgment should not be granted.

Rule Returnable and argument thereon to be held the 8th of August, 2008, at 10:30 A.m., in Courtroom 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION, YOU 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. 5982

BY THE COURT,

Judge

DATE: 7/24/08

X You are responsible for serving all appropriate parties.

___ The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

FILED

JUL 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, L.P., Additional Defendant.	*	

PETITION FOR LEAVE TO FILE MOTION FOR SUMMARY JUDGMENT

NOW COMES the Defendant, Moravian Run Reclamation Co., Inc. (hereinafter referred to as "Moravian Run"), and by its attorney, James A. Naddeo, Esquire, and files the following motion for summary judgment and sets forth as follows:

1. On or about March 27, 2008 a pretrial conference was held in this matter.

2. At the time of the pretrial conference it was discussed before Your Honorable Court that Plaintiff had indicated its agreement that Defendant, Moravian Run Reclamation Co., Inc. be released from this case.

3. As well at the time of the pretrial conference, counsel for Additional Defendant, Laurel Energy, L.P. relayed

that she expected agreement to the same, but would need to consult her client.

4. This Court entered an Order on the same date, directing that Plaintiff file a Motion for Partial Summary Judgment on or before May 1, 2008 (Plaintiff at this time being the only party intending or expected to file the same.) and that Additional Defendant file its Answer on or before May 15, 2008.

5. That despite several inquiries to Additional Defendant made subsequent to the pretrial conference, Defendant, Moravian Run, has been unable to obtain a response from Additional Defendant as to the party's agreement or disagreement with releasing Defendant, Moravian Run from this case.

6. That Plaintiff continues to be in agreement with discontinuing this case as to Defendant, Moravian Run.

7. That Defendant, Moravian Run, believes and therefore avers that if agreement will not be made to release it from the case, it is entitled to the same by way of a summary judgment motion.

WHEREFORE, Defendant, Moravian Run, respectfully requests that Your Honorable Court grant Defendant, Moravian

Run, leave to file a motion for summary judgment in this case.

Respectfully submitted,

NADDEO & LEWIS, LLC

By _____
James A. Naddeo
Attorney for Moravian Run

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Petition for Leave to File Motion for Summary Judgment was served on the following persons and in the following manner on the 23rd day of July, 2008:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-141

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Moravian Run

FILED

JUL 23 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendant, Moravian Run Reclamation Co., Inc.

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

FILED 2 cc Atty Naddeo
01/10:42/01
JUL 28 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that certified copies of Rule and Petition for Leave to File Motion for Summary Judgment were served on the following persons and in the following manner on the 23rd day of July, 2008:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-141

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Moravian Run

FILED

JUL 28 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAN LAWWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER	:	
VS.	:	NO. 05-1351-CD
MORAVIAN RUN RECLAMATION COMPANY, INC. and JOHNSON BROTHERS COAL COMPANY	:	
VS.	:	
LAUREL ENERGY, LP.	:	

O R D E R

AND NOW, this 8th day of August, 2008, this being the date set for argument on the Defendant Moravian Run Reclamation Company's Petition for Leave to File Motion for Summary Judgment; the Court noting that no one has appeared on behalf of Plaintiff or Defendant Laurel Energy, L.P.; accordingly, it is the ORDER of this Court that the said Defendant have no more than fifteen (15) days from this date in which to file a Motion for Summary Judgment.

BY THE COURT,

Judge J. Cummings

President Judge

FILED
01/4:00/BA
AUG 11 2008
William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys: Ging
L. Bell
Naddeo

ICC Def. Johnson Bros. Coal Co.
RR 1, Box 586
Mahaffey, PA 15757

FILED

AUG 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/11/08

____ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) X Plaintiff(s) Attorney ____ Other

X Defendant(s) X Defendant(s) Attorney Johnson Bros.

____ Special Instructions:

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST ADDITIONAL DEFENDANT, LAUREL ENERGY, L.P.

Filed on behalf of:
Defendant, Moravian Run Reclamation Co., Inc.

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: August 25, 2008

FILED 2cc Atty Naddeo
013:46BH
AUG 25 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, L.P., Additional Defendant.	*	

MOTION FOR PARTIAL SUMMARY JUDGMENT
AGAINST ADDITIONAL DEFENDANT, LAUREL ENERGY, L.P.

NOW COMES the Defendant, Moravian Run Reclamation Co., Inc. (hereinafter referred to as "Moravian Run"), and by its attorney, James A. Naddeo, Esquire, and moves this Court pursuant to Pa.R.C.P. No. 1035.1 et seq., for the entry of partial summary judgment in favor of Defendant, Moravian Run, and against Additional Defendant, Laurel Energy, L.P. (hereinafter "Laurel") as to indemnification, including but not limited to, counsel fees costs and expenses:

1. That on or about August 31, 2005 Plaintiffs commenced the instant action against Defendant, Moravian Run.

2. That on or about February 2, 2006 Moravian Run filed a Complaint against Additional Defendant, Laurel which

included claims for indemnifaction and payment of counsel fees and costs incurred in this litigation by Moravian.

3. That the Option Agreement entered into between Moravian Run and Laurel contains an indemnification clause at Paragraph 4 of said agreement. True and correct copy of Option Agreement is attached hereto as Exhibit "A."

4. That pursuant to Paragraph 4 of said Option Agreement, Laurel agreed to indemnify Moravian Run as defined within said Paragraph and to the extent that Laurel would "defend all claims, demands, and suits at its sole cost and expense, whether groundless or not."

5. That Paragraph 4 of said agreement states that said provision "shall survive the expiration or termination of this agreement."

6. That by virtue of the Laurel's agreement to indemnify Moravian Run in the Option Agreement between Moravian Run and Laurel, Laurel is liable to indemnify Moravian Run for any and all amounts that it has expended or will expend in this litigation and for any and all liability established in this suit as against Moravian Run.

7. That Moravian Run is entitled to judgment as a matter of law as to the issue of indemnification, including but not limited to judgment in its favor and against Laurel as to

payment of Moravian Run's counsel fees, costs and expenses in this litigation.

WHEREFORE, Defendant, Moravian Run, respectfully requests that Your Honorable Court grant Defendant, Moravian Run, partial summary judgment as to the issue of Laurel's liability to Moravian Run for indemnification, including but not limited to Moravian Run's counsel fees, costs and expenses in this litigation.

Respectfully submitted,

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Moravian Run

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Motion for Partial Summary Judgment Against Additional Defendant, Laurel Energy, L.P. was served on the follcwing persons and in the following manner on the 25th day of August, 2008:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-141

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Moravian Run

OPTION AGREEMENT

This **Option Agreement** ("Agreement") made and entered into on this 15th day of ~~May,~~ June 2001 by and between Moravian Run Reclamation, Co., Inc. of 605 Sheridan Drive Clearfield PA 16830, ("Optionor")

~ AND ~

Laurel Energy, L.P., a Pennsylvania limited partnership, with a principal business office located at One Energy Place Suite 7500 Latrobe, PA 15650, ("Optionee").

WHEREAS, Optionor owns leases to certain coal lands ("Leases") more particularly described in Exhibit A attached hereto ("Premises") and;

WHEREAS, Optionor is the permit holder under a certain mining Permit issued by the Pennsylvania Department of Environmental Protection more particularly described in Exhibit B attached hereto ("Permit");

WHEREAS, Optionor has granted to Optionee an option to (a) obtain an assignment of the Leases, and (b) acquire the Permit, in accordance with the provisions of this Agreement, and Optionee has accepted the option.

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, in consideration of the above covenants and conditions and those hereinafter set forth mutually agree as follows:

1. Option. In consideration of the sum of $1,000.00 (One Thousand Dollars) paid by the Optionee to Optionor, Optionor does hereby grant and convey to Optionee the sole, exclusive, and irrevocable right and option ("Option") to take an assignment of the Leases, and acquire the Permit, at any time within a period of thirty (30) days from the date hereof ("Option Period"), subject to the terms and conditions hereinafter set forth. The Option Period may be extended for an additional period of thirty (30) days if needed to obtain consent to the assignment of leases by the Optionee giving notice thereof to Optionor.

2. Right of Entry. During the Option Period, Optionee shall have the right to enter upon the Premises for the purposes of test drilling, core drilling, and such other investigations and exploratory tests as Optionee shall deem necessary in its sole and exclusive discretion. The Optionee agrees to reclaim any areas disturbed by the activities of the Optionee during exploration of the Premises. Such obligations to reclaim will survive the expiration or termination of this Agreement.

3. Access to Information. Optionor shall provide and furnish Optionee and Optionee's counsel, accountants, engineers, and other representatives full access, during normal business hours throughout the Option Period, all of the Optionor's records and information pertaining to the Premises as necessary for Optionee to conduct due diligence. In the event the Optionee fails to exercise the option granted herein, all records and information obtained by the Optionee in conducting due diligence shall be surrendered and remitted to Optionor within five

Exhibit "A"

(5) days of the earlier of the expiration of the option granted herein or notice by Optionee to Optionor of its intent not to exercise the option granted herein.

4. Indemnification. During the Option Period, Optionee will indemnify and save harmless Optionor, its successors and assigns, from any and all loss and/or liability for claims, demands, and suits, or causes of action in law or equity for damages and injuries (including death) of every kind and nature to persons and property, including loss of the use thereof, as the result of Optionee activities hereunder, and Optionee will defend all such claims, demands, and suits at its sole cost and expense, whether groundless or not. Nothing herein shall relieve Optionor from liability for its own negligence or acts, or the negligence or acts of its employees, agents, and contractors. This provision shall survive the expiration or termination of this agreement.

5. Exercise of Option. In the event Optionee elects to exercise its Option, it shall exercise the Option within thirty (30) days from the date hereof unless otherwise extended as provided for in Section 1 above. The notice of the exercise of the option or extension shall be given in writing by the Optionee by registered mail or United States certified mail, return receipt requested, addressed to the Optionor, which shall be postmarked within the period set forth above at which time the option shall be considered exercised. If the Optionor shall exercise the Option, as herein provided then the following provisions of this Agreement shall immediately become effective. If the Optionee fails to exercise the option in accordance with the terms of this Agreement within the Option Period, then the option granted by this Agreement, and all rights hereunder of the Optionee shall automatically terminate without notice to either party.

6. Time and Place of Closing. The assignment of Leases and the signing of documents to allow for the transfer of the Permit shall take place thirty (30) days after the Optionee exercises the Option, at the offices of the Optionor, 605 Sheridan Drive Clearfield PA 16830 commencing at 10:00 a.m., local time, or at such other date, time or place as may be agreed to by the Buyer and Seller.

7. Transaction. At the Closing Optionor will assign the Leases to Optionee, in form and substance satisfactory to Optionee, and complete the documentation required to transfer the Permit to Optionee, such transfer is to occur in the manner prescribed by Department of Environmental Protection, under the following terms and conditions:

a. Optionee shall pay an overriding production royalty ("Overriding Royalty") of thirty cents ($0.30) per ton for all merchantable and mineable coal produced and sold from mining activities conducted on the Premises. Such Overriding Royalty shall be paid on the twenty fifth (25) day of each month for all coal removed and shipped from the Premises during the previous calendar month and shall be accompanied by a correct statement showing the truck weights for all coal shipped during such month. such payment shall be paid to Moravian Run Reclamation Co., Inc. 605 Sheridan Dr. Clearfield, PA 16830

b. Upon completion of transfer of the Permit to the Optionee, the Optionee shall pay the sum of $18,963.[illegible] to the Optionor for reimbursement of permit preparation

costs. Provided Optionee or its designee has a contract miners license, has replaced Optionors bonds, and has applied for transfer of the permit, Optionor shall permit Optionee or its designee to conduct mining operations pursuant to the Permit, providing that the Optionors bonds have been released, until such time as the Permit is transferred to the Optionee or its designee.

8. Representations & Warranties of Optionor.

Optionor represents and warrants to Optionee as follows:

B. Optionor is the sole and exclusive owner and/or lessee of the Leases and has good and marketable title to the Leases, free and clear of all liens and encumbrances, clouds and defects whatsoever and has the authority to enter in this Agreement with Optionee.

C. All the Leases are valid and in good standing with no circumstances of default or pending default or other condition that would effect the right of the Optionee to mine coal under the Leases.

D. There are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Premises or the Leases, or any portion thereof, at law or in equity before any court or administrative agency.

E. To the best of the Optionors knowledge, there are no pending or threatening proceedings in eminent domain, or otherwise, which would affect the Premise, or any portion of the same.

F. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor the consummation of the transaction contemplated hereby, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions, provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which Optionor is a party.

G. Neither the Optionor, nor any other entity, person, direct or indirect affiliate controlled by the Optionor has caused to be deposited or has deposited on, at, or in the Premises, or has caused to be disposed, treated, stored or discharged upon the Premises any hazardous or toxic materials or substances, and the Premises and Optionor's activities thereon are now in full compliance with all environmental laws. For the purpose of the preceding sentence and if hereafter used in this Agreement the term "environmental laws" means any federal, state or local law, rule, regulation, or ordinance regulating and relating to protection of the environment, including without limitation, the land, air and water, or human health or safety, and the term "hazardous or toxic substances" means any

substance defined as hazardous or toxic or otherwise regulated by any environmental law.

H. There are no agreements, formal or informal, between Optionor, the Lessors under the Leases and any third party regarding the Premises or the Leases, except for an agreement between Moravian Run Reclamation Co., Inc. and Penn Grampian Coal Company regarding the advanced royalties paid by Penn Grampian Coal Company to Wesley and Raymond Smith, which is attached to and considered part of this agreement.

I. All representations, warranties and agreements made by both parties in this Agreement shall survive the Transaction, for a period of two (2) years.

J. All representations and warranties by Optionor in this Agreement and all statements and certificates furnished or to be furnished to Optionee pursuant hereto, or in connection with the Transaction, contain true statements of material fact, and do not omit the material facts necessary to confirm all of the above representations and warranties.

8.1 Representations and Warranties of Optionee

Optionee represents and warrants to Optionor as follows:

A. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor the consummation of the transaction contemplated hereby, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions, provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which Optionee is a party.

B. Neither the Optionee, nor any other entity, person, direct or indirect affiliate controlled by the Optionee has caused to be deposited or has deposited on, at, or in the Premises, or has caused to be disposed, treated, stored or discharged upon the Premises any hazardous or toxic materials or substances, and the Premises and Optionee's activities thereon are now in full compliance with all environmental laws. For the purpose of the preceding sentence and if hereafter used in this Agreement the term "environmental laws" means any federal, state or local law, rule, regulation, or ordinance regulating and relating to protection of the environment, including without limitation, the land, air and water, or human health or safety, and the term "hazardous or toxic substances" means any substance defined as hazardous or toxic or otherwise regulated by any environmental law.

C. All representations and warranties by Optionee in this Agreement and all statements and certificates furnished or to be furnished to Optionee pursuant hereto, or in connection with the Transaction, contain true statements of material fact, and do not omit the material facts necessary to confirm all of the above representations and warranties.

9. Place of Payment and Notices. All Overriding Royalties payable hereunder, and all notices and other communications hereunder by either party may be effectuated by personal delivery or in writing by first class United States mail, postage prepaid, and shall be deemed received for all purposes hereunder as of the date of actual mailing as determined by the postmark date. All payments and notices by mail shall be addressed to the respective parties at their addresses set forth above, or to such other address the parties hereafter designate by notice to each other. All royalties payable to the Optionor shall be mailed to the address set forth above.

10. Events Of Default.

(a) The following shall constitute acts of default hereunder:

(i) if any representation or warranty of either party made in or pursuant to this Agreement is untrue or incorrect in any material respect, either party materially breaches the covenants or other terms of this Agreement

(ii) the neglect or refusal of Optionee to make payment of royalties, required to be paid by Optionee hereunder for a period of fifteen (15) days after Optionor has made written demand upon Optionee.

(iii) Optionee shall file a voluntary petition in bankruptcy or for the appointment of a receiver or shall be adjudicated a bankrupt or insolvent, or shall seek, consent to, or acquiesce in the appointment of any trustee, receiver or liquidator for all or any substantial part of its assets or be unable to meet its obligations to creditors as they come due.

(b) In the event of any such default by the Optionee, Optionor shall have at its addition to any other remedies it may have at law or in equity, all and singular the following remedies:

1. The right to terminate and cancel this Agreement upon thirty (30) days written notice of the same in addition to any other notice requirement above set forth, being provided to Optionee.

2. If Optionor elects to terminate and cancel this Agreement, Optionee authorizes any attorney of any court of record to appear for it and confess judgment against it and in favor of the Optionor, in ejectment or its equivalent legal remedy, for possession of the Leased Premises and further, authorizes said attorney to cause the immediate issuance of writ of possession delivering possession of the Leased Premises to the Optionor.

3. All of the rights and remedies of Optionor shall be cumulative and shall not be deemed to exclude Optionor from any other legal or equitable remedy or remedies which they may have. Failure on the part of Optionor to enforce any of the rights herein reserved by them on default for a period shall not operate as an estoppel or as a waiver against Optionor or prevent it at any subsequent time from electing to exercise all or any of such rights for any subsequent default.

4. Optionee hereby authorizes any attorney of any court of record, as often as default be made in the payment of royalties and other moneys as above stipulated to appear for it and confess judgment or judgments against it for the amount of royalties and other moneys due and unpaid, with attorney's commissions of ten percent (10%) and costs of suit, without stay of execution, waiving inquisition and exemption. This power of attorney shall be continuous and may be exercised as often as any default be made by Optionee in the terms of this Agreement.

11. Indemnification by Seller. For a period of five (5) years from and after the closing, Optionor shall indemnify and hold Optionee (and its permitted assigns) and the officers, directors and shareholders thereof harmless against and in respect of any and all losses, costs, expenses, claims, damages, obligations and liabilities, including interest, penalties and attorneys' fees and disbursements ("Damages"), which Optionee or any such person may suffer, incur or become subject to arising out of, based upon or otherwise in respect of: (a) any inaccuracy in or breach of any representation or warranty of Optionor made in or pursuant to this Agreement; (b) any breach or non-fulfillment of any covenant or obligation of Optionor contained in this Agreement; and (c) any violation of the Environmental Laws by Optionor or any affiliate of Optionor of which Optionor was aware or should have been aware.

12. Modification & Alteration. No modification, alteration, waiver or addition to this Agreement or any part thereof, shall be valid or binding or be set up or relied upon by either party unless the same be in writing, specifically referring to this Agreement, and signed by the Optionor and Optionee. No evidence of any such modification, alteration, waiver or addition shall be received in any controversy arising out of this Agreement, unless it be in writing and signed as aforesaid.

13. Applicable Law. It is hereby mutually understood and agreed that this Agreement shall be interpreted in accordance with the internal laws of the Commonwealth of Pennsylvania and that no presumption shall be deemed to exist in favor or against either party hereto as a result of the preparation and/or negotiation of the same nor for any other reason.

14. Integration. This Agreement contains and constitutes the final expression of the intent of the parties hereto, and is the complete and exclusive statement of the terms and conditions agreed upon by the parties hereto. No modification or amendment of this Agreement will be valid unless stated in writing and executed by the parties hereto.

15. Binding Effect. This Agreement shall be binding upon the parties hereto, their respective successors and assigns.

16. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be one in the same.

17. Severability. If any part or provision of this Agreement is found or declared to be invalid in contravention of any governing law or regulation, such part or provision shall be severable without affecting the validity of this Agreement.

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

ATTEST

OPTIONOR

By:

ATTEST

LAUREL ENERGY, L.P.
By Laurel Mountain Management, Inc.
Its General Partner

By:
D. Scott Kroh, President

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FILED

AUG 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFFS

Filed on behalf of:
Defendant, Moravian Run Reclamation Co., Inc.

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: August 25, 2008

FILED 2 cc Atty Naddeo
03:46 BM
AUG 25 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, L.P., Additional Defendant.	*	

MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST PLAINTIFFS

NOW COMES the Defendant, Moravian Run Reclamation Co., Inc. (hereinafter referred to as "Moravian Run"), and by its attorney, James A. Naddeo, Esquire, and moves this Court pursuant to Pa.R.C.P. No. 1035.1 et seq., for the entry of summary judgment in favor of Defendant, Moravian Run, and against Plaintiffs as to the entire case:

1. That on or about August 31, 2005 Plaintiffs commenced the instant action against Defendant, Moravian.

2. That Count I is a claim for breach of contract in that Plaintiffs allege that Moravian failed to pay Plaintiffs royalties as set forth in the lease agreement between Plaintiffs and B&B Land Company, said lease having been transferred to

Moravian Run. *See* Exhibits 1 and 2 to Plaintiffs' Complaint for Lease and Transfer of Lease Agreement.

3. That Moravian Run never conducted any mining or timbering upon the land of Plaintiffs and in fact never entered upon the land of Plaintiffs and Additional Defendant, Laurel Energy, L.P. (hereinafter "Laurel") admits these facts at Paragraph 3 of *Answer and New Matter Pursuant to Pa.R.C.P. 2252 (D) to Complaint of Original Defendant Johnson Brothers Coal Company Against Additional Defendant Laurel Energy, LP.*

4. That on or about June 15, 2001 Moravian Run entered into an Agreement entitled "Option Agreement" wherein Moravian Run assigned its lease with Plaintiffs (which had been transferred to Moravian Run) to Additional Defendant, Laurel. True and correct copy of Option Agreement is attached hereto as Exhibit "A."

5. That pursuant to the law in this Commonwealth Laurel as the assignee of the lease between Moravian Run and Plaintiffs is liable for the payment of all rents and royalties which accrued while it holds the assignment of the lease. Goss v. Woodland Fire Brick Co., 4 Pa.Super. 167 (Pa.Super. Ct. 1897).

6. That Moravian Run is entitled to judgment as a matter of law in that it is not liable to Plaintiffs under the

lease agreement between Plaintiffs and B&B Land Company as it assigned the same to Additional Defendant, Laurel.

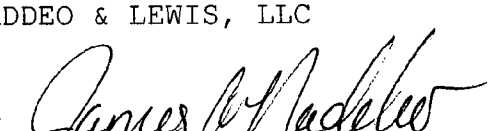
7. That Count II of Plaintiffs Complaint is a claim for trespass upon Plaintiffs' property.

8. That Moravian Run is entitled to judgment as a matter of law as to the claim of trespass for the reasons stated supra at Paragraph three hereof, said Paragraph is incorporated herein by reference as if set forth in full.

WHEREFORE, Defendant, Moravian Run, respectfully requests that Your Honorable Court grant Defendant, Moravian Run, summary judgment as to the entire case brought by Plaintiffs against Moravian Run.

Respectfully submitted,

NADDEO & LEWIS, LLC

By 

James A. Naddeo
Attorney for Moravian Run

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Motion for Summary Judgment Against Plaintiffs was served on the following persons and in the following manner on the 25th day of August, 2008:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-141

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Moravian Run

OPTION AGREEMENT

This **Option Agreement** ("Agreement") made and entered into on this 15th day of ~~May,~~ June 2001 by and between Moravian Run Reclamation, Co., Inc. of 605 Sheridan Drive Clearfield PA 16830, ("Optionor")

~ AND ~

Laurel Energy, L.P., a Pennsylvania limited partnership, with a principal business office located at One Energy Place Suite 7500 Latrobe, PA 15650, ("Optionee").

WHEREAS, Optionor owns leases to certain coal lands ("Leases") more particularly described in Exhibit A attached hereto ("Premises") and;

WHEREAS, Optionor is the permit holder under a certain mining Permit issued by the Pennsylvania Department of Environmental Protection more particularly described in Exhibit B attached hereto ("Permit");

WHEREAS, Optionor has granted to Optionee an option to (a) obtain an assignment of the Leases, and (b) acquire the Permit, in accordance with the provisions of this Agreement, and Optionee has accepted the option.

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, in consideration of the above covenants and conditions and those hereinafter set forth mutually agree as follows:

1. Option. In consideration of the sum of $1,000.00 (One Thousand Dollars) paid by the Optionee to Optionor, Optionor does hereby grant and convey to Optionee the sole, exclusive, and irrevocable right and option ("Option") to take an assignment of the Leases, and acquire the Permit, at any time within a period of thirty (30) days from the date hereof ("Option Period"), subject to the terms and conditions hereinafter set forth. The Option Period may be extended for an additional period of thirty (30) days if needed to obtain consent to the assignment of leases by the Optionee giving notice thereof to Optionor.

2. Right of Entry. During the Option Period, Optionee shall have the right to enter upon the Premises for the purposes of test drilling, core drilling, and such other investigations and exploratory tests as Optionee shall deem necessary in its sole and exclusive discretion. The Optionee agrees to reclaim any areas disturbed by the activities of the Optionee during exploration of the Premises. Such obligations to reclaim will survive the expiration or termination of this Agreement.

3. Access to Information. Optionor shall provide and furnish Optionee and Optionee's counsel, accountants, engineers, and other representatives full access, during normal business hours throughout the Option Period, all of the Optionor's records and information pertaining to the Premises as necessary for Optionee to conduct due diligence. In the event the Optionee fails to exercise the option granted herein, all records and information obtained by the Optionee in conducting due diligence shall be surrendered and remitted to Optionor within five

Exhibit "A"

(5) days of the earlier of the expiration of the option granted herein or notice by Optionee to Optionor of its intent not to exercise the option granted herein.

4. Indemnification. During the Option Period, Optionee will indemnify and save harmless Optionor, its successors and assigns, from any and all loss and/or liability for claims, demands, and suits, or causes of action in law or equity for damages and injuries (including death) of every kind and nature to persons and property, including loss of the use thereof, as the result of Optionee activities hereunder, and Optionee will defend all such claims, demands, and suits at its sole cost and expense, whether groundless or not. Nothing herein shall relieve Optionor from liability for its own negligence or acts, or the negligence or acts of its employees, agents, and contractors. This provision shall survive the expiration or termination of this agreement.

5. Exercise of Option. In the event Optionee elects to exercise its Option, it shall exercise the Option within thirty (30) days from the date hereof unless otherwise extended as provided for in Section 1 above. The notice of the exercise of the option or extension shall be given in writing by the Optionee by registered mail or United States certified mail, return receipt requested, addressed to the Optionor, which shall be postmarked within the period set forth above at which time the option shall be considered exercised. If the Optionor shall exercise the Option, as herein provided then the following provisions of this Agreement shall immediately become effective. If the Optionee fails to exercise the option in accordance with the terms of this Agreement within the Option Period, then the option granted by this Agreement, and all rights hereunder of the Optionee shall automatically terminate without notice to either party.

6. Time and Place of Closing. The assignment of Leases and the signing of documents to allow for the transfer of the Permit shall take place thirty (30) days after the Optionee exercises the Option, at the offices of the Optionor, 605 Sheridan Drive Clearfield PA 16830 commencing at 10:00 a.m., local time, or at such other date, time or place as may be agreed to by the Buyer and Seller.

7. Transaction. At the Closing Optionor will assign the Leases to Optionee, in form and substance satisfactory to Optionee, and complete the documentation required to transfer the Permit to Optionee, such transfer is to occur in the manner prescribed by Department of Environmental Protection, under the following terms and conditions:

a. Optionee shall pay an overriding production royalty ("Overriding Royalty") of thirty cents ($0.30) per ton for all merchantable and mineable coal produced and sold from mining activities conducted on the Premises. Such Overriding Royalty shall be paid on the twenty fifth (25) day of each month for all coal removed and shipped from the Premises during the previous calendar month and shall be accompanied by a correct statement showing the truck weights for all coal shipped during such month. such payment shall be paid to Moravian Run Reclamation Co., inc. 605 Sheridan Dr. Clearfield, PA 16830

b. Upon completion of transfer of the Permit to the Optionee, the Optionee shall pay the sum of $18,963.[illegible] to the Optionor for reimbursement of permit preparation

costs. Provided Optionee or its designee has a contract miners license, has replaced Optionors bonds, and has applied for transfer of the permit, Optionor shall permit Optionee or its designee to conduct mining operations pursuant to the Permit, providing that the Optionors bonds have been released, until such time as the Permit is transferred to the Optionee or its designee.

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Optionor represents and warrants to Optionee as follows:

B. Optionor is the sole and exclusive owner and/or lessee of the Leases and has good and marketable title to the Leases, free and clear of all liens and encumbrances, clouds and defects whatsoever and has the authority to enter in this Agreement with Optionee.

C. All the Leases are valid and in good standing with no circumstances of default or pending default or other condition that would effect the right of the Optionee to mine coal under the Leases.

D. There are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Premises or the Leases, or any portion thereof, at law or in equity before any court or administrative agency.

E. To the best of the Optionors knowledge, there are no pending or threatening proceedings in eminent domain, or otherwise, which would affect the Premise, or any portion of the same.

F. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor the consummation of the transaction contemplated hereby, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions, provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which Optionor is a party.

G. Neither the Optionor, nor any other entity, person, direct or indirect affiliate controlled by the Optionor has caused to be deposited or has deposited on, at, or in the Premises, or has caused to be disposed, treated, stored or discharged upon the Premises any hazardous or toxic materials or substances, and the Premises and Optionor's activities thereon are now in full compliance with all environmental laws. For the purpose of the preceding sentence and if hereafter used in this Agreement the term "environmental laws" means any federal, state or local law, rule, regulation, or ordinance regulating and relating to protection of the environment, including, without limitation, the land, air and water, or human health or safety, and the term "hazardous or toxic substances" means any

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H. There are no agreements, formal or informal, between Optionor, the Lessors under the Leases and any third party regarding the Premises or the Leases, except for an agreement between Moravian Run Reclamation Co., Inc. and Penn Grampian Coal Company regarding the advanced royalties paid by Penn Grampian Coal Company to Wesley and Raymond Smith, which is attached to and considered part of this agreement.

I. All representations, warranties and agreements made by both parties in this Agreement shall survive the Transaction, for a period of two (2) years.

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Optionee represents and warrants to Optionor as follows:

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(i) if any representation or warranty of either party made in or pursuant to this Agreement is untrue or incorrect in any material respect, either party materially breaches the covenants or other terms of this Agreement

(ii) the neglect or refusal of Optionee to make payment of royalties, required to be paid by Optionee hereunder for a period of fifteen (15) days after Optionor has made written demand upon Optionee.

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

ATTEST

OPTIONOR

By:

ATTEST

LAUREL ENERGY, L.P.
By Laurel Mountain Management, Inc.
Its General Partner

By:
D. Scott Kroh, President

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

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Plaintiffs,

v.

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Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

ORDER

Filed on behalf of:
Defendant, Moravian Run Reclamation Co., Inc.

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: August 25, 2008

FILED 2 CC
9/2:2184 Atty Naddeo
AUG 27 2008
GIO
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, L.P., Additional Defendant.	*	

ORDER

AND NOW this 27th day of August, 2008, upon consideration of the Motion for Partial Summary Judgment Against Additional Defendant, Laurel Energy, L.P. and the Motion for Summary Judgment Against Plaintiffs filed by James A. Naddeo, attorney of record for Defendant, Moravian Run, it is the Order of this Court that this case will be heard before the Court on the 26th day of September, 2008, at 9:00 A.M., at the Clearfield County Courthouse, Clearfield, Pennsylvania, Courtroom No. 1.

1 hour has been allotted for this hearing.

BY THE COURT,

Judge

FILED

AUG 27 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/27/08

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

UA

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

FILED
0 1:40 p.m. GK
AUG 29 2008
William A. Shaw
Prothonotary/Clerk of Courts

5cc Atty. Greg
1cc Atty Neddeo
1cc Johnson Bro. Coal Co.
RR1 Box 586
Maherry PA 15757
1cc Atty. L. Bell
1cc D. Mikesell, Esq
1cc Law Library
GIO

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant.

No. 05-1351-CD

OPINION

On August 31, 2005 Jan Lawrence, Chris Ilyes, Mary Ilyes, Jeff Cookerly and Scott Aldinger (Collectively "Plaintiffs") filed a cause of action alleging breach of contract and trespass against the Moravian Run Reclamation Co. Inc., Johnson Brothers Coal. Laurel Energy, LP., was joined as an additional Defendant. The Plaintiffs' causes of action arise from a lease agreement(s) purportedly attached to their property located in Beccari and Gulich Townships, Clearfield County. The Plaintiffs are alleging that the Defendants are jointly and/or severally liable for mining of coal, removing paper-wood or saw timber, and failing to properly reclaim and/or re-vegetate the abovementioned property. The Plaintiffs and Additional Defendant Laurel Energy, LP., (hereinafter "Laurel") filed for Partial Summary Judgment on the matters.

The Parties to the initial lease agreement at issue are Raymond and Shirley Smith (hereinafter "Smiths"), prior owners of the abovementioned property and B&B Land Company (hereinafter "B&B"), of Clearfield County. On April 15, 1995 the Smiths as lessors and B&B as lessee entered into an agreement for the mining and removing of coal from the property. The Smiths as property owners with 100% surface ownership were guaranteed royalty payments "...at the rate of one dollar and fifty cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton for all merchantable and mineable coal, whichever amount is greater, for coal mined and removed from the premise." *Plaintiffs' Complaint Exhibit No.* 1, pp. 3. In exchange for royalty payments B&B as the lessee was granted the right to "mine and remove all mineable and merchantable coal in, under and upon..." the property. *Id.* On October 17, 2000 B&B as lessee transferred to the Defendant Moravian Run Reclamation Company, Inc., (hereinafter "Moravian") the right to mine and remove coal from the Smiths' property. *Plaintiffs' Complaint Exhibit No.* 2. On June 15, 2001 Moravian entered into an "Option Agreement" with Laurel wherein Moravian assigned to Laurel the original lease agreement's rights to mine and remove coal from the property. *Defendant Moravian Run Reclamation, Co., Inc., Complaint Against Additional Defendant Laurel Energy, LP., Exhibit* B. On August 23, 2001 Laurel entered into a mining contract with the Defendant Johnson Brothers Coal Company, Inc., (hereinafter "Johnson") for the sole purpose of stripping coal from the property. *Defendant Johnson Brothers Coal Company's, Complaint against Additional Defendant Laurel Energy, LP., Exhibit* B.

As to the ownership rights of the property at issue, the Smiths sold the property to Ferguson Valley Hardwoods (hereinafter "Ferguson") in December 2000. Subsequently, Ferguson sold the property ownership interest to the Plaintiffs on February 27, 2002.

Plaintiffs' Complaint, Exhibit No. 3. The Plaintiffs only obtained through purchase 100% of the surface rights as the coal rights were severed by deed dated February 7, 1936. *Plaintiffs' Motion for Summary Judgment, Exhibit No.* 3.

"Summary judgment should be granted only in cases where the right is clear and free of doubt." *First v. Zem Zem Temple*, 686 A.2d 18 (Pa. Super. 1996). "After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law:

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." Pa. R.C.P. § 1035.2.

On considering a motion for summary judgment, the court must examine the record in a light most favorable to the non-moving party and resolve all doubts against the moving party when determining if there is a genuine issue of material fact. *Chada v. Chada*, 756 A.2d 39 (Pa. Super. 2000).

The Plaintiffs file a motion for summary judgment against Moravian, Johnson and Laurel (Collectively "Defendants") asserting that there is "no genuine issue of material fact" as to their rights to coal royalty payments as successors in interest to the Smiths' 100% surface ownership of the property. Pa. R.C.P. § 1035.2. The Plaintiffs have provided as part of the record a deed that clearly establishes their ownership of 100% of the surface rights. *Plaintiffs' Complaint, Exhibit No. 3.* Additional, it is undisputed by all the relevant parties that the Plaintiffs are owed coal royalty payments for the mining conducted on the property. As noted previously, the Smith owned only the surface rights as the coal rights were severed on

February 7, 1936. The Smiths as 100% owner of the surface rights were guaranteed "...one dollar and fifty cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton..." for coal mined on the property. The initial lease agreement at issue rendered between the Smiths and B&B contracts the following "...[a]ll payment of royalty as herein provided based on **either** one hundred percent (100%) ownership of surface(right of surface support) coal **or** both surface and coal." *Plaintiffs' Complaint Exhibit No.* 1, pp. 3-4 (emphasis added). "In the event LESSORS should own less than one hundred percent (100%) of said surface **and/or** coal rights said sums shall be adjusted on accordance with the percentage of ownership." *Id.* (emphasis added). "Where, however, the language of the contract is clear and unambiguous, a court is required to give effect to that language." *Standard Venetian Blind Co. v. American Empire Ins. Co.,* 469 A.2d 563, 566 (Pa.,1983). "...[A] contract is not rendered ambiguous by the mere fact that the parties do not agree upon the proper construction. *TIG Specialty Ins. Co. v. Koken,* 855 A.2d 900, 909 (Pa.Cmwlth.,2004). Despite Defendant Laurel's contention, the language of the lease clearly guarantees the Plaintiffs as successors in interest to the Smiths' 100% surface ownership 100% of the royalty payments as follows "...one dollar and fifty cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton...". The Plaintiffs' Motion for Partial Summary Judgment shall be granted as there is "no genuine issue of material fact" and the Plaintiffs' right to coal royalty payments (as of February 27, 2002) being 100% of the coal royalty "is clear and free of doubt". *First*, 686 A.2d 18.

The Defendant Laurel also files for Partial Summary Judgment. Laurel purports that the Plaintiffs' allegation that the Defendants breached the lease agreement by failing to satisfactory reclaim and re-vegetate the property, causing damage and pollution, is without

"...evidence of facts essential to the cause of action." Pa. R.C.P. § 1035.2. Paragraph 6 of the Smiths and B&B coal mining lease agreement provides that the "LESSEE agrees that all mining operation shall be conducted in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry." *Plaintiffs' Complaint Exhibit No.* 1. Pursuant to the requirements of the Surface Mining Conservation and Reclamation Act, 52 P.S. § 1396.4, the Defendant Johnson applied to the Department of Environmental Protection (hereinafter "DEP") for a permit granting surface right to mine. The DEP application process requires the mining company to submit a reclamation plan and deposit of bonds payable to the Commonwealth to ensure satisfactory completion. 52 P.S. § 1396.4(a), (b) and (d). A bond is released provided the reclamation activities are satisfactory completed in accordance with the statue. A bond release occurs in accordance with the three stages of reclamation provided in the statute, 52 P.S. § 1396.4(g):

"(g) Subject to the public notice requirements of subsection (b), if the department is satisfied the reclamation covered by the bond or portion thereof has been accomplished as required by this act, it may, upon request by the permittee or any other person having an interest in the bond, including the department, release in whole or in part the bond or deposit according to the following schedule:

(1) At Stage I, when the operator has completed the backfilling, regrading and drainage control of a bonded area in accordance with his approved reclamation plan, the release of up to sixty per cent of the bond for the applicable permit area, so long as provisions for treatment of pollutional discharges, if any, have been made by the operator.
(2) At Stage II, when revegetation has been successfully established on the affected area in accordance with the approved reclamation plan, the department shall retain that amount of bond for the revegetated area which would be sufficient for the cost to the Commonwealth of reestablishing revegetation. Such retention of bond shall be for the duration of liability under the bond as prescribed in subsection (d). No part of the bond shall be released under this subsection so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of law or until soil productivity for prime farmlands has returned to equivalent level of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to subsection (a)(2)I. Where a permanent impoundment is to be retained, that portion of bond under this subsection may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the department.

(3) At Stage III, when the operator has completed successfully all mining and reclamation activities and has made provisions with the department for the sound future treatment of pollutional discharges, if any, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in subsection (d). No bond shall be fully released until all requirements of this act are fully met. Upon release of all or part of the bond and collateral as herein provided, the State Treasurer shall immediately return to the operator the amount of cash or securities specified therein."

The Defendants have provided business documentation from the DEP that establishes that the Stage I (DEP Completion Report No. 4-03-017) and Stage II (DEP Completion Report No. 4-03-015) were accomplished and bonds released in accordance with satisfactory completion. *Additional Defendant's Motion For Partial Summary Judgment, Exhibit* D-F. Stage III bond will not be released until the mining operations have been completed and an additional five years have lapsed. "No bond shall be filed for less than ten thousand dollars ($10,000.00) for the entire permit area. Liability under such bond shall be for the duration of the surface mining at each operation, and for a period of five full years after the last year of augmented seeding and fertilizing and any other work to complete reclamation to meet the requirements of law and protect the environment, unless released in part prior thereto as hereinafter provided." 52 P.S. § 1396.4(d). Laurel's motion states the following, "...[d]espite the fact that Stage III of the bond, which relates to pollutional discharges such as mine drainage, cannot be released, inspections conducted by the DEP state there is no indication that water in the area has been degraded by pollution." *Additional Defendant's Motion for Partial Summary Judgment*, at pp. 5. Laurel's claims are clearly substantiated by the DEP letters and reclamation reports provided. *Additional Defendant's Motion For Partial Summary Judgment, Exhibit* D-F. The Plaintiffs' contention that the exhibits attached to the Laurel's Motion for Partial Summary Judgment is not a part of the record is incorrect. Business Documents attached to a party's motion for summary judgment are part of the record in

accordance with Pa.R.C.P. §1035.1 et seq and can be considered by the court in deliberating the issue of summary judgment. *Kroptavich v. Pennsylvania Power and Light Co.*, 795 A.2d 1048 (Pa. Super. 2002). Upon consideration of the record, Defendant Laurel is entitled to Partial Summary Judgment in their favor.

ORDER

Now this 27th day of August 2008, upon consideration of the record, the parties oral arguments and supporting briefs it is the Order of this Court that the Plaintiffs' Motion for Partial Summary Judgment be and is hereby GRANTED. It is the further Order of this Court that the Defendant Laurel's Additional Defendant's Motion for Partial Summary Judgment be and is hereby GRANTED.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

DATE: 8-29-08

____ You are responsible for serving all appropriate parties.

__X__ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) __X__ Plaintiff(s) Attorney __X__ Other Johnson Brothers Coal Company

____ Defendant(s) __X__ Defendant(s) Attorney

____ Special Instructions:

FILED

AUG 29 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendant, Moravian Run Reclamation Co., Inc.

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

FILED
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SEP 02 2005
William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Order was served on the following persons and in the following manner on the 2nd day of September, 2008:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-141

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Moravian Run

FILED
SEP 02 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

RESPONSE OF LAUREL ENERGY, LP, TO DEFENDANT MORAVIAN RUN RECLAMATION CO., INC.'S MOTION FOR SUMMARY JUDGMENT AGAINST ADDITIONAL DEFENDANT LAUREL ENERGY, LP

Filed on Behalf of this Party:
Laurel Energy, LP

Counsel of Record for this Party:

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588

LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270

JENNINGS L. HART, III, ESQUIRE
Pa. I.D. No.: 200060

DAVIES, McFARLAND & CARROLL, P.C.
Firm I.D. No.: 281
One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED NO CC
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

CIVIL DIVISION

No.: 05-1351-CD

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant

RESPONSE OF LAUREL ENERGY, LP, TO DEFENDANT MORAVIAN RUN RECLAMATION CO., INC.'S MOTION FOR SUMMARY JUDGMENT AGAINST ADDITIONAL DEFENDANT LAUREL ENERGY, LP

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P. (collectively "Laurel Energy"), by and through its counsel, Davies, McFarland & Carroll, P.C., who files the within Response of Laurel Energy, LP, to Defendant Moravian Run Reclamation Co., Inc.'s Motion for Summary Judgment Against Additional Defendant Laurel Energy LP, stating as follows:

1. Admitted.

2. Admitted.

3. The averments of Paragraph 3 of Moravian Run's Motion are admitted. By way of further response, Laurel states that the Option Agreement was entered into on June 15, 2001,

and created an "Option Period" of thirty days from the date of execution. See "Option Agreement", attached hereto as Exhibit "A", Paragraph No. 1.

4. The Option Agreement is a document which speaks for itself. See Exhibit "A".

5. The Option Agreement is a document which speaks for itself. See Exhibit "A".

6. Paragraph 6 of Moravian Run's Motion is a conclusion of law which requires no response. However, it is denied that Laurel owes Moravian Run indemnification, counsel fees, costs or expenses. By way of further response, Laurel incorporates the full text of the clause which states:

> 4. Indemnification. ***During the Option Period, Optionee [Laurel] will indemnify and save harmless Optionor [Moravian Run]***, its successors and assigns, from any and all loss and/or liability for claims, demands, and suits, or causes of action in law or equity for damages and injuries (including death) of every kind and nature to persons and property, including loss of the use thereof, as the result of Optionee activities hereunder, and Optionee will defend all such claims, demands, and suits at its sole cost and expense, whether groundless or not. Nothing herein shall relieve Optionor from liability for its own negligence or acts, or the negligence or acts of its employees, agents, and contractors. This provision shall survive the expiration or termination of this agreement.

Exhibit "A", Paragraph No. 4, emphasis added.

Based upon the language of the indemnification clause, it is clear that the agreement only intended for indemnification arising out of claims/events which arose or occurred during the "Option Period" which expired thirty days after the June 15, 2001, execution. No mining activities or timber removal, the bases of Plaintiffs' claims, commenced during the "Option Period". Contract Mining Agreement executed by Laurel and Johnson Brothers Coal Company, Inc., on August 23, 2001, attached hereto as Exhibit "B". As Laurel undertook no mining or timbering during the "Option Period", no indemnification or defense is owed to Moravian Run.

Furthermore, the Indemnification clause relied upon by Moravian Run excludes "liability for its own negligence or acts, or the negligence or acts of its employees, agents, and contractors". Exhibit "A", Paragraph No. 4. Count II of the Plaintiffs' Complaint against Moravian makes claims for conversion of the coal and timber from the property.[1] Plaintiffs' Complaint attached hereto as Exhibit "C". Such claims, if proven by Plaintiffs, would not qualify for relief or defense under the Indemnification clause.

7. Paragraph 7 of Moravian Run's Motion is a conclusion of law which requires no response. However, it is denied that Laurel owes Moravian Run indemnification, counsel fees, costs or expenses for the reasons stated above, which are hereby incorporated by reference.

WHEREFORE, Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., demands judgment in its favor and against the Defendant Moravian Run Reclamation Co., Inc.

Respectfully submitted,

DAVIES, McFARLAND & CARROLL, P.C.

By: _____

LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE
Attorney for Laurel Energy, L.P.,
Additional Defendant

[1] Conversion is the deprivation of another's right of property, through the exercise of dominion or control over the property, without the owner's consent and without lawful justification. ***Shonberger v. Oswell***, 365 Pa.Super. 481, 484- 485, 530 A.2d 112, 114 (1987).

OPTION AGREEMENT

This **Option Agreement** ("Agreement") made and entered into on this 15th day of ~~May,~~ June 2001 by and between Moravian Run Reclamation, Co., Inc. of 605 Sheridan Drive Clearfield PA 16830, ("Optionor")

~ AND ~

Laurel Energy, L.P., a Pennsylvania limited partnership, with a principal business office located at One Energy Place Suite 7500 Latrobe, PA 15650, ("Optionee").

WHEREAS, Optionor owns leases to certain coal lands ("Leases") more particularly described in Exhibit A attached hereto ("Premises") and;

WHEREAS, Optionor is the permit holder under a certain mining Permit issued by the Pennsylvania Department of Environmental Protection more particularly described in Exhibit B attached hereto ("Permit");

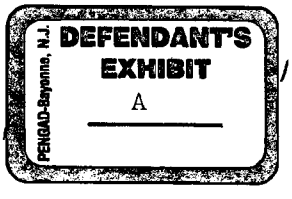
WHEREAS, Optionor has granted to Optionee an option to (a) obtain an assignment of the Leases, and (b) acquire the Permit, in accordance with the provisions of this Agreement, and Optionee has accepted the option.

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, in consideration of the above covenants and conditions and those hereinafter set forth mutually agree as follows:

1. Option. In consideration of the sum of $1,000.00 (One Thousand Dollars) paid by the Optionee to Optionor, Optionor does hereby grant and convey to Optionee the sole, exclusive, and irrevocable right and option ("Option") to take an assignment of the Leases, and acquire the Permit, at any time within a period of thirty (30) days from the date hereof ("Option Period"), subject to the terms and conditions hereinafter set forth. The Option Period may be extended for an additional period of thirty (30) days if needed to obtain consent to the assignment of leases by the Optionee giving notice thereof to Optionor.

2. Right of Entry. During the Option Period, Optionee shall have the right to enter upon the Premises for the purposes of test drilling, core drilling, and such other investigations and exploratory tests as Optionee shall deem necessary in its sole and exclusive discretion. The Optionee agrees to reclaim any areas disturbed by the activities of the Optionee during exploration of the Premises. Such obligations to reclaim will survive the expiration or termination of this Agreement.

3. Access to Information. Optionor shall provide and furnish Optionee and Optionee's counsel, accountants, engineers, and other representatives full access, during normal business hours throughout the Option Period, all of the Optionor's records and information pertaining to the Premises as necessary for Optionee to conduct due diligence. In the event the Optionee fails to exercise the option granted herein, all records and information obtained by the Optionee in conducting due diligence shall be surrendered and remitted to Optionor within five



(5) days of the earlier of the expiration of the option granted herein or notice by Optionee to Optionor of its intent not to exercise the option granted herein.

4. Indemnification. During the Option Period, Optionee will indemnify and save harmless Optionor, its successors and assigns, from any and all loss and/or liability for claims, demands, and suits, or causes of action in law or equity for damages and injuries (including death) of every kind and nature to persons and property, including loss of the use thereof, as the result of Optionee activities hereunder, and Optionee will defend all such claims, demands, and suits at its sole cost and expense, whether groundless or not. Nothing herein shall relieve Optionor from liability for its own negligence or acts, or the negligence or acts of its employees, agents, and contractors. This provision shall survive the expiration or termination of this agreement.

5. Exercise of Option. In the event Optionee elects to exercise its Option, it shall exercise the Option within thirty (30) days from the date hereof unless otherwise extended as provided for in Section 1 above. The notice of the exercise of the option or extension shall be given in writing by the Optionee by registered mail or United States certified mail, return receipt requested, addressed to the Optionor, which shall be postmarked within the period set forth above at which time the option shall be considered exercised. If the Optionor shall exercise the Option, as herein provided then the following provisions of this Agreement shall immediately become effective. If the Optionee fails to exercise the option in accordance with the terms of this Agreement within the Option Period, then the option granted by this Agreement, and all rights hereunder of the Optionee shall automatically terminate without notice to either party.

6. Time and Place of Closing. The assignment of Leases and the signing of documents to allow for the transfer of the Permit shall take place thirty (30) days after the Optionee exercises the Option, at the offices of the Optionor, 605 Sheridan Drive Clearfield PA 16830 commencing at 10:00 a.m., local time, or at such other date, time or place as may be agreed to by the Buyer and Seller.

7. Transaction. At the Closing Optionor will assign the Leases to Optionee, in form and substance satisfactory to Optionee, and complete the documentation required to transfer the Permit to Optionee, such transfer is to occur in the manner prescribed by Department of Environmental Protection, under the following terms and conditions:

a. Optionee shall pay an overriding production royalty ("Overriding Royalty") of thirty cents ($0.30) per ton for all merchantable and mineable coal produced and sold from mining activities conducted on the Premises. Such Overriding Royalty shall be paid on the twenty fifth (25) day of each month for all coal removed and shipped from the Premises during the previous calendar month and shall be accompanied by a correct statement showing the truck weights for all coal shipped during such month. such payment shall be paid to Moravian Run Reclamation Co., inc. 605 Sheridan Dr. Clearfield, PA 16830

b. Upon completion of transfer of the Permit to the Optionee, the Optionee shall pay the sum of $18,963.[illegible] to the Optionor for reimbursement of permit preparation

costs. Provided Optionee or its designee has a contract miners license, has replaced Optionors bonds, and has applied for transfer of the permit, Optionor shall permit Optionee or its designee to conduct mining operations pursuant to the Permit, providing that the Optionors bonds have been released, until such time as the Permit is transferred to the Optionee or its designee.

8. Representations & Warranties of Optionor.

Optionor represents and warrants to Optionee as follows:

B. Optionor is the sole and exclusive owner and/or lessee of the Leases and has good and marketable title to the Leases, free and clear of all liens and encumbrances, clouds and defects whatsoever and has the authority to enter in this Agreement with Optionee.

C. All the Leases are valid and in good standing with no circumstances of default or pending default or other condition that would effect the right of the Optionee to mine coal under the Leases.

D. There are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Premises or the Leases, or any portion thereof, at law or in equity before any court or administrative agency.

E. To the best of the Optionors knowledge, there are no pending or threatening proceedings in eminent domain, or otherwise, which would affect the Premise, or any portion of the same.

F. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor the consummation of the transaction contemplated hereby, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions, provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which Optionor is a party.

G. Neither the Optionor, nor any other entity, person, direct or indirect affiliate controlled by the Optionor has caused to be deposited or has deposited on, at, or in the Premises, or has caused to be disposed, treated, stored or discharged upon the Premises any hazardous or toxic materials or substances, and the Premises and Optionor's activities thereon are now in full compliance with all environmental laws. For the purpose of the preceding sentence and if hereafter used in this Agreement the term "environmental laws" means any federal, state or local law, rule, regulation, or ordinance regulating and relating to protection of the environment, including without limitation, the land, air and water, or human health or safety, and the term "hazardous or toxic substances" means any

substance defined as hazardous or toxic or otherwise regulated by any environmental law.

H. There are no agreements, formal or informal, between Optionor, the Lessors under the Leases and any third party regarding the Premises or the Leases, except for an agreement between Moravian Run Reclamation Co., Inc. and Penn Grampian Coal Company regarding the advanced royalties paid by Penn Grampian Coal Company to Wesley and Raymond Smith, which is attached to and considered part of this agreement.

I. All representations, warranties and agreements made by both parties in this Agreement shall survive the Transaction, for a period of two (2) years.

J. All representations and warranties by Optionor in this Agreement and all statements and certificates furnished or to be furnished to Optionee pursuant hereto, or in connection with the Transaction, contain true statements of material fact, and do not omit the material facts necessary to confirm all of the above representations and warranties.

8.1 Representations and Warranties of Optionee

Optionee represents and warrants to Optionor as follows:

A. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor the consummation of the transaction contemplated hereby, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions, provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which Optionee is a party.

B. Neither the Optionee, nor any other entity, person, direct or indirect affiliate controlled by the Optionee has caused to be deposited or has deposited on, at, or in the Premises, or has caused to be disposed, treated, stored or discharged upon the Premises any hazardous or toxic materials or substances, and the Premises and Optionee's activities thereon are now in full compliance with all environmental laws. For the purpose of the preceding sentence and if hereafter used in this Agreement the term "environmental laws" means any federal, state or local law, rule, regulation, or ordinance regulating and relating to protection of the environment, including without limitation, the land, air and water, or human health or safety, and the term "hazardous or toxic substances" means any substance defined as hazardous or toxic or otherwise regulated by any environmental law.

C. All representations and warranties by Optionee in this Agreement and all statements and certificates furnished or to be furnished to Optionee pursuant hereto, or in connection with the Transaction, contain true statements of material fact, and do not omit the material facts necessary to confirm all of the above representations and warranties.

9. Place of Payment and Notices. All Overriding Royalties payable hereunder, and all notices and other communications hereunder by either party may be effectuated by personal delivery or in writing by first class United States mail, postage prepaid, and shall be deemed received for all purposes hereunder as of the date of actual mailing as determined by the postmark date. All payments and notices by mail shall be addressed to the respective parties at their addresses set forth above, or to such other address the parties hereafter designate by notice to each other. All royalties payable to the Optionor shall be mailed to the address set forth above.

10. Events Of Default.

(a) The following shall constitute acts of default hereunder:

(i) if any representation or warranty of either party made in or pursuant to this Agreement is untrue or incorrect in any material respect, either party materially breaches the covenants or other terms of this Agreement

(ii) the neglect or refusal of Optionee to make payment of royalties, required to be paid by Optionee hereunder for a period of fifteen (15) days after Optionor has made written demand upon Optionee.

(iii) Optionee shall file a voluntary petition in bankruptcy or for the appointment of a receiver or shall be adjudicated a bankrupt or insolvent, or shall seek, consent to, or acquiesce in the appointment of any trustee, receiver or liquidator for all or any substantial part of its assets or be unable to meet its obligations to creditors as they come due.

(b) In the event of any such default by the Optionee, Optionor shall have at its addition to any other remedies it may have at law or in equity, all and singular the following remedies:

1. The right to terminate and cancel this Agreement upon thirty (30) days written notice of the same in addition to any other notice requirement above set forth, being provided to Optionee.

2. If Optionor elects to terminate and cancel this Agreement, Optionee authorizes any attorney of any court of record to appear for it and confess judgment against it and in favor of the Optionor, in ejectment or its equivalent legal remedy, for possession of the Leased Premises and further, authorizes said attorney to cause the immediate issuance of writ of possession delivering possession of the Leased Premises to the Optionor.

3. All of the rights and remedies of Optionor shall be cumulative and shall not be deemed to exclude Optionor from any other legal or equitable remedy or remedies which they may have. Failure on the part of Optionor to enforce any of the rights herein reserved by them on default for a period shall not operate as an estoppel or as a waiver against Optionor or prevent it at any subsequent time from electing to exercise all or any of such rights for any subsequent default.

4. Optionee hereby authorizes any attorney of any court of record, as often as default be made in the payment of royalties and other moneys as above stipulated to appear for it and confess judgment or judgments against it for the amount of royalties and other moneys due and unpaid, with attorney's commissions of ten percent (10%) and costs of suit, without stay of execution, waiving inquisition and exemption. This power of attorney shall be continuous and may be exercised as often as any default be made by Optionee in the terms of this Agreement.

11. Indemnification by Seller. For a period of five (5) years from and after the closing, Optionor shall indemnify and hold Optionee (and its permitted assigns) and the officers, directors and shareholders thereof harmless against and in respect of any and all losses, costs, expenses, claims, damages, obligations and liabilities, including interest, penalties and attorneys' fees and disbursements ("Damages"), which Optionee or any such person may suffer, incur or become subject to arising out of, based upon or otherwise in respect of: (a) any inaccuracy in or breach of any representation or warranty of Optionor made in or pursuant to this Agreement; (b) any breach or non-fulfillment of any covenant or obligation of Optionor contained in this Agreement; and (c) any violation of the Environmental Laws by Optionor or any affiliate of Optionor of which Optionor was aware or should have been aware.

12. Modification & Alteration. No modification, alteration, waiver or addition to this Agreement or any part thereof, shall be valid or binding or be set up or relied upon by either party unless the same be in writing, specifically referring to this Agreement, and signed by the Optionor and Optionee. No evidence of any such modification, alteration, waiver or addition shall be received in any controversy arising out of this Agreement, unless it be in writing and signed as aforesaid.

13. Applicable Law. It is hereby mutually understood and agreed that this Agreement shall be interpreted in accordance with the internal laws of the Commonwealth of Pennsylvania and that no presumption shall be deemed to exist in favor or against either party hereto as a result of the preparation and/or negotiation of the same nor for any other reason.

14. Integration. This Agreement contains and constitutes the final expression of the intent of the parties hereto, and is the complete and exclusive statement of the terms and conditions agreed upon by the parties hereto. No modification or amendment of this Agreement will be valid unless stated in writing and executed by the parties hereto.

15. Binding Effect. This Agreement shall be binding upon the parties hereto, their respective successors and assigns.

16. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be one in the same.

17. Severability. If any part or provision of this Agreement is found or declared to be invalid in contravention of any governing law or regulation, such part or provision shall be severable without affecting the validity of this Agreement.

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

ATTEST

OPTIONOR

By:

ATTEST

LAUREL ENERGY, L.P.
By Laurel Mountain Management, Inc.
Its General Partner

By:
D. Scott Kroh, President

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CONTRACT MINING AGREEMENT

This CONTRACT MINING AGREEMENT ("Agreement") is made and entered into as of the 23rd day of August, 2001, between Laurel Energy, L.P., of One Energy Place, Suite 7500, Latrobe, PA 15650-9628, (hereinafter called "Owner"), and Johnson Brothers Coal Company, Inc., R.D. #1, Box 580, Mahaffey PA 17757 (hereinafter called "Contractor.")

WHEREAS, Owner owns and has the right to surface mine certain coal-bearing properties located in Gulich Township, Clearfield County, Pennsylvania ("Premises"), as described in Pennsylvania Department of Environmental Protection (PaDEP) Mining Permit No. 17970119 ("SMP"); and,

WHEREAS, Contractor is the holder of the SMP, Tanoma Energy, Inc. ("Tanoma") has provided the collateral support for the bonds securing the SMP, and Owner has provided the engineering services required to prepare and obtain the SMP; and,

WHEREAS, Owner desires to engage Contractor to mine, by surface mining methods only, the seams of coal within the Premises, and Contractor is willing to undertake the mining of such coal upon the terms and conditions hereinafter set forth; and,

WHEREAS, Contractor is fully informed regarding mining operations in the area of the Premises, is skilled and experienced in mining coal in the manner contemplated hereby, and desires to mine such coal as an independent contractor for Owner and to deliver the same to Owner, pursuant to the terms and conditions herein set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein set out to be kept and performed by each of the parties, and intending to be legally bound hereby, the parties agree as follows:

1. Services to be Performed. Contractor shall, in accordance with the terms and conditions herein set forth and in the SMP, produce for Owner, by open pit or strip mining methods, the mineable coal located in and underlying the Premises, including the replacement of all soil, subsoils, and topsoil thereof. Contractor shall be responsible for the revegetation of the mined area after it reclaims the land to approximate original contour and shall replace all topsoil and subsoil. Contractor, at its expense, shall provide, repair, replace

PENOAD-Bayonne, N.J. DEFENDANT'S EXHIBIT B

and maintain everything necessary to perform its operations hereunder, including without limitation, all tools, supplies, material and equipment and shall use recognized modern mining methods and practices, employ capable management, expend reasonable and necessary funds for proper health and safety measures, development, reclamation, drainage and pollution control and take all other actions necessary to enable it to achieve maximum recovery of mineable coal and to deliver the same to Owner as herein set forth.

1.1 Mineable Coal Defined. As used herein, the term "mineable coal" shall mean coal which, when reached in the course of Contractor's mining operations can be mined and removed by the use of modern mining machinery and prudent mining techniques and is of sufficient quality to be marketable at a reasonable profit to Owner.

1.2 Conduct of Operations. Contractor shall promptly commence and diligently prosecute its operations hereunder in a careful, skillful and workmanlike manner, in accordance with recognized modern mining methods and practices, in strict compliance with all applicable federal, state and local laws, rules, regulations, ordinances, and permits, and so as to secure the greatest possible recovery of mineable coal.

1.3 Reclamation. All reclamation activity will be completed by the end of the planting season following the removal of all mineable coal.

1.4 Thin Seams. Contractor agrees to load any seams encountered during its mining of the Premises that are 12 inches or greater in thickness.

2. Permits and Bonds. Contractor has obtained the SMP, Owner will provide the road bonding required for the mining contemplated hereby, and the Owner and Tanoma will provide the collateral support for the related permit and road bonding (together the "Bonds"). Contractor will reimburse Owner for the ongoing expenses incurred by Owner in maintaining and complying with the provisions of the Bonds.

2.1 Bond Recoupment Payment. Contractor agrees to pay Owner the sum of One Dollar and Twenty Five Cents ($1.25) ("Bond Recoupment Payment") per ton of coal shipped from the Premises. The right to receive the Bond Recoupment Payments from Contractor will be transferred and paid over by Owner to Tanoma

the purchaser of the Coal from Owner and the party that provided the collateral to support the Bonds. Tanoma shall maintain an account in which all Bond Recoupment Payments made by Contractor under this Agreement, or Bond Recoupment Payments made by Contractor under any other Contract Mining Agreement between Owner and Contractor will be recorded ("Reclamation Account"). Whenever the Reclamation Account exceeds the total amount of all of the bonds for permits issued by the PaDEP for work performed by Contractor for Owner, and for which Tanoma has provided the collateral to support the bonds ("Tanoma Bonds"), Tanoma will pay to Contractor a sum equal to the amount the balance in the Reclamation Account exceeds the Tanoma Bonds. The Bond Recoupment Payment shall not effect Contractor's obligation to completely reclaim the Premises to achieve Owner's full bond release at the conclusion of mining.

2.2 Contractor Bonds. Prior to commencing operations hereunder, Contractor, at its own expense, shall obtain and maintain in its own name, all other permits, licenses, governmental approvals and identification numbers, including but not limited to an MSHA identification number, which are necessary for such operations.

2.3 Recognized Contractor. Contractor shall execute such documents as may be necessary for Contractor's designation by DEP as the Recognized Contractor for the mining operation on the Premises.

3. Haul Road. Contractor, at its own expense, shall construct and maintain a road, satisfactory to Owner, for the transportation of coal from the Premises. Contractor shall be responsible for constructing and maintaining driveways suitable to access Township roads needed for coal hauling purposes.

4. Drainage Controls. Contractor, at its own expense, shall construct and maintain all sediment ponds, diversion ditches and other temporary and permanent structures necessary for the control of surface waste water and run-off in accordance with Contractor's mining plans, and all applicable federal, state and local laws, rules, regulations, ordinances and permits.

5. Quantity. Commencing with the date of this Agreement, Contractor shall make deliveries of raw coal to Owner at a monthly rate of Four thousand (4,000) to Six thousand (6,000) tons as directed by Owner. Contractor and Owner both recognize that monthly tonnage may vary due to changing sales opportunities. Contractor agrees to keep a monthly record for Owner of surface mine tonnage produced from each coal seam on each mining phase.

6. Sampling By Owner. Owner reserves that right to sample coal at the Premises prior to it being shipped, and to have sample(s) analyzed by an independent third party laboratory for payment purposes, which analysis shall be binding upon the parties hereto.

7. Payment For Services. Owner shall pay Contractor, on behalf of Owner, as full compensation for Contractor's work performed under this Agreement for each net ton of 2,000 lbs. of coal mined by Contractor and delivered to Owner during any calendar month, such sums as are shown on the Schedule attached hereto as Exhibit A. Owner will review on a quarterly basis the sums shown on Exhibit A to determine if market conditions require any adjustment. Any such adjustment shall be communicated in writing to Contractor at least thirty (30) days before it becomes effective. Promptly following the last day of each calendar month, Contractor shall invoice Owner for all coal mined by Contractor from the Premises during the preceding calendar month. Owner shall pay Contractor, the amount of each invoice by the 25th of the month following the month of production, provided that Contractor submits its invoice in a timely manner. Contractor agrees that the Owner may reduce any amount due to Contractor under this Agreement, at any time, by any sums owed by Contractor to Owner or to Tanoma or its affiliates.

8. Title To Coal. Owner is and shall remain the sole and exclusive owner of all coal mined by Contractor pursuant to this Agreement, and Owner shall have the sole right to sell the coal produced by the Contractor.

9. *Force Majeure*. If either party hereto is unable to perform, in whole or in part, any of its obligations under this Agreement by reason of *force majeure*, as hereinafter defined, and if such party promptly gives notice thereof to the other party, including sufficient information as to the cause and expected duration of such *force majeure* condition, then the obligations of the party giving such notice shall be suspended during the duration of such *force majeure* to the extent made necessary thereby. Any party claiming *force majeure* shall eliminate the cause of such *force majeure* with all reasonable dispatch. Any deficiencies in deliveries of coal hereunder caused by *force majeure* shall not be made up except by mutual consent of the parties hereto. The term "*Force Majeure*", as used herein, shall mean any causes beyond the reasonable control of the party affected thereby, such as acts of God, acts of the public enemy, insurrections, riots, strikes, labor disputes, fires, explosions, floods, embargoes, orders or acts of civil or military authority, governmental regulation or legislation, or other causes of a similar nature which wholly or partially prevent the mining or delivery of coal by Contractor or the receiving or marketing of the coal by Owner. "*Force Majeure*" shall not include equipment breakdowns, vacation periods, or planned shutdowns for inspection.

10. Weights. The weight of all coal mined by Contractor from the Premises shall be determined by scales located at the facility of the purchaser of the coal. Owner shall promptly furnish copies of all weigh slips or scale weights to Contractor. Unless weights are questioned by the Contractor within thirty (30) days following the date that Owner furnishes original weigh slips or scale weights, such weights shall be final and conclusive as between the parties for all purposes.

11. Inspections. Owner shall have the right, at any and all times, to enter upon, examine and survey Contractor's operations and inspect, examine all books, accounts, statements, maps and plans of Contractor for the purpose of verifying Contractor's compliance with the terms and conditions of this Agreement.

12. Independent Contractor. Contractor shall perform the work required by this Agreement without direction or control by Owner, except as may be necessary for Owner to protect its property or insure conformity with mining plans. Nothing herein shall be deemed to create a partnership between the parties hereto, to convey to either party, by operation of

law or otherwise, any interest in, right to, or ownership of, any property of the other party, or to constitute Contractor as an agent of Owner for any purpose, it being understood that Contractor is an independent contractor

13. Responsibility for Employees. Contractor, solely and exclusively, shall employ, direct, supervise, discharge and fix the compensation and working conditions and practices of its employees and shall be solely responsible for payment of their compensation. Contractor, solely and exclusively, shall be responsible for, and shall exercise complete control of its employees in all matters, disputes or grievances arising out of or in any way connected with Contractor's operations.

14. Workmen's Compensation; Black Lung Benefits. Contractor shall obtain and maintain Workmen's Compensation coverage, including coverage for occupational disease, for its employees in accordance with the laws of Pennsylvania and shall obtain and maintain insurance with Owner named as an additional insured thereon for, or otherwise guarantee to Owner's satisfaction, the payment of Federal Black Lung insurance to its employees in accordance with applicable federal laws. Contractor shall furnish written evidence of such Workmen's Compensation and Black Lung insurance coverage prior to commencing operations hereunder and thereafter shall furnish the same upon request of Owner.

15. Indemnification. Contractor shall fully indemnify and save harmless Owner and its directors, officers, partners, employees and agents, successors and assigns, from and against any and all fines, penalties or other assessments which are levied upon or assessed against Owner under any applicable federal, state or local law, rule, regulation or ordinance including without limitation the Federal Mine Safety and Health Act of 1977, the Surface Mining Control and Reclamation Act of 1977, The Clean Streams Law of Pennsylvania, and/or the Surface Mining Conservation and Reclamation Act of Pennsylvania by reason or as the result of any failure by Contractor to strictly comply with the provisions of said laws, rules, regulations and ordinances and any amendments thereto. Owner shall promptly notify Contractor of all citations, notices and orders issued and all fines, penalties or other assessments levied upon or against Owner as a result of or in any way connected with Contractor's performance or its obligations under this Agreement. Owner shall have the right to retain from payments due to Contractor hereunder sufficient funds to cover any fines,

penalties or other assessments which are or may be levied upon or assessed against Owner by reason of any citation, notice or order issued to Owner as a result of any failure of Contractor, or any of its employees or agents to strictly comply with the provisions of the aforesaid laws, rules, regulations and ordinances. Such funds may be retained by Owner until such time as a final assessment is determined. Contractor further shall indemnify and hold harmless Owner and its directors, officers, partners, employees and agents, successors and assigns from and against all claims, demands, actions, causes of action and liability of any nature whatsoever for property damage and/or for personal injury, including death resulting therefrom, caused or alleged to have been caused, directly or indirectly, by any act or omission on the part of the Contractor, or its employees and agents, or in any way connected with Contractor's performance of its obligations and/or exercise of the rights and privileges granted under this Agreement.

16. Insurance. Contractor shall obtain and maintain Comprehensive General Liability Insurance, including contractual Liability Insurance with limits of liability of not less that $1,000,000 for property damage and $1,000,000 per person/$1,000,000 per occurrence for bodily injury and with a deductible not exceeding Ten Thousand Dollars ($10,000), if obtainable, and otherwise the lowest deductible obtainable. Owner and Tanoma shall be named as an additional insured thereunder. Such insurance shall not be deemed a limitation on any liability of Contractor provided for in this Agreement but shall be additional security therefore. Prior to commencing operations hereunder, Contractor shall provide Owner with a certificate or certificates evidencing such insurance, together with written assurance of the insurance company or companies that Owner will be advised in writing not less than thirty (30) days prior to any cancellation of any such insurance.

17. Term. The initial term of this Agreement shall be a period of one (1) year, beginning on the day and year first above written, and if not sooner terminated, the term of this Agreement shall thereafter be automatically extended for successive periods of one (1) year each until terminated as hereunder set forth. Contractor shall remain responsible for all reclamation obligations after termination of this Agreement pursuant to this paragraph 17 or paragraph 18 following.

18. Remedies.

18.1. Termination For Default. In the event Contractor (a) fails to comply with any of the terms and conditions of this Agreement for a period of ten (10) days after receipt of written notice from Owner, and such failure to comply is not excused under Section 9 Force Majeure hereof, or (b) Contractor is finally adjudicated a bankrupt, files a voluntary petition in bankruptcy, or makes a general assignment for the benefit of creditors, or liquidates itself or its assets, or if a receiver is appointed on account of its insolvency, or (c) Contractor's operations result in the issuance of more than five (5) citations, notices or orders because of Contractor's failure to comply with applicable state and local laws, rules, regulations and ordinances, regardless of whether the condition giving rise to any such citation, notice or order is a force majeure under Section 9 Force Majeure, or Contractor fails to mine and deliver more than 4,000 tons for three consecutive months, Owner shall have the right to terminate this Agreement by giving notice of such termination to Contractor in writing. Subparagraph (c) above shall not be constructed to include any inspection report by the Pennsylvania Department of Environmental Protection which contains a notice of violation unless such inspection report subsequently results in the assessment or proposed assessment of a civil penalty or the issuance of an abatement order to cease operations.

18.2. Termination For Lack of Markets. Notwithstanding anything to the contrary that may be contained in the Agreement, Owner further shall have the right, upon giving Contractor not less than fifteen (15) days written notice, to terminate this Agreement if, in Owner's sole judgment, Owner is unable to sell the coal mined from the Premises.

18.3. Suspension For lack of Markets. Owner shall have the right at any and all times to suspend deliveries of coal hereunder, whenever the coal in and underlying the Premises cannot, in Owner's sole judgment, be mined, removed, sold and shipped from the Premises at reasonable profit in markets then available to Owner.

18.3 Suspension For Violations of Law. In the event Contractor's operations on the Premises are in violation of any federal, state or local law, rule, regulation, ordinance or permit for a period of forty-eight (48) consecutive hours, Owner in addition to all other rights it may have under this Agreement or at law or in equity, shall have the right to require the Contractor to suspend its operations on the Premises until such violation is corrected. Contractor shall immediately suspend its operations if so requested by Owner.

19. Surrender on Termination. Contractor agrees, upon termination or cancellation of this Agreement by either party, to transfer or surrender the SMP, as Owner shall direct.

19.1 Power of Attorney. To effectuate the rights and interests in this paragraph 19, Contractor hereby irrevocably appoints the Owner its true and lawful attorney, with power of substitution, for the Contractor and in the Contractors name, or in the Owner's name or otherwise, for its use and benefit, (i) to assign, transfer, surrender, cancel, or terminate and take any other action with respect to or otherwise deal with the SMP held by Contractor, as fully and completely as if the Owner were the permittee or licensee thereunder, and (ii) to make, execute, acknowledge, and file any documents or instruments which may be required in or to effectuate such assignment, transfer, cancellation, termination, or other action with respect to such permit.

19.2 Survival of Power of Attorney. The power of attorney granted in paragraph 19.1 shall survive termination of this Agreement and shall survive the liquidation, dissolution, death, or incapacity of the Contractor. The powers conferred on the Owner by this paragraph are solely to protect its interests and shall not impose any duties upon the Owner to exercise any such powers. Contractor agrees to execute and deliver to Owner an instrument in recordable form, as provided for in Pennsylvania law, to effectuate the purposes of this paragraph 19.

20. Depletion. It is specifically understood and agreed by Owner and Contractor that (a) all coal mined hereunder and the economic interest therein be and at all times shall remain the property of Owner, (b) no leasehold or other estate or interest in and to the coal nor any economic interest therein is hereby granted to Contractor, (c) Owner shall retain and have all rights to claim the entire depletion allowance for state or federal income tax purposes or other purposes attributable to the coal mined by Contractor hereunder, (d) Contractor shall not make any claim for any portion of such depletion allowance for state or federal income tax purposes or for any other purpose, and (e) Owner's sole right to such depletion allowance has been fully considered by Owner and Contractor in fixing the price for coal to be mined and delivered hereunder.

21. Payment of Fees. Owner shall pay the excise tax imposed by the Federal Black Lung Benefits Revenue Act, the reclamation fee imposed by the Federal Surface Mining Control and Reclamation Act of 1977, and any surface or coal royalties due which are applicable to coal mined by Contractor from the Premises.

22. Investigation of Premises. Contractor accepts the Premises hereinabove described in their existing condition and knowledge that Contractor has made an investigation to determine existing conditions, limitation of areas involved, equipment necessary to conduct and complete operations, law affecting performance hereunder, and latent dangers and dangerous conditions. OWNER MAKES NO IMPLIED OR EXPRESS WARRANTY OR REPRESENTATION CONCERNING THE EXISTENCE, QUALITY, MINEABILITY OR MERCHANTABILITY OF THE COAL SEAM(S) WITHIN THE PREMISES, AND CONTRACTOR COVENANTS AND AGREES THAT NO REPRESENTATIONS, STATEMENTS OR WARRANTIES, EXPRESS OR IMPLIED, HAVE BEEN MADE BY OR ON BEHALF OF OWNER REGARDING THE PREMISES, THEIR CONDITION, THE USE OR OCCUPATION THAT MAY BE MADE THEREOF OR THE INCOME THEREFROM. Owner shall in no event assume or be liable for any loss incurred by Contractor under this Agreement. Owner does not assume any responsibility or liability for the present or future condition of the Premises, and Owner shall not be liable to Contractor for any damage to or destruction of the Premises, or Contractor's property or the property of

any other person due to fire, flood, or any other accident or natural catastrophe which occurs on or within the Premises.

23. Assignment. This Agreement shall not be assigned in whole or in part by Contractor without the written consent of Owner, which consent may be denied by Owner in its sole judgment, and any such assignment without the prior written consent of Owner shall be void and of no force and effect. Any change in ownership of Contractor by 20% or more shall be deemed an assignment by Contractor hereunder.

24. Notices. All notices required or permitted to be given in writing under this Agreement shall be deemed given when delivered to the receiving party personally or by United States Certified Mail, Return Receipt Requested, postage prepaid, addressed as follows:

(a) To Owner:

Laurel Energy, L.P.
One Energy Place, Suite 7500
Latrobe, PA 15650-9628

(b) To Contractor:

Johnson Brothers Coal Company, Inc.
R.D. #1, Box 580
Mahaffey, PA 17757

or (c) to such other person(s) and address(es) as the parties may from time to time designate in writing.

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

26. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof unless it substantially and adversely affects the value of this Agreement to one of the parties; and in the absence of any such

substantial and adverse effect, this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

27. Entire Agreement. This Agreement constitutes the entire contract between Owner and Contractor and supersedes all other prior negotiations, undertakings, notices, memoranda and agreements, whether oral or written, with respect to the subject matter hereof.

28. Amendments. Any modification or amendment of the terms and provisions of this Agreement shall be valid and effective only if and when made in writing and duly executed on behalf of the parties hereto.

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

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

ATTEST:

LAUREL ENERGY, L.P., by
Laurel Mountain Management, Inc., its
General Partner

By _____
Michael J. Walker, Executive Vice President

ATTEST:

JOHNSON BROTHERS COAL COMPANY, INC.

By _____
Leslie Johnson, President

TANOMA ENERGY, INC. joins in the execution of the above Contract Mining Agreement between Laurel Energy, L.P. and Johnson Brothers Coal Company, Inc., for the sole purpose of acknowledging its intent to comply with the provisions of Section 2.1, to the extent they are applicable to it.

TANOMA ENERGY, INC.

By _____
Michael J. Walker, Executive Vice President

EXHIBIT A

PAYMENT FOR SERVICES

COAL SUPPLY PRICING SCHEDULE

Product: Smith #1 Crop

Quality:

Moisture:	10.00%
Ash:	16.50%
Sulfur:	.80%
BTU:	11,000

Price: $14.00 F.O.B. Mine Site

Premium/Penalty:

BTU: ± $0.25 per 100 BTU above/below 11,000 BTU, fractions pro rate on any daily analysis.

Product: Smith #1 C'

Quality:

Moisture:	6.00%
Ash:	15.00%
Sulfur:	1.00%
BTU:	12,200

Price: $20.00 F.O.B. Mine Site

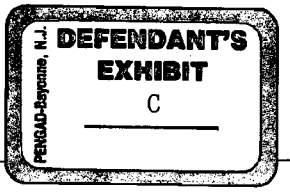
Premium/Penalty:

BTU: ± $0.25 per 100 BTU above/below 12,200 BTU, fractions pro rate on any daily analysis.

*** All quality is determined by daily analysis taken by "Owner".

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	
vs.	CASE NO.
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	
	TYPE OF PLEADING: **COMPLAINT**
	FILED ON BEHALF OF: Plaintiffs
	COUNSEL OF RECORD: ROBERT P. GING, JR., ESQUIRE Pa. Id. No. 25459 2095 Humbert Road Confluence, PA 15424-2371 (814) 395-3661



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO.
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

NOTICE TO DEFEND

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MidPenn Legal Services
211 ½ E. Locust Street
Clearfield, PA 16830
(800) 326-9177

IN THE COURT OF COMMON PLEAS OF BLAIR COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO.
MORAVIAN RUN RECLAMATION CO, INC. and JOHNSON BROTHERS COAL COMPANY, Defendants	)	

COMPLAINT

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Complaint.

1. The Plaintiffs are adult citizens of Pennsylvania, who reside in the Commonwealth of Pennsylvania at the following addresses: Jan Lawrence and Scott Aldinger, 2178 Gleim Court, Enola, PA 17025; Chris and Mary Ilyes, 2160 Esbenshade Road, York, Pennsylvania 17404; and Jeff Cookerly, 152 Linda Drive, New Oxford, Pennsylvania 17350.

2. The Defendant, Moravian Run Reclamation Co., Inc. (hereinafter "Moravian") entered into a Memorandum of Lease with B & B Land Company of Clearfield, Pennsylvania, transferring all right, title and interest to a surface mine lease in Gulich Township, Clearfield County on October 17, 2000. The lease was for property now owned by the Plaintiffs. A copy of the lease is attached

hereto as Exhibit 1 and a copy of the Memorandum of Lease is attached as Exhibit 2.

3. At all times material hereto Johnson Brothers Coal Company (hereinafter "Johnson Brothers"), R.R. 1, Box 586, Mahaffey, Pennsylvania 15757 was the permittee and contract strip mine operator for Moravian which conducted mining operations pursuant to Permit No. 17970119 on the property owned by the Plaintiffs in Gulich Township, Clearfield County.

4. On February 27, 2002 Plaintiffs were the purchasers of a piece of property located in Beccari and Gulich Townships, Clearfield County, Pennsylvania as more fully set forth in the Deed attached hereto as Exhibit 3, being Instrument No. 200203112 dated February 27, 2002.

5. Subsequent to acquiring the property the Plaintiffs began building a cabin on the property in March of 2002. On August 23, 2002 Plaintiffs returned to the property from their primary residences which were not in Clearfield County to find that the property was being surface mined by Johnson Brothers Coal Company.

6. In October, 2002 a representative of Johnson Brothers Coal Company provided a copy of the lease to the Plaintiffs for the first time.

7. Mining was conducted on the property, without notice to the Plaintiffs, and the timber remaining on the property was also cut during the mining operation.

8. At no time did the Plaintiffs give permission to either of the Defendants or their predecessors or successors in interest to conduct surface mining operations on their property, nor did the Defendants make the Plaintiffs aware that they intended to conduct surface mining on their property

COUNT I - BREACH OF CONTRACT

9. The averments of Paragraphs 1 through 8 are incorporated herein by reference as if fully set forth.

10. At all times material hereto the Defendants have breached the surface mining contract as more fully set forth herein.

11. At the time of the mining conducted by the Defendants, the prior lessors did not own the surface rights of the premises.

12. Paragraph 3 of the original lease provided for a payment from the mining company to the property owners of $1.50 per net ton or 5% of the pit selling price per all merchantable and mineable coal whichever amount is greater for all coal mined and removed on the premises.

13. The Plaintiffs have made a request for payment of the royalties set forth in Paragraph 3, however the Defendants, and their successors in interest have refused and continue to refuse to make any royalty payments.

14. Paragraph 5 of the lease requires that the Defendants maintain certified truck scale weights for all coal mined and removed from the premises. The Plaintiffs have requested truck scale weights and other records through the Defendants or their successors in interest, however the Defendants and their successors in interest have refused and continue to refuse to comply with that provision of the original lease.

15. The original lease provided that lessors, their successors in interest would have access to the operation and scale records. Plaintiffs, or the current property owners have requested on numerous occasions that such records be provided, however the Defendants and their successors in interest have refused and continue to refuse to comply with the provision of the lease.

16. Paragraph 9 of the lease requires that prior to mining any paperwood or saw timber remaining on the leased premises would be cut and removed, and payment made to the Plaintiffs, as, successors in interest to the original lessors, pursuant to that paragraph. No such payments were made, nor was the timber on the property cut and removed by reliable people subject to the approval of the lessors. Defendants gave no notice to the Plaintiffs that they intended to mine Plaintiffs' property.

17. The lessee also failed to refrain from destroying pulpwood and saw timber in the progress of its mining operations and has failed to replant the premises in accordance wit the lease and its permits.

18. Paragraph 11 requires that lessee supply to lessors monthly tonnage reports, which the Defendants and their successors in interest have refused and continue to refuse to do.

19. Paragraph 6 of the lease required that lessee conduct all mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. The Defendants and their successors in interest failed to conduct mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry, have failed to adequately reclaim and re-vegetate the site, to implement sedimentation and erosion controls, and to assure that there was no mine drainage emanating from the mined area.

WHEREFORE Plaintiffs demand judgment in an amount in excess of arbitration limits of the Court of Common Pleas of Clearfield County.

COUNT II - TRESPASS

20. The averments of paragraphs 1 through 19 are incorporated herein by reference as if fully set forth.

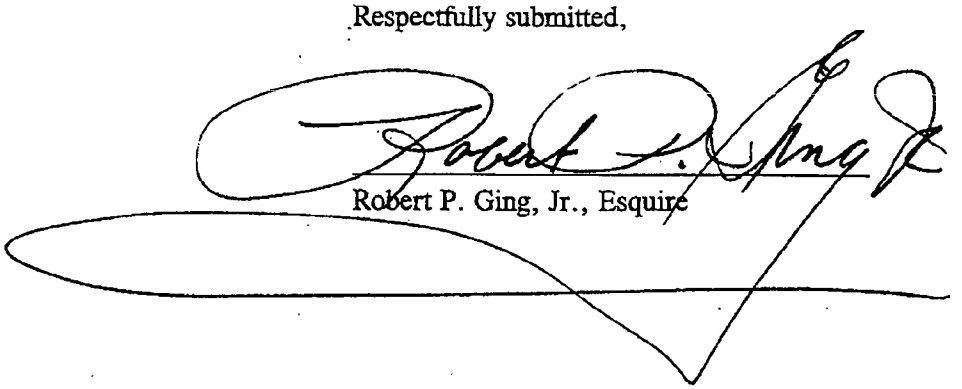
21. At the time that mining was commenced the original lease agreement had expired, and the Memorandum of Lease, purportedly commencing June 2, 2000, occurred after the expiration of the original lease agreement.

22. No mining occurred prior to the expiration of the original coal lease.

23. In the alternative, if the lease was not in full force and affect at the time the mining was conducted, the Defendants, and their successors in interest and/or contractors converted timber present on the property to their own use, and converted the coal on the property to their own use and trespassed on Plaintiffs' property without Plaintiffs' consent and without the benefit of a lease.

WHEREFORE, Plaintiffs respectfully request judgment in excess of the arbitration limits of the Court of Common Pleas of Clearfield County.

Respectfully submitted,



Robert P. Ging, Jr., Esquire

EXHIBIT 1

Original Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 15th day of April, 1995 by and between R. Wesley Smith and Samantha Smith, his wife of R.D. 2, Box 39, Reynoldsville, Pennsylvania 15851 and Raymond A. Smith and Shirley B. Smith, his wife of R.D. 1, Box 211-A, Reynoldsville, Pennsylvania 15851, party of the first part, hereinafter referred to as "LESSORS";

A N D

B & B LAND COMPANY, of Clearfield, Pennsylvania, party of the second part, hereinafter referred to as "LESSEE".

W I T N E S S E T H:

THE LEASE

1. That for and in consideration of the sum of One Dollar ($1.00) paid by the LESSEE to the LESSORS, the receipt whereof is hereby acknowledged, the LESSORS do hereby let, lease and demise unto the LESSEE, its succesors and assigns, the right with such terms, covenants and conditions as hereinafter set forth, to mine and remove all the mineable and merchantable coal in, under and upon that certain tract in the Township of Beccaria and in the Township of Gulich title to which is vested in the LESSORS which tract of land is Parcel #1 - 290 acres in Gulich Township under Ray and Wesley Smith which is shown on Tax Map No. 118-K7-9 and Parcel #2 - 200 acres in Beccaria Township under Ray and Wesley Smith, which is shown on Tax Map No. 101-K17-8. Also, 110.56

110.56 acres in Beccaria Township under William O'Shall, Tax Map No. 101-K17-1.

The LESSORS covenant that they own either the coal or the surface (right of surface support) of the described premises, and do hereby grant and convey the full and complete rights for the mining and removing of the coal in, under and upon the above described premises by all modern mining methods, including but not limited to surface stripping, with the right of ingress, egress and regress, into, upon the under said lands for the purpose of examining, testing, mining, stripping and removing said coal, together with the right to locate and erect such chutes, tipples, buildings, pipe lines, pole lines and other structures as may be necessary for the use and working of mines or strippings, and with the right to deposit spoil therefrom upon the surface with the right to redeposit the same, and with all rights and privileges necessary and convenient in mining, digging, stripping, removing and transporting said coal without liability for any and all damage done to said lands or buildings or the water therein or thereon, caused by the mining, stripping and removal of all said coal, or the exercise of any or all of the mining rights aforesaid.

LESSORS hereby lease unto the LESSEE the right of ingress, egress and regress in and to the leased premises any time within five (5) years after the termination of this lease for the purpose of backfilling or planting trees or otherwise complying with the mining laws of the Commonwealth of Pennsylvania. But this right of re-entry for a period of five (5) years is for the

purpose alone and shall vest in LESSEE no rights whatsoever in the coal, in the mining of coal, or in the property. In addition, LESSORS agree to execute the required written consents on the form furnished by the Commonwealth of Pennsylvania concerning re-entry for backfilling, planting, reclamation and inspection.

2. Term and Effective Date: This lease shall become effective as of the 15th day of April, 1995, by the LESSEE and shall continue for a period of four (4) years with automatic extensions of one (1) year terms from year to year to exhaustion of the coal provided the premises are being actively mined at the end of the original term and each yearly extention thereof. Active mining shall be defined to mean mining operations upon the premises on a regular five (5) days per week.

3. Tonnage Royalty: LESSEE shall pay to LESSORS royalty at the rate of One Dollar and Fifty Cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton for all merchantable and mineable coal, whichever amount is greater, for all coal mined and removed from the premises. All payments of royalty shall be made on or before the 25th day of each calendar month for all coal mined and removed in the preceding calendar month and shall be accompanied by a statement showing the tonnage mined and royalty due. All payments are to be made to the LESSORS without demand or to any other party or parties LESSORS in writing designate as an agent for receiving payments.

All payments of royalty as herein provided are based on either one hundred percent (100%) ownership of surface (right of

surface support) coal or both surface and coal. In the event LESSORS should own less than one hundred percent (100%) of said surface and/or coal rights said sums shall be adjusted in accordance with the percentage of ownership.

4. Minimum Royalty: LESSEE shall pay to LESSORS the sum of Two Hundred Dollars ($200.00) per month as a minimum royalty for each month that the within lease is in full force and effect. All payments of minimum royalty shall be recoupable by the LESSEE as a credit against tonnage royalty from production as herein provided.

5. Tonnage Measurements: Royalty and other payments shall be based on certified truck scale weights or railroad weights, and all coal mined and removed from the premises shall be weighed on such scales. LESSEE hereby authorizes LESSORS or its agent, to examine any and all of the LESSEE'S records and to examine the records of any truck scale weights or railroad weights concerning the coal which was hauled or shipped from the described premises and the right to make copies of his findings.

6. Mining Methods: LESSEE agrees that all mining operations shall be conducted in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that LESSORS (at its own risk) shall have access to the operation and scale records of LESSEE at all times in person or by duly authorized agent.

7. Taxes: All taxes upon the premises herein demised shall be paid by LESSORS, and all taxes that may be levied, imposed, charged or assessed upon improvements, equipment, or

mining machine placed upon the demised premises by LESSEE for the mining, removing, processing or transportation of the coal shall be paid by LESSEE. Should any federal, state or local subdivision impose any tax upon the mining of coal, the coal mined, or otherwise, said taxes shall be paid by LESSEE.

8. Insurance: LESSEE agrees to keep in force during the term of this lease general liability insurance with a reputable insurance company in the sum of at least One Million Dollars. Upon request LESSEE shall furnish to LESSORS a certificate of said insurance which shall name LESSORS as an additional insured.

9. Timber Removal: If on investigation it appears that there is any appreciable quantity of paper wood or saw timber remaining on the leased premises, the LESSEE will at the request of the LESSORS arrange for the cutting and removal of such paper wood and saw timber by reliable people, subject to the approval of the LESSORS, and will supervise the cutting of such timber and pulpwood, arranging for monthly remittances to the LESSORS at the same time that royalties hereunder are due. The LESSEE shall refrain from destroying pulpwood or saw timber in the progress of its strip mining operations, if these is reasonable opportunity to arrange to have such timber cut off in advance of such operations.

10. Books and Records: LESSEE shall and will keep complete and accurate books of account, showing the amount of coal produced from the said property, and at the time for payment of the monthly royalties hereinbefore mentioned, shall furnish accurate statements of all coal mined and produced during the

preceding calendar month; shall and will keep all mining maps, books, plans and records necessary in operating said leased coal; and shall and will furnish LESSORS, or its duly authorized agent or employee, at any reasonable time, upon request, access to all books of account, records, weigh sheets, maps and plans and will also give LESSORS, or its duly authorized agent or employee, at reasonable request, access to any and all portions of the said leased premises and to the operations in connection with the same.

11. LESSEE agrees to supply to LESSORS, at the first of each month, tonnage on the number of trucks loaded with coal for the previous month.

12. Default in Royalties and Breach of Term: It is understood and agreed that in the event the LESSEE should default in any payment provided for herein when said payments become due, or should LESSEE be in default in any other respect and continue in such default for a period of thirty (30) days after being notified in writing of such default by LESSORS, then, in either event, at the option of the LESSORS, this Lease shall cease and terminate and LESSEE hereby authorizes any attorney of any court of record to appear for it and in its name to confess a judgment against it in an amicable action of ejectment to the end that a writ of habere facias possession may issue forthwith for the delivery of possession to LESSORS together with clause of fieri facias for royalties in arrears and costs.

13. Supplemental "C": LESSORS hereby agrees to execute, acknowledge and deliver to LESSEE within ten (10) days after the

exercise of the within option in quadruplicate the form know as Supplemental "C" required by the Department of Environmental Resources (DER) of the Commonwealth of Pennsylvania and thereafter any other forms required in order to secure the permits necessary for mining operations.

14. Force Majeure: LESSEE shall not be deemed in default for failure to perform any of its obligations under this Agreement during periods in which performance is partially or wholly prevented by any cause, condition or matter beyond LESSEE'S control, such as, and not by way of limitation, strikes, riots, accidents, governmental laws, lack of satisfactory markets for coal from the leased premises and acts of God.

15. No Assignment or Transfer: LESSEE agrees not to mortgage or encumber the leased premises with liens of any kind, or sell, or assign, or setover or sublet the whole or any part of the herein leased premises, or subcontract for the mining thereof, without the express written consent of the LESSOR first had and obtained, which, shall not be unreasonably withheld. It is further agreed and provided that any lawful levy and sale on execution or other legal processes, as well as any assignments or sale in bankruptcy, voluntary or involuntary proceedings, or any receivership created, shall be deemed and taken to be an assignment or subletting within the meaning of this lease agreement, and at the option the LESSORS shall work an immediate forfeiture, without notice, and thereupon possession may be immediately taken by the LESSORS without further formality.

It is understood, however, that anything to the contrary in the foregoing paragraph notwithstanding, LESSEE shall have the right to assign the within lease to LESSEE'S mining company, Penn-Grampian Coal Company or to Al Hamilton Contracting Company or any of its assigns.

16. Memorandum of Lease: Upon exercise of the within option by LESSEE, LESSORS agrees to execute, acknowledge and deliver to LESSEE a "memorandum of Lease" suitable for recording, which Memorandum retains the privacy of this document but gives public notice of the fact that the within lease has been executed. Said Memorandum shall contain a description of the property, the purpose of the lease, the length of the term and the fact that it incorporates the within lease by reference thereto. LESSEE agrees to prepare said Memorandum and deliver it to LESSORS and LESSORS agrees to execute, acknowledge and deliver to LESSEE the said Memorandum within ten (10) days of the receipt thereof.

17. Cancellation: The LESSEE shall have the right to cancel this Agreement at any time upon giving thirty (30) days written notice to the LESSORS, whereupon all accrued royalties including paid past minimum royalties shall be due and payable.

18. Notices: A written notice addressed to B & B Land Company, P.O. Box 249, Clearfield, Pennsylvania, 16830, and sent by certified mail, shall be deemed received by the LESSEE as of one day after the date of mailing. A written notice addressed to Raymond A. Smith, R.D. 1, Box 211-A, Reynoldsville, Pennsylvania

15851 and sent by certified mail shall be deemed received by the LESSORS as of one day after the date of mailing.

19. Water monitoring shall begin within ninety (90) days of the signing of the Agreement.

20. Anything to the contrary herein notwithstanding, mining shall commence within six (6) months after all required permits have been approved by D.E.R., otherwise the within lease shall terminate upon the expiration of thirty (30) days written notice by LESSORS to LESSEE should LESSEE fail to commence mining within said thirty (30) days.

21. This lease agreement is binding on the parties hereto, their heirs, executors, administrators, successors and assigns.

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

ATTEST:

Diane A. McGeeon

LESSORS:

R. Wesley Smith

Samantha L. Smith

Raymond A. Smith

Shirley F. Smith

ATTEST:

William J. Hoag
Partner

LESSEES:
B & B LAND COMPANY
By

Andrew J. Sutton
Partner

Lease Amendment

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT made this 2nd day of June, 2000, by and between R. WESLEY SMITH and SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, Pennsylvania 15851 and RAYMOND A. SMITH and SHIRLEY B. SMITH, his wife, of R R 1 Box 211A, Reynoldsville, Pennsylvania 15851, Party of the First Part, hereinafter referred to as "LESSORS";

AND

B & B LAND COMPANY of Clearfield, Pennsylvania, Party of the Second Part, hereinafter referred to as "LESSEE".

WHEREAS, the Lessors and Lessee have entered into a Lease Agreement dated April 15, 1995, and the Lessee has obtained certain mining permits on a portion of the premises set forth in said Lease in the Townships of Beccaria and Gulich in Clearfield County, Pennsylvania, more fully set forth in said Lease and the Lessors are desirous of granting additional time to Lessee.

WITNESSETH:

That the parties hereto agree to continue said lease for another three (3) years from the original term and Lessors do not require Lessee to pay any additional advance royalty and Lessee agrees to release from said Lease all premises not currently under permit including, but not limited to, all the premises lying South of T-534 and West of Muddy Run.

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

WITNESS:

Denise A. McGraner as to all — R. Wesley Smith (SEAL)
R. Wesley Smith

Samantha L. Smith (SEAL)
Samantha L. Smith

Raymond A. Smith (SEAL)
Raymond A. Smith

Shirley B. Smith (SEAL)
Shirley B. Smith

EXHIBIT 2

NOV 0 4 2002

MEMORANDUM OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that R. WESLEY SMITH & SAMANTHA L. SMITH, his wife, of P. O. Box 39, Reynoldsville, PA 15851; and RAYMOND A. SMITH & SHIRLEY B. SMITH, his wife, of R. R. #1, Box 211A, Reynoldsville, PA 15851; LESSORS, have by Agreement dated April 15th, 1995; and amended June 2nd, 2000; leased to B & B LAND COMPANY of Clearfield, PA 16830; LESSEE, and subsequently transferred to MORAVIAN RUN RECLAMATION COMPANY, INC., for the purpose of strip mining all the coal upon certain premises located in Gulich Township, Clearfield County, Pennsylvania as shown on the attached map. (PO Box 247)

The date of commencement of amended Agreement is June 2nd, 2000. The term of amended Agreement and transfer is three (3) years.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 17th day of October, 2000.

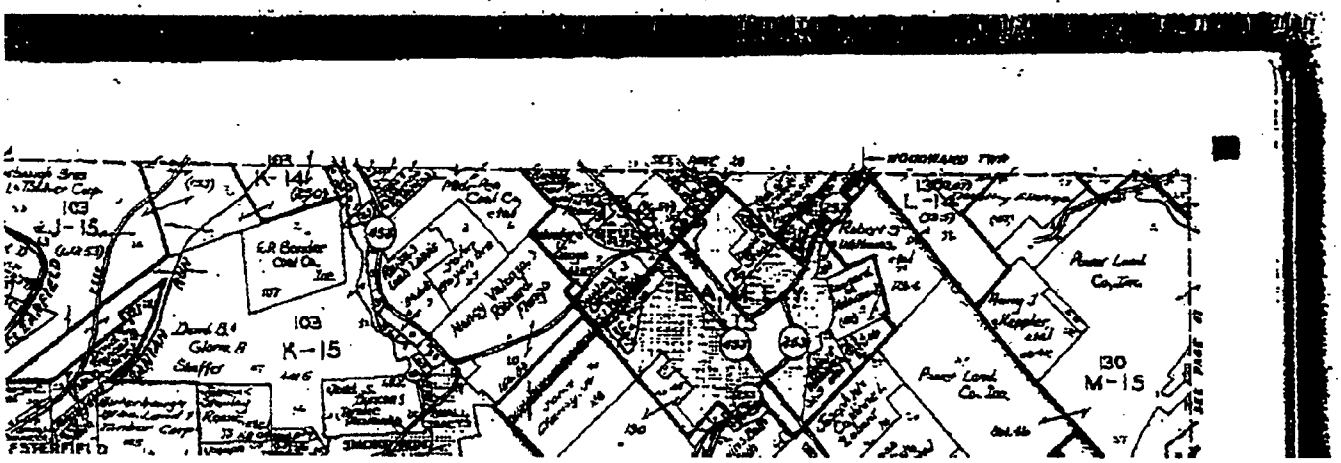
WITNESS:

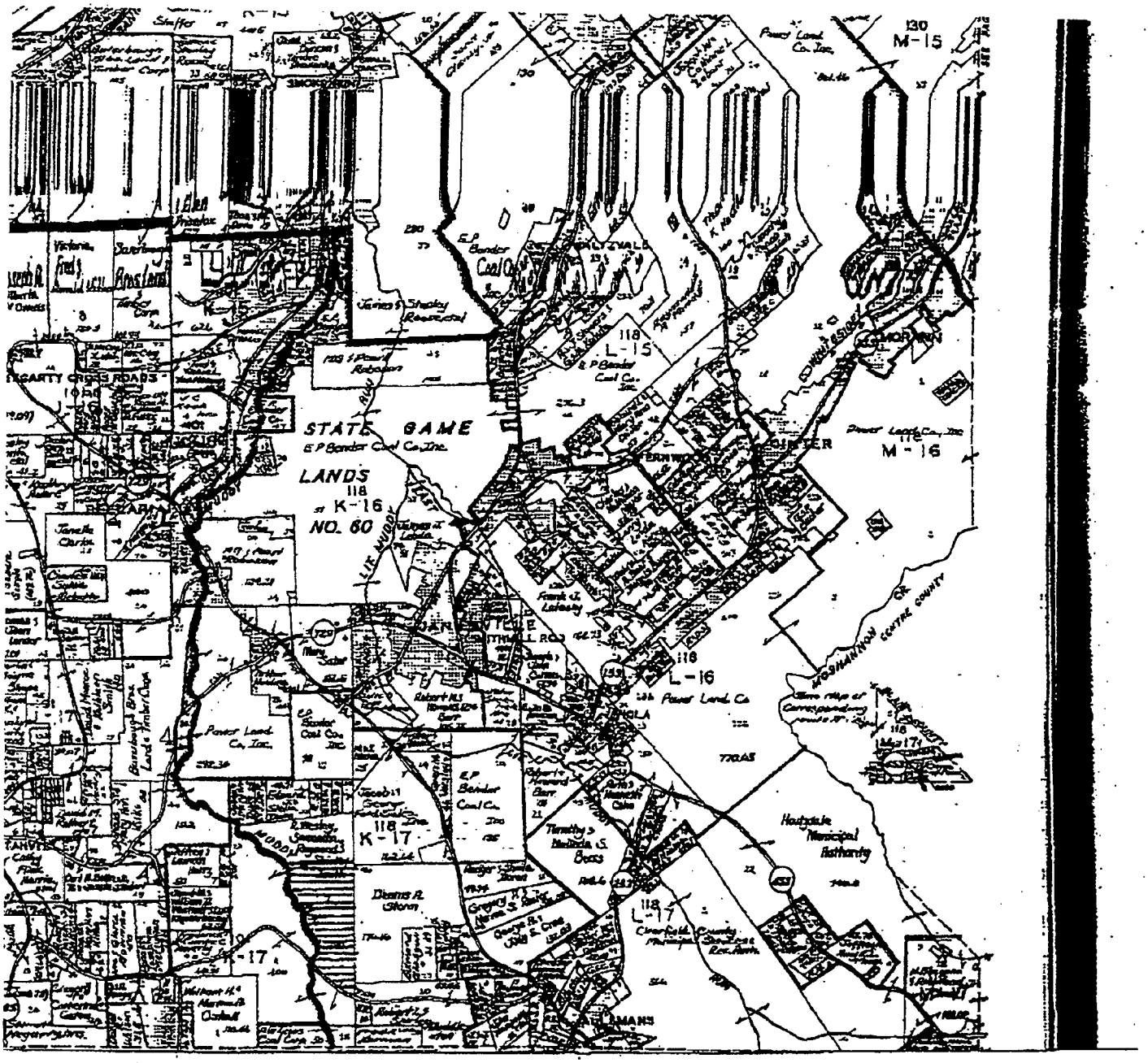
Denise A McGrann — R. Wesley Smith (SEAL)
R. Wesley Smith

Denise A McGrann — Samantha L. Smith (SEAL)
Samantha L. Smith

Denise A McGrann — Raymond A. Smith (SEAL)
Raymond A. Smith

Denise A McGrann — Shirley B. Smith (SEAL)
Shirley B. Smith





STATE OF PENNSYLVANIA:

: SS

COUNTY OF Jefferson :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and [illegible] that they executed the same for the purpose therein contained.

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 19th day of October, 2000, before me, the undersigned officer, personally appeared WILLIAM T. THORP, Partner, B & B LAND COMPANY, who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

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

Ronald O. Thorp
Notary Public

NOTARIAL SEAL
RONALD O. THORP, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, October 4, 2003

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 23rd day of Oct, 2000, before me, the undersigned officer, personally appeared DAVID M. CURULLA, President, MORAVIAN RUN RECLAMATION COMPANY, INC., who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he, as President of MORAVIAN RUN RECLAMATION COMPANY, INC., executed the same for the purpose therein

STATE OF PENNSYLVANIA:
: SS
COUNTY OF Jefferson :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and

L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A. McGranor
Notary Public

Notarial Seal
Denise A. McGranor, Notary Public
Reynoldsville Boro, Jefferson County
My Commission Expires Jan. 24, 2003
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA:
: SS
COUNTY OF JEFFERSON :

On this, the 19th day of December, 2000 before me, the

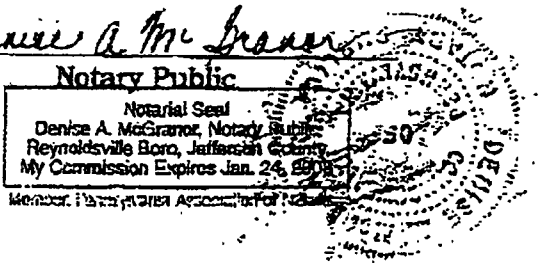
STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

On this, the 19th day of December, 2000, before me, the undersigned officer, personally appeared WILLIAM T. THORP, Partner, B & B LAND COMPANY, who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

undersigned officer, personally appeared R. WESLEY SMITH and SAMANTHA L. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A McGranor
Notary Public



STATE OF PENNSYLVANIA:
: SS
COUNTY OF JEFFERSON :

On this, the 17th day of October, 2000, before me, the undersigned officer, personally appeared RAYMOND A. SMITH and SHIRLEY B. SMITH, husband and wife, who are known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

Denise A McGranor
Notary Public

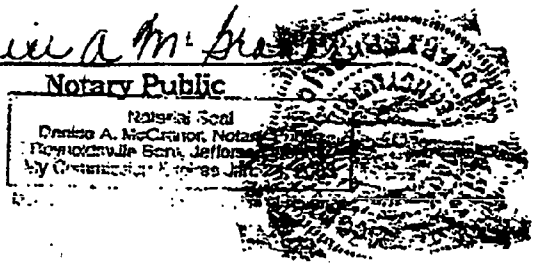


EXHIBIT 3

THIS DEED,

MADE THE 27th day of February, in the year two thousand two (2002),

BETWEEN CHARLES M. COLONY, DOROTHY I. COLONY and ERIC E. EMINHIZER, trading and doing business as FERGUSON VALLEY HARDWOODS, with its principal place of business at 501 Electric Avenue, Lewistown, Mifflin County, Pennsylvania, Grantor

AND

CHRISTOPHER SCOTT ILYES and MARY GALLAGHER ILYES, his wife, of 404 Debbi Ct., Hanover, PA 17331; JAY SCOTT ALDINGER and JANET LOUISE LAWRENCE/ALDINGER, his wife, of 2178 Gleim Ct., Enola, PA 17025; JEFFREY THOMAS COOKERLY and JENNIFER RENEE COOKERLY, his wife, of 405 Debbi Ct., Hanover, PA 17331; SCOTT WILLIAM MILLER and MICHELLE LYNN MILLER, his wife, of 813 Market St., Mt. Wolf, PA 17347, Grantees

WITNESS, that in consideration of Fifty Five Thousand ($55,000.00) Dollars, in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantees,

ALL THAT CERTAIN piece, parcel or tract of land situate in the Townships of Becarria and Gulich, County of Clearfield and State of Pennsylvania, bounded and described on Schedule "A" attached.

SUBJECT, HOWEVER, to all exceptions, reservations, restrictions, leases, interests, covenants, agreements, rights-of-way and easements contained in, and/or conveyed and/or granted by, prior instruments of writing of record in the chain of title, insofar as they may still be in force and effect; all easements apparent on the premises; municipal zoning ordinances; building codes; laws, ordinances or governmental regulations relating to sewage disposal; and, all laws, ordinances and regulations relating to subdivisions.

TOGETHER WITH the appurtenances.

BEING the premises which Ferguson Valley Hardwoods, became seized by deed of R. Wesley Smith and Samantha L. Smith, his wife; Raymond A. Smith and Shirley B. Smith, his wife, dated December 22, 2000, and recorded in the Recorder's Office of Clearfield County, Pennsylvania, at Instrument Number 200100027.

SCHEDULE A

ALL THAT CERTAIN 100.8645 acres tract of land located in Gulich Township and Beccaria Township, Clearfield County, Pennsylvania, which is shown as Lot 6 of a two sheet Plan of Subdivision of Ferguson Valley Hardwoods, prepared for Ferguson Valley Hardwoods by Colony & Company Surveying & Engineering, dated January 9, 2001, said Plan of Subdivision recorded in Instrument No. 2001 07907 to Map File No. 2317 Clearfield County Records, said tract of land being more fully bounded and described as follows:

BEGINNING at a set rebar in line of Lot 1 of said Plan of Subdivision at corner of Lot 2 of said Plan of Subdivision, said set rebar lying S 86° 37' 28" W 632.88' from a found square concrete monument at common corner of Lot 1, lands of Jacob George Ford Sales, Inc. and lands of John Dominicus; thence by Lot 2 S 01° 54' 41" W passing through a set rebar at 3668.58' a total distance of 3703.58' to a point in line of Lot 3 of said Plan of Subdivision, said point being in centerline of T-534 (Wippers Road), a 33' right-of-way leading from SR 2001 (Beaver Dam Road) to T-535 (Dakota Ridge Road); thence by Lot 3 and Lot 4 of said Plan of Subdivision and along centerline of T-534 (Wippers Road) the following 22 courses: 1) N 39° 08' 03" W 112.82'; 2) by a curve to the left with a Long Chord of N 41° 48' 34" W 189.03', a Radius of 2025.00', and an Intersection Angle of 05° 21' 01" a total distance of 189.10'; 3) N 44° 29' 05" W 71.03'; 4) by a curve to the left with a Long Chord of N 46° 47' 43" W 104.82', a Radius of 1300.00', and an Intersection Angle of 04° 37' 16" a total distance of 104.85'; 5) N 49° 06' 20" W 265.61'; 6) by a curve to the right with a Long Chord of N 37° 56' 09" W 120.10', a Radius of 310.00', and an Intersection Angle of 22° 20' 22" a total distance of 120.87'; 7) N 26° 45' 58" W 53.51'; 8) by a curve to the left with a Long Chord of N 39° 02' 37" W 141.20', a Radius of 332.00', and an Intersection Angle of 24° 33' 19" a total distance of 142.28'; 9) N 51° 19' 17" W 63.10'; 10) by a curve to the right with a Long Chord N 39° 12' 23" W 111.65', a Radius of 266.00', and an Intersection Angle of 24° 13' 48" a total distance of 112.49'; 11) N 27° 05' 29" W 54.77'; 12) by a curve to the left with a Long Chord of N 47° 23' 23" W 150.56', a Radius of 217.00', and an Intersection Angle of 40° 35' 49" a total distance of 153.76'; 13) N 67° 41' 18" W 120.55'; 14) by a curve to the right with a Long Chord of N 67° 03' 45" W 59.43', a Radius of 2720.00', and an Intersection Angle of 01° 15' 07" a total distance of 59.43' to a point at the intersection of the centerline of T-534 (Wippers Road) with the centerline of Muddy Run, said point being a common corner of Lot 3 and Lot 4 of said Plan of Subdivision, said point also marking the boundary line between Gulich Township and Beccaria Township; 15) thence by Lot 4, entering Beccaria Township and along centerline of T-534 and by a curve to the right with a Long Chord of N 65° 44' 48" W 65.50', a Radius of 2720.00', and an Intersection Angle of 01° 22' 47" a total distance of 65.50'; 16) N 65° 03' 24" W 137.22'; 17) by a curve to the right with a Long Chord of N 53° 35' 13" W 212.77', a Radius of 535.00', and an Intersection Angle of 22° 56' 21" a total distance of 214.20'; 18) N 42° 07' 03" W 106.40'; 19) by a curve to the right with a Long Chord of N 34° 49' 57" W 131.88', a Radius of 520.00', and an Intersection Angle of 14° 34' 12" a total

distance of 132.23'; 20) N 27° 32' 50" W 75.19'; 21) by a curve to the left with a Long Chord of N 29° 27' 32" W 66.05', a Radius of 990.00', and an Intersection Angle of 03° 49' 24" a total distance of 66.06'; 22) N 31° 22' 15" W 93.58' to a point in said centerline of T-534, being a corner of Lot 5 of said Plan of Subdivision; thence departing centerline of T-534 and by Lot 5 N 31° 31' 28" E passing through a set rebar at 50.00' and at 1180.00' a total distance of 1201.69' to a point in centerline of Muddy Run marking the boundary of Gulich Township and Beccaria Township; thence along centerline of Muddy Run and by Lot 5 the following 11 courses: 1) S 86° 14' 17" W 100.07'; 2) N 03° 10' 11" W 22.61'; 3) N 30° 58' 44" E 63.72'; 4) N 03° 07' 26" W 90.52'; 5) N 51° 07' 33" W 149.94'; 6) N 28° 40' 26" W 208.11'; 7) N 03° 49' 13" E 48.49'; 8) N 48° 32' 31" E 169.68'; 9) N 07° 39' 17" W 66.20'; 10) N 21° 04' 43" W 167.19'; 11) N 56° 45' 22" W 75.93' to a point in centerline of Muddy Run and in line of Lot 1 of said Plan of Subdivision, said point lying N 86° 37' 28" E 26.42' from a set rebar in common line of Lot 1 and Lot 5; thence departing the centerline of Muddy Run and by Lot 1 entering Gulich Township N 86° 37' 28" E 1540.70' to a set rebar, being the POINT OF BEGINNING.

CONTAINING: 100.8645 Acres.

TOGETHER WITH and SUBJECT TO a 100' Right-of-Way centered on the centerline of T-534 (Wippers Road) for placement of utilities as noted on aforesaid Plan of Subdivision.

CERTIFICATE OF RESIDENCE

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

2178 Gleim Court, Enola, PA 17025

Attorney for Grantee

COMMONWEALTH OF PENNSYLVANIA

ss:

COUNTY OF MIFFLIN

On this, the 27th day of February, 2002, before me, the undersigned officer, personally appeared CHARLES M. COLONY, DOROTHY I. COLONY and ERIC E. EMINHIZER, individually and as partners of FERGUSON VALLEY HARDWOODS, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

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

Notarial Seal
Sharon F. Morris, Notary Public
Derry Twp., Mifflin County
My Commission Expires Apr. 9, 2005
Member, Pennsylvania Association of Notaries

Notary Public

RECORDED in the Office for Recording of Deeds, etc., in and for said County, in Record Book _____, Page _____.

WITNESS my hand and official seal this _____ day of _____, 200__.

Recorder of Deeds

NOTICE – Grantee (hereinafter, whether one or more, called "Grantee") hereby agrees that he may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal.

x Debby Thomas Cooley
x Christopher Scott Ely
x Mary Gallagher Ely POA
x Jennifer Renee Cotterly
x Janet Lawrence Aldenjo
x Gary Scott Aldenjo POA
x Michelle Lynn Miller
x Scott William Miller

NOTE – THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACEOF THE LAND AND ANY HOUSE, BUILDING OR OTHER SUTRCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT R MODIVFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.]

KAREN L. STARCK
GISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200203112
RECORDED ON
ab 27, 2002
1:12:40 PM
Total Pages: 6

RDING FEES - $21.00
ORDER
NTY IMPROVEMENT $1.00
)
ORDER $1.00
ROVEMENT FUND
TE TRANSFER $550.00

TE WRIT TAX $0.50
ARIA TOWNSHIP $137.50
ICH TOWNSHIP $137.50
DALE SCHOOL $137.50
TRICT
HANNON VALLEY $137.50
OLS
AL $1,123.50
CUSTOMER
MPSON, DAVID

AND the said Grantor will **SPECIALLY WARRANT** the property hereby conveyed.

GRANTOR certifies that no hazardous waste, within the meaning of the Solid Waste Management Act of 1980, is presently being disposed of or has ever been disposed of by the Grantor or to the Grantor's actual knowledge in or upon the premises above described.

IN WITNESS WHEREOF, the said Grantor has hereunto set its hand and seal, the day and year first above-written.

Sealed and delivered in the presence of

Sharon Moore

Chas M. Colony

CHARLES M. COLONY, individually and as a partner of Ferguson Valley Hardwoods

Sharon Moore

Dorothy I. Colony

DOROTHY I. COLONY, individually and as a partner of Ferguson Valley Hardwoods

Sharon Moore

E E E

ERIC E. EMINHIZER, individually and as a partner of Ferguson Valley Hardwoods

UNIFORM CLEARFIELD COUNTY BAR ASSOCIATION CERTIFICATE OF TITLE

TO: Christopher Scott Ilyes and Mary Gallagher Ilyes; Jay Scott Aldinger and Janet Louise Lawrence/Aldinger; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly; Scott William Miller and Michelle Lynn Miller

CERTIFICATION

The undersigned does hereby certify the record title of Christopher Scott Ilyes and Mary Gallagher Ilyes, his wife; Jay Scott Aldinger and Janet Louise Lawrence/Aldinger, his wife; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly, his wife; Scott William Miller and Michelle Lynn Miller, his wife, whose property is located in Becarria and Gulich Townships, Clearfield County and recorded to Instrument Number 200203112, to be good and marketable and free and clear of all liens and encumbrances of record which would be disclosed by a search of the indices of the records of the Court House, at Clearfield, Pennsylvania, with any exceptions hereinafter noted, covering the period from fifty (50) years ago to this date.

EXCEPTIONS

1st Lien Mortgage to The Juniata Valley Bank in the original principal amount of $80,000.00 dated February 27, 2002 and recorded in Clearfield County to Instrument Number 200203113 on February 27, 2002.

This certificate embraces the following:

Miscellaneous agreements, grants, releases, easements, mechanic's liens, municipal liens, mortgages, liens of record, taxes are entered or recorded in any of the offices of the said Court House, but does not embrace liens or other matters not entered of record in the indices of said offices.

This certificate covers only matters disclosed by the indices of the Court House records of Clearfield County, Pennsylvania. It specifically does not cover any deficiency int he quantity of land, improvements on the premises, violation of zoning ordinances or building restrictions, boundary line disputes, nor taxes of any nature whatsoever which have accrued and are actually owing but which have not been entered or record, nor does it cover any matters which might be disclosed by either a survey or a physical inspection of the premises. No mechanic's or municipal liens were filed of record as of the date of this certificate, but your attention is specifically directed to the possibility that the same might be filed at a future date for any building, repair or other word already commenced.

This certificate shall insure only to the benefit of the person to whom it is addressed

wife; Jeffrey Thomas Cookerly and Jennifer Renee Cookerly, his wife; Scott William Miller and Michelle Lynn Miller, his wife, whose property is located in Becarria and Gulich Townships, Clearfield County and recorded to Instrument Number 200203112, to be good and marketable and free and clear of all liens and encumbrances of record which would be disclosed by a search of the indices of the records of the Court House, at Clearfield, Pennsylvania, with any exceptions hereinafter noted, covering the period from fifty (50) years ago to this date.

EXCEPTIONS

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This certificate shall insure only to the benefit of the person to whom it is addressed, and is issued subject to all rights of persons who may be in possession under lease, or title or claim of title not indexed of record.

DATED: February 27, 2002

David R. Thompson, Esquire

VERIFICATION AFFIDAVIT

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief.

I understand that statements herein are made subject to the penalties of 18 Pa. C.S., §4904, relating to unsworn falsifications to authorities.

Jan Lawrence

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing Response of Laurel Energy, LP, to Defendant Moravian Run Reclamation Co., Inc.'s Motion for Summary Judgment Against Additional Defendant Laurel Energy, LP, to all counsel of record in the following manner on the 12th day of September, 2008:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc., and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE

Attorney for Laurel Energy, L.P., Additional Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

RESPONSE OF LAUREL ENERGY, LP, TO DEFENDANT MORAVIAN RUN RECLAMATION CO., INC.'S MOTION FOR SUMMARY JUDGMENT AGAINST THE PLAINTIFFS

Filed on Behalf of this Party:
Laurel Energy, LP

Counsel of Record for this Party:

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588

LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270

JENNINGS L. HART, III, ESQUIRE
Pa. I.D. No.: 200060

DAVIES, McFARLAND & CARROLL, P.C.
Firm I.D. No.: 281
One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

FILED
m/11:28 Bl
SEP 15 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

RESPONSE OF LAUREL ENERGY, LP, TO DEFENDANT MORAVIAN RUN RECLAMATION CO., INC.'S MOTION FOR SUMMARY JUDGMENT AGAINST THE PLAINTIFFS

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P. (collectively "Laurel Energy"), by and through its counsel, Davies, McFarland & Carroll, P.C., who files the within Response of Laurel Energy, LP, to Defendant Moravian Run Reclamation Co., Inc.'s Motion for Summary Judgment Against the Plaintiffs, stating as follows:

1. Admitted.

2. Admitted.

3. Paragraph 3 of the Motion for Summary Judgment against the Plaintiffs filed on behalf of Defendant Moravian Run Reclamation Co., Inc. ("Moravian Run") is denied.

Paragraph 3 of the Answer and New Matter Pursuant to Pa.R.C.P 2252(d) to Complaint of Original Defendant Johnson Brothers Coal Company Against Defendant Laurel Energy, LP, does not admit that that Moravian Run never conducted any mining or timbering upon the land of Plaintiffs or entered upon the land of Plaintiffs. See Paragraph 3 of the Answer and New Matter Pursuant to Pa.R.C.P 2252(d) to Complaint of Original Defendant Johnson Brothers Coal Company Against Defendant Laurel Energy, LP, attached hereto as Exhibit "A". By way of further response, it is, however, stated that Laurel Energy has no evidence to establish that Moravian Run mined or timbered Plaintiffs' land.

4. It is admitted that on June 15, 2001, Moravian Run and Laurel executed an "Option Agreement". The remaining averments of Paragraph 4 are denied as the "Option Agreement" is a document which speaks for itself. "Option Agreement" attached hereto as Exhibit "B".

5. The averments of Paragraph 5 of Moravian Run's Motion for Summary Judgment Against the Plaintiff contains conclusions of law to which no response is necessary. By way of further response, Laurel states that Moravian Run has provided no evidence of the assignment upon which it relies beyond the "Option Agreement" which merely provides for the assignment at a later date. See Exhibit "B".

6. Paragraph 6 of Moravian Run's Motion is directed to Plaintiffs. As such, no response is required from Laurel. However, as to averments contained therein regarding the assignment to Laurel, Additional Defendant incorporates its response to Paragraph 5 above.

7. In response to Paragraph 7 of Moravian Run's Motion, Laurel states that Plaintiffs' Complaint is a document which speaks for itself and references both trespass and conversion.

8. Paragraph 8 of Moravian Run's Motion is a conclusion of law to which no response is required.

WHEREFORE, Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., demands judgment in its favor and against Defendant Moravian Run Reclamation Co., Inc.

Respectfully submitted,

DAVIES, McFARLAND & CARROLL, P.C.

By: _____

LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE
Attorney for Laurel Energy, L.P.,
Additional Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

vs.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP.,

Additional Defendant

CIVIL DIVISION

No.: 05-1351-CD

ANSWER AND NEW MATTER PURSUANT TO PA R.C.P. 2252 (D) TO COMPLAINT OF ORIGINAL DEFENDANT JOHNSON BROTHERS COAL COMPANY AGAINST ADDTIOINAL DEFENDNAT LAUREL ENERGY, LP

TO: ALL PARTIES

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED ANSWER AND NEW MATTER PURSUANT TO PA R.C.P. 2252 (d) TO COMPLAINT OF ORIGINAL DEFENDANT WITHIN TWENTY (20) DAYS FROM THE SERVICE HEREOF OR JUDGMENT MAY BE ENTERED AGAINST YOU.

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
Lynn E. Bell, Esquire

Filed on Behalf of this Party:

Laurel Energy, LP, Additional Defendant

Counsel of Record for this Party:

Lynn E. Bell, Esquire
Pa I.D. #38588

Davies, McFarland & Carroll, P.C.
Firm I.D. #281

One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

PENGAD-Bayonne, N.J.
DEFENDANT'S EXHIBIT
A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
Plaintiffs,	)	
vs.	)	No.: 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants,	)	
and	)	
LAUREL ENERGY, LP.,	)	
Additional Defendant	)	

ANSWER AND NEW MATTER PURSUANT TO PA R.C.P. 2252 (d) TO COMPLAINT OF ORIGINAL DEFENDANT JOHNSON BROTHERS COAL COMPANY AGAINST ADDITIONAL DEFENDANT LAUREL ENERGY, LP

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., by and through its counsel, Davies, McFarland & Carroll, P.C. who files the within Answer and New Matter Pursuant to Pa. R.C.P. 2252 (d) to Complaint of Original Defendant Johnson Brothers Coal Company against Additional Defendant Laurel Energy, L.P., stating as follows:

1. After a reasonable investigation, Additional Defendant, Laurel Energy, L.P., is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.

2. The Plaintiffs' Complaint speaks for itself and to the extent the allegations are set forth in paragraph 2 of the Complaint of Original Defendant, Johnson Brothers Coal, are supported by the Complaint filed by Lawrence, et al. then said allegations are admitted to have been made in the Lawrence, et al. Complaint. To the extent the allegations contained in paragraph 2 are inconsistent with the Lawrence, et al. Complaint, said allegations are denied.

3. Paragraph 3 is admitted that on August 23, 2001 a Contract Mining Agreement was entered into between Johnson Brothers and Laurel Energy.

4. Paragraph 4 is denied. Paragraph 8 of the Contract Mining Agreement speaks for itself. Paragraph 8 of said Agreement makes reference to coal which was mined.

5. After a reasonable investigation Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5.

6. Paragraph 6 is denied. The Contract Mining Agreement entered into on August 23, 2001 made no mention nor provided any permission for Johnson Brothers to remove pulp wood and/or saw timber from the property addressed therein.

7. The response to paragraph 6 is incorporated herein by reference in response to Paragraph 7. The Contract Mining Agreement speaks for itself with regard to

the payment of coal royalties and to whom said royalties were to be paid. It further speaks for itself regarding the removal of pulp wood and/or saw timber.

8. Paragraph 8 is denied and placed at issue in accordance with Pa. R.C.P. 1029.

9. Paragraph 9 is denied and placed at issue in accordance with Pa. R.C.P. 1029.

10. In response to the demands made by Johnson Brothers in the "Wherefore" clause of their Complaint against Laurel Energy, it is denied Johnson Brothers are entitled to any of those damages.

WHEREFORE, Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., prays this Honorable Court to enter judgment on its behalf and against Plaintiffs and to dismiss Plaintiffs' Complaint with prejudice.

NEW MATTER PURSUANT TO PA R.C.P. 2252 (d)
AGAINST ORIGINAL DEFENDANTS
(Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company)

1. Additional Defendant, Laurel Energy, L.P. denies that it is or may be liable to Moravian Run Reclamation Co., Inc. and/or Johnson Brothers Coal Company on any claim asserted against it in this action. In the alternative, Additional Defendant hereby incorporates by reference the averments of Plaintiffs' Complaint, without admission to the same, and avers that, if and in the event it is found liable, than Original Defendants, Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company, are solely liable, jointly and/or severally liable with Additional Defendant, Laurel

Energy, L.P. or liable over to Laurel Energy, L.P. for indemnification and/or contribution.

WHEREFORE, Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., prays this Honorable Court to enter judgment on its behalf and against Plaintiffs and to dismiss Plaintiffs' Complaint with prejudice.

Davies McFarland & Carroll, P.C.

By: _____

Lynn E. Bell, Esquire
Attorney for Laurel Energy, L.P.,
Additional Defendant

(108952)

VERIFICATION

I, Michael J. Walker, have read the foregoing *Answer and New Matter pursuant to Pa. R.C.P. 2252 (d) to Complaint of Original Defendant Johnson Brothers Coal Company against Additional Defendant Laurel Energy, L.P.* The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, which provide that if I make knowingly false averments, I may be subject to criminal penalties.

I am authorized to make this verification on behalf of Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., because of my position as Executive Vice President of Laurel Mountain Management, Inc., the sole general partner of Laurel Energy II, LP.

Michael J. Walker
Executive Vice President
Laurel Mountain Management, Inc., sole general partner of Laurel Energy II, LP (successor in interest to Laurel Energy, L.P.)

Date: April 20, 2006

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 20th day of April, 2006:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	✓
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
Lynn E. Bell, Esquire
Attorneys for Laurel Energy, LP.,
Additional Defendant

OPTION AGREEMENT

This **Option Agreement** ("Agreement") made and entered into on this 15th day of ~~May,~~ June 2001 by and between Moravian Run Reclamation, Co., Inc. of 605 Sheridan Drive Clearfield PA 16830, ("Optionor")

~ AND ~

Laurel Energy, L.P., a Pennsylvania limited partnership, with a principal business office located at One Energy Place Suite 7500 Latrobe, PA 15650, ("Optionee").

WHEREAS, Optionor owns leases to certain coal lands ("Leases") more particularly described in Exhibit A attached hereto ("Premises") and;

WHEREAS, Optionor is the permit holder under a certain mining Permit issued by the Pennsylvania Department of Environmental Protection more particularly described in Exhibit B attached hereto ("Permit");

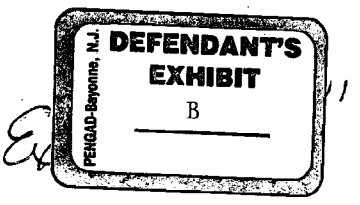
WHEREAS, Optionor has granted to Optionee an option to (a) obtain an assignment of the Leases, and (b) acquire the Permit, in accordance with the provisions of this Agreement, and Optionee has accepted the option.

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, in consideration of the above covenants and conditions and those hereinafter set forth mutually agree as follows:

1. Option. In consideration of the sum of $1,000.00 (One Thousand Dollars) paid by the Optionee to Optionor, Optionor does hereby grant and convey to Optionee the sole, exclusive, and irrevocable right and option ("Option") to take an assignment of the Leases, and acquire the Permit, at any time within a period of thirty (30) days from the date hereof ("Option Period"), subject to the terms and conditions hereinafter set forth. The Option Period may be extended for an additional period of thirty (30) days if needed to obtain consent to the assignment of leases by the Optionee giving notice thereof to Optionor.

2. Right of Entry. During the Option Period, Optionee shall have the right to enter upon the Premises for the purposes of test drilling, core drilling, and such other investigations and exploratory tests as Optionee shall deem necessary in its sole and exclusive discretion. The Optionee agrees to reclaim any areas disturbed by the activities of the Optionee during exploration of the Premises. Such obligations to reclaim will survive the expiration or termination of this Agreement.

3. Access to Information. Optionor shall provide and furnish Optionee and Optionee's counsel, accountants, engineers, and other representatives full access, during normal business hours throughout the Option Period, all of the Optionor's records and information pertaining to the Premises as necessary for Optionee to conduct due diligence. In the event the Optionee fails to exercise the option granted herein, all records and information obtained by the Optionee in conducting due diligence shall be summarized and remitted to Optionor within five



(5) days of the earlier of the expiration of the option granted herein or notice by Optionee to Optionor of its intent not to exercise the option granted herein.

4. Indemnification. During the Option Period, Optionee will indemnify and save harmless Optionor, its successors and assigns, from any and all loss and/or liability for claims, demands, and suits, or causes of action in law or equity for damages and injuries (including death) of every kind and nature to persons and property, including loss of the use thereof, as the result of Optionee activities hereunder, and Optionee will defend all such claims, demands, and suits at its sole cost and expense, whether groundless or not. Nothing herein shall relieve Optionor from liability for its own negligence or acts, or the negligence or acts of its employees, agents, and contractors. This provision shall survive the expiration or termination of this agreement.

5. Exercise of Option. In the event Optionee elects to exercise its Option, it shall exercise the Option within thirty (30) days from the date hereof unless otherwise extended as provided for in Section 1 above. The notice of the exercise of the option or extension shall be given in writing by the Optionee by registered mail or United States certified mail, return receipt requested, addressed to the Optionor, which shall be postmarked within the period set forth above at which time the option shall be considered exercised. If the Optionor shall exercise the Option, as herein provided then the following provisions of this Agreement shall immediately become effective. If the Optionee fails to exercise the option in accordance with the terms of this Agreement within the Option Period, then the option granted by this Agreement, and all rights hereunder of the Optionee shall automatically terminate without notice to either party.

6. Time and Place of Closing. The assignment of Leases and the signing of documents to allow for the transfer of the Permit shall take place thirty (30) days after the Optionee exercises the Option, at the offices of the Optionor, 605 Sheridan Drive Clearfield PA 16830 commencing at 10:00 a.m., local time, or at such other date, time or place as may be agreed to by the Buyer and Seller.

7. Transaction. At the Closing Optionor will assign the Leases to Optionee, in form and substance satisfactory to Optionee, and complete the documentation required to transfer the Permit to Optionee, such transfer is to occur in the manner prescribed by Department of Environmental Protection, under the following terms and conditions:

a. Optionee shall pay an overriding production royalty ("Overriding Royalty") of thirty cents ($0.30) per ton for all merchantable and mineable coal produced and sold from mining activities conducted on the Premises. Such Overriding Royalty shall be paid on the twenty fifth (25) day of each month for all coal removed and shipped from the Premises during the previous calendar month and shall be accompanied by a correct statement showing the truck weights for all coal shipped during such month. such payment shall be paid to Moravian Run Reclamation Co., inc. 605 Sheridan Dr. Clearfield, PA 16830

b. Upon completion of transfer of the Permit to the Optionee, the Optionee shall pay the sum of $18,963.[illegible] to the Optionor for reimbursement of permit preparation

costs. Provided Optionee or its designee has a contract miners license, has replaced Optionors bonds, and has applied for transfer of the permit, Optionor shall permit Optionee or its designee to conduct mining operations pursuant to the Permit, providing that the Optionors bonds have been released, until such time as the Permit is transferred to the Optionee or its designee.

8. Representations & Warranties of Optionor.

Optionor represents and warrants to Optionee as follows:

B. Optionor is the sole and exclusive owner and/or lessee of the Leases and has good and marketable title to the Leases, free and clear of all liens and encumbrances, clouds and defects whatsoever and has the authority to enter in this Agreement with Optionee.

C. All the Leases are valid and in good standing with no circumstances of default or pending default or other condition that would effect the right of the Optionee to mine coal under the Leases.

D. There are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Premises or the Leases, or any portion thereof, at law or in equity before any court or administrative agency.

E. To the best of the Optionors knowledge, there are no pending or threatening proceedings in eminent domain, or otherwise, which would affect the Premise, or any portion of the same.

F. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor the consummation of the transaction contemplated hereby, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions, provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which Optionor is a party.

G. Neither the Optionor, nor any other entity, person, direct or indirect affiliate controlled by the Optionor has caused to be deposited or has deposited on, at, or in the Premises, or has caused to be disposed, treated, stored or discharged upon the Premises any hazardous or toxic materials or substances, and the Premises and Optionor's activities thereon are now in full compliance with all environmental laws. For the purpose of the preceding sentence and if hereafter used in this Agreement the term "environmental laws" means any federal, state or local law, rule, regulation, or ordinance regulating and relating to protection of the environment, including, without limitation, the land, air and water, or human health or safety, and the term "hazardous or toxic substances" means any

substance defined as hazardous or toxic or otherwise regulated by any environmental law.

H. There are no agreements, formal or informal, between Optionor, the Lessors under the Leases and any third party regarding the Premises or the Leases, except for an agreement between Moravian Run Reclamation Co., Inc. and Penn Grampian Coal Company regarding the advanced royalties paid by Penn Grampian Coal Company to Wesley and Raymond Smith, which is attached to and considered part of this agreement.

I. All representations, warranties and agreements made by both parties in this Agreement shall survive the Transaction, for a period of two (2) years.

J. All representations and warranties by Optionor in this Agreement and all statements and certificates furnished or to be furnished to Optionee pursuant hereto, or in connection with the Transaction, contain true statements of material fact, and do not omit the material facts necessary to confirm all of the above representations and warranties.

8.1 Representations and Warranties of Optionee

Optionee represents and warrants to Optionor as follows:

A. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor the consummation of the transaction contemplated hereby, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions, provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which Optionee is a party.

B. Neither the Optionee, nor any other entity, person, direct or indirect affiliate controlled by the Optionee has caused to be deposited or has deposited on, at, or in the Premises, or has caused to be disposed, treated, stored or discharged upon the Premises any hazardous or toxic materials or substances, and the Premises and Optionee's activities thereon are now in full compliance with all environmental laws. For the purpose of the preceding sentence and if hereafter used in this Agreement the term "environmental laws" means any federal, state or local law, rule, regulation, or ordinance regulating and relating to protection of the environment, including without limitation, the land, air and water, or human health or safety, and the term "hazardous or toxic substances" means any substance defined as hazardous or toxic or otherwise regulated by any environmental law.

C. All representations and warranties by Optionee in this Agreement and all statements and certificates furnished or to be furnished to Optionee pursuant hereto, or in connection with the Transaction, contain true statements of material fact, and do not omit the material facts necessary to confirm all of the above representations and warranties.

9. Place of Payment and Notices. All Overriding Royalties payable hereunder, and all notices and other communications hereunder by either party may be effectuated by personal delivery or in writing by first class United States mail, postage prepaid, and shall be deemed received for all purposes hereunder as of the date of actual mailing as determined by the postmark date. All payments and notices by mail shall be addressed to the respective parties at their addresses set forth above, or to such other address the parties hereafter designate by notice to each other. All royalties payable to the Optionor shall be mailed to the address set forth above.

10. Events Of Default.

(a) The following shall constitute acts of default hereunder:

(i) if any representation or warranty of either party made in or pursuant to this Agreement is untrue or incorrect in any material respect, either party materially breaches the covenants or other terms of this Agreement

(ii) the neglect or refusal of Optionee to make payment of royalties, required to be paid by Optionee hereunder for a period of fifteen (15) days after Optionor has made written demand upon Optionee.

(iii) Optionee shall file a voluntary petition in bankruptcy or for the appointment of a receiver or shall be adjudicated a bankrupt or insolvent, or shall seek, consent to, or acquiesce in the appointment of any trustee, receiver or liquidator for all or any substantial part of its assets or be unable to meet its obligations to creditors as they come due.

(b) In the event of any such default by the Optionee, Optionor shall have at its addition to any other remedies it may have at law or in equity, all and singular the following remedies:

1. The right to terminate and cancel this Agreement upon thirty (30) days written notice of the same in addition to any other notice requirement above set forth, being provided to Optionee.

2. If Optionor elects to terminate and cancel this Agreement, Optionee authorizes any attorney of any court of record to appear for it and confess judgment against it and in favor of the Optionor, in ejectment or its equivalent legal remedy, for possession of the Leased Premises and further, authorizes said attorney to cause the immediate issuance of writ of possession delivering possession of the Leased Premises to the Optionor.

3. All of the rights and remedies of Optionor shall be cumulative and shall not be deemed to exclude Optionor from any other legal or equitable remedy or remedies which they may have. Failure on the part of Optionor to enforce any of the rights herein reserved by them on default for a period shall not operate as an estoppel or as a waiver against Optionor or prevent it at any subsequent time from electing to exercise all or any of such rights for any subsequent default.

4. Optionee hereby authorizes any attorney of any court of record, as often as default be made in the payment of royalties and other moneys as above stipulated to appear for it and confess judgment or judgments against it for the amount of royalties and other moneys due and unpaid, with attorney's commissions of ten percent (10%) and costs of suit, without stay of execution, waiving inquisition and exemption. This power of attorney shall be continuous and may be exercised as often as any default be made by Optionee in the terms of this Agreement.

11. Indemnification by Seller. For a period of five (5) years from and after the closing, Optionor shall indemnify and hold Optionee (and its permitted assigns) and the officers, directors and shareholders thereof harmless against and in respect of any and all losses, costs, expenses, claims, damages, obligations and liabilities, including interest, penalties and attorneys' fees and disbursements ("Damages"), which Optionee or any such person may suffer, incur or become subject to arising out of, based upon or otherwise in respect of: (a) any inaccuracy in or breach of any representation or warranty of Optionor made in or pursuant to this Agreement; (b) any breach or non-fulfillment of any covenant or obligation of Optionor contained in this Agreement; and (c) any violation of the Environmental Laws by Optionor or any affiliate of Optionor of which Optionor was aware or should have been aware.

12. Modification & Alteration. No modification, alteration, waiver or addition to this Agreement or any part thereof, shall be valid or binding or be set up or relied upon by either party unless the same be in writing, specifically referring to this Agreement, and signed by the Optionor and Optionee. No evidence of any such modification, alteration, waiver or addition shall be received in any controversy arising out of this Agreement, unless it be in writing and signed as aforesaid.

13. Applicable Law. It is hereby mutually understood and agreed that this Agreement shall be interpreted in accordance with the internal laws of the Commonwealth of Pennsylvania and that no presumption shall be deemed to exist in favor or against either party hereto as a result of the preparation and/or negotiation of the same nor for any other reason.

14. Integration. This Agreement contains and constitutes the final expression of the intent of the parties hereto, and is the complete and exclusive statement of the terms and conditions agreed upon by the parties hereto. No modification or amendment of this Agreement will be valid unless stated in writing and executed by the parties hereto.

15. Binding Effect. This Agreement shall be binding upon the parties hereto, their respective successors and assigns.

16. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be one in the same.

17. Severability. If any part or provision of this Agreement is found or declared to be invalid in contravention of any governing law or regulation, such part or provision shall be severable without affecting the validity of this Agreement.

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

ATTEST

OPTIONOR

By:

ATTEST

LAUREL ENERGY, L.P.
By Laurel Mountain Management, Inc.
Its General Partner

By:
D. Scott Kroh, President

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing Response of Laurel Energy, LP, to Defendant Moravian Run Reclamation Co., Inc.'s Motion for Summary Judgment Against the Plaintiffs to all counsel of record in the following manner on the 12th day of September, 2008:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc., and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE

Attorney for Laurel Energy, L.P.,
Additional Defendant

FILED

SEP 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,
Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY,
Defendants,

and

LAUREL ENERGY, LP.,
Additional Defendant.

No. 05-1351-CD

Type of Pleading:

AFFIDAVIT OF DAVID M. CURULLA SUBMITTED IN IN SUPPORT OF DEFENDANT, MORAVIAN RUN'S, MOTION FOR SUMMARY JUDGMENT

Filed on behalf of:
Defendant, Moravian Run Reclamation Co., Inc.

Counsel of Record for this party:

James A. Naddeo, Esquire
207 East Market Street
PO Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: September 25, 2008

FILED
03:36 p.m. GK
SEP 25 2008
William A. Shaw
Prothonotary/Clerk of Courts
2 cc Atty Naddeo
GK

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, L.P., Additional Defendant.	*	

AFFIDAVIT OF DAVID M. CURULLA, PRESIDENT OF MORAVIAN RUN RECLAMATION COMPANY, INC.

COMES NOW, the undersigned, who being duly sworn according to law, and based upon his personal knowledge of the facts stated herein, deposes and says as follows:

1. That the Affiant is David M. Curulla, an adult individual who is President of Moravian Run Reclamation Company, Inc. (hereinafter "Moravian Run"), a defendant in the above-captioned action.

2. That as President of Moravian Run Affiant has personal knowledge and information regarding the herein discussed facts and circumstances.

3. That at no time did Moravian Run enter upon the property now or formerly owned by Plaintiffs to remove coal, harvest trees or for any purpose other than a general inspection of the subject

property prior to accepting an assignment of the lease between Plaintiffs and B&B Land Company.

4. That Additional Defendant, Laurel Energy, L.P., exercised its option to receive an assignment of the lease from Moravian Run (being the same lease assigned to Moravian that was originally between Plaintiffs and B&B Land Company). A copy of the assignment from Moravian to Laurel Energy is believed to be in the possession of the Additional Defendant, Laurel Energy.

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared DAVID M. CURULLA, who being duly sworn according to law, deposes and states that he is the President of Moravian Run Reclamation Company, Inc. and that as such officer he is authorized to execute this Affidavit and further that the facts set forth in the foregoing Affidavit are true and correct to the best of his knowledge, information and belief.

David M. Curulla

SWORN and SUBSCRIBED before me this 5th day of September, 2008.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2011

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

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs,	*	
v.	*	No. 05-1351-CD
MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY, Defendants,	*	
and	*	
LAUREL ENERGY, LP., Additional Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Affidavit of David M. Curulla Submitted in Support of Defendant, Moravian Run's, Motion for Summary Judgment was served on the following persons and in the following manner on the 25th day of September, 2008:

First-Class Mail, Postage Prepaid

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-3661

Lynn E. Bell, Esquire
Davies, McFarland & Carroll, PC
The Tenth Floor, One Gateway Center
Pittsburgh, PA 15222-141

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Moravian Run

FILED
SEP 25
William A. Shaw
Prothonotary/Clerk of Courts

FILED
01/11:20 SEP 29 2008
William A. Shaw
Prothonotary/Clerk of Courts

(5)
ICC Atty's: Ging, Bell, Naddeo
ICC Johnson Bros. RR1, Box 58C Mahaffey, PA 15757

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

JAN LAWRENCE, CHRIS AND MARY ILYES, JEFF COOKERLY, AND SCOTT ALDINER
VS
MORAVIAN RUN RECLAMATION CO., INC., AND JOHNSON BROTHERS COAL COMPANY
VS
LAUREL ENERGY, L.P.

NO. 05-1351-CD

O R D E R

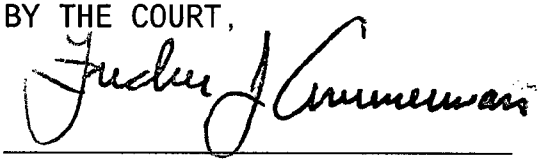
NOW, this 26th day of September, 2008, this being the date set for argument on the Motions for Summary Judgment filed on behalf of Moravian Run Reclamation Co., Inc., and following argument on the same and upon agreement of the parties, it is the ORDER of this Court as follows:

1. The said Defendant's Motion for Summary Judgment against the Plaintiffs is hereby GRANTED. The said Defendant Moravian Run Reclamation Co., Inc., is hereby removed as a Defendant in the case upon agreement of Plaintiff's counsel.

2. The said Defendant's Motion for Partial Summary Judgment in regard to Laurel Energy, L.P. is GRANTED to the extent that Moravian Run Reclamation Co., Inc., is DISMISSED as a party in this case. The Court notes that the said

Defendant has waived on the record any request for counsel fees or costs.

BY THE COURT,



President Judge

FILED

SEP 29 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/29/08

____ You are responsible for serving all appropriate parties.

__X__ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) __X__ Plaintiff(s) Attorney ____ Other

__X__ Defendant(s) __X__ Defendant(s) Attorney Johnson Bros.

____ Special Instructions:

5/18. 1:30 p.m.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Filed on Behalf of this Party:
Laurel Energy, LP

Re Laurel's Motion for partial Sum. Judgment

446 A2d 914 (88)

Laurel says case says documents attached to Motion for Sum Judg. ok to consider as part of the record

Counsel of Record for this Party:

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588

LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270

JENNINGS L. HART, III, ESQUIRE
Pa. I.D. No.: 200060

DAVIES, McFARLAND & CARROLL, P.C.
Firm I.D. No.: 281
One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

RECEIVED
MAY 19 2008
Court Administrator's Office

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	)	CIVIL DIVISION
	)	
	)	No.: 05-1351-CD
Plaintiffs,	)	
	)	
v.	)	
	)	
MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
LAUREL ENERGY, LP,	)	
	)	
Additional Defendant	)	

DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P. (collectively "Laurel"), by and through its counsel, Davies, McFarland & Carroll, P.C., who files the within Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment , stating as follows:

I. HISTORY OF THE CASE

This civil action involves a dispute concerning coal royalties, alleged timber removal and reclamation of real property.

In April 1995, by a document entitled "Lease Agreement" ("Lease Agreement"), the prior owners of the property in question, R. Wesley Smith, Samantha Smith, Raymond A. Smith, and Shirley B. Smith (collectively "the Smiths"), granted mining rights to B&B Land Company. B&B Land Company transferred its lease of coal rights to Moravian Run Reclamation Company, with the express written consent of the Smiths.

There was a Transfer of Lease Agreement on October 23, 2000, and therein Moravian Run agreed to pay Penn-Grampian Coal Company the royalties that were due to the Smiths for money advanced. The amount due was $6,657.58. Moravian Run and then later Laurel Energy reimbursed the $6,657.58 and the remaining amount was to be paid to the Lessor.

In December 2000, the Smiths sold the surface property to Ferguson Valley Hardwoods.

In June 2001, pursuant to an option agreement, Moravian Run Reclamation Company assigned its lease of coal rights to Laurel Energy, L.P. In this option agreement, Moravian Run Reclamation represented to Laurel Energy, L.P., that Moravian Run Reclamation had good title to the coal rights. In this option agreement, Moravian Run Reclamation agreed to indemnify Laurel Energy, L.P., for expenses, damages and liabilities concerning any inaccuracy or breach in the warranties for a period of five (5) years.

On August 23, 2001, Laurel Energy, L.P., entered into a Contract Mining Agreement with Johnson Brothers Coal Company, Inc., concerning mining of the property. Laurel Energy, L.P., did not remove trees from the land and Johnson Brothers agreed to construct and maintain the reclamation.

In February 2002, Hardwoods sold the surface property to the Plaintiffs in this action, Jan Lawrence Chris, Mary Eilyes, Jeff Cookerly and Scott Aldiner. The Plaintiffs claim they are entitled to coal royalties for removal of coal from the property since 2002, removal of timber since 2002 and an unspecified amount for reclamation.

On or about May 1, 2008, Plaintiffs served the parties to this action with a Motion for Partial Summary Judgment claiming that there was no genuine issue of material fact with respect to the Plaintiffs' right to receive royalty payments. While there is no question as to the Plaintiffs' right to receive royalty payments, there is a question as to the amount of the payment to be received by the Plaintiffs.

II. STATEMENT OF THE QUESTION INVOLVED

QUESTION 1: When a lease agreement for the removal of minerals from property provides for payment of full royalties to the lessor only under the condition that the lessor owns both surface and mineral rights, is a lessor that possesses only surface rights entitled to payment of full royalties?

PROPOSED ANSWER: No.

III. ARGUMENT

The Lease Agreement, upon which Plaintiffs rely in support of their Motion for Partial Summary Judgment, provides for payment of royalties to the "LESSORS" who are providing the "LESSEE" the right to remove coal from the land. *See* Lease Agreement, attached hereto as Exhibit "A". In that Lease Agreement, the LESSORS are defined as "R. Wesley Smith and Samantha Smith, his wife ... and Raymond A. Smith and Shirley B. Smith his wife...." Exhibit "A", page 1. The Smiths later sold their

interest to Ferguson Valley Hardwoods who in turn sold its interest to the Plaintiffs in the instant action. As such, the Plaintiffs are the successors in interest to the LESSORS. This status entitles them to payment of royalty for the coal removed during their ownership, but only so much of the royalty as is provided for by the terms of the Lease Agreement entered into by the Smiths.

The Lease Agreement provides for royalty payments as follows:

> LESSEE shall pay to LESSORS royalty at the rate of One Dollar and Fifty Cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton for all merchantable and mineable coal, whichever amount is greater, for all coal mined and removed from the premises. All payments of royalty shall be made on or before the 25th day of each calendar month and shall be accompanied by a statement showing the tonnage mined and the royalty due. All payments are to be made to the LESSORS without demand or to any other party or parties LESSORS in writing designate as an agent for receiving payments.
>
> All payments of royalty as herein provided are based on either one hundred percent (100%) ownership of surface (right of surface support) coal or both surface and coal. **In the event that LESSORS should own less than one hundred percent (100%) of said surface and/or coal rights the sums shall be adjusted in accordance with the percentage of ownership.**

Exhibit "A", pages 3 and 4, clause 3 (emphasis added). The issue presently before the Court is not whether the Plaintiffs, as successors in interest to the LESSORS, are due payment but what the appropriate adjustment is when determining the payment.

As was pointed-out by Plaintiffs' Motion for Partial Summary Judgment, the coal rights to the property had been severed prior to their purchase of the land, therefore Plaintiffs purchased only the surface rights to the land in question. *See* Plaintiffs' Motion for Partial Summary Judgment, paragraph nos. 6 and 7. The fact that Plaintiffs purchased

only the surface rights to the property subject to the Lease Agreement does not give them rights to the minerals beneath that land, or the proceeds thereof. *See* ***Wilkes-Barre Twp. Sch. Dist. v. Corgan***, 403 Pa. 383, 387-88, 170 A.2d 97, 99 (1961) ("Where, however, the surface is granted to one and the underlying coal to another the 'surface' includes whatever earth, soil or land which lie above and is superincumbent upon the coal."). As the Plaintiffs are only the owners of the surface rights, an adjustment of the royalty payment must be made in accordance with the Lease Agreement upon which Plaintiffs rely.

The language of the Lease Agreement divides the property interests for the premises into two halves; surface and coal. This is evidenced in the clause of the Lease Agreement where the LESSORS covenanted "that they own either the **coal or the surface** (right of surface support) of the described premises" and the portion of the royalty clause which provides that "[i]n the event that LESSORS should own less than one hundred percent (100%) of said **surface and/or coal rights** the sums shall be adjusted in accordance with the percentage of ownership." Exhibit "A", pages 2 and 4 (emphasis added). As Plaintiffs purchased only the surface rights, they are only fifty percent (50%) owners of the entire estate contemplated by the Lease Agreement entitling them only to the percentage of the royalty payment associated with their purchase of the surface rights. The Lease Agreement provides that "[i]n the event that LESSORS should own less than one hundred percent (100%) of said **surface and/or coal rights** the sums shall be adjusted in accordance with the percentage of ownership." Therefore, Plaintiffs, collectively, are entitled to an undivided fifty percent (50%) share of the royalties based on their fifty percent (50%) ownership of the estate contemplated by the Lease

Agreement. Based on the Lease Agreement, Plaintiffs are entitled to fifty percent (50%) of "One Dollar and Fifty Cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton for all merchantable and mineable coal, whichever amount is greater, for all coal mined and removed from the premises" during their period of ownership.

IV. CONCLUSION

Based upon the foregoing, Plaintiffs are not entitled to partial summary judgment for one hundred percent (100%) of the royalties for the coal removed from the premises during their ownership.

Additional Defendant, Laurel Energy II, LP, reserves the right to amend or supplement this Brief in Opposition upon receipt of the Plaintiffs' Brief in Support of their Motion for Partial Summary Judgment.

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE

Attorney for Laurel Energy, L.P.,
Additional Defendant

Original Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 15th day of April, 1995 by and between R. Wesley Smith and Samantha Smith, his wife of R.D. 2, Box 39, Reynoldsville, Pennsylvania 15851 and Raymond A. Smith and Shirley B. Smith, his wife of R.D. 1, Box 211-A, Reynoldsville, Pennsylvania 15851, party of the first part, hereinafter referred to as "LESSORS";

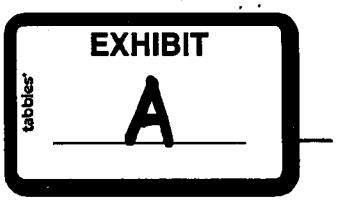
A N D

B & B LAND COMPANY, of Clearfield, Pennsylvania, party of the second part, hereinafter referred to as "LESSEE".

W I T N E S S E T H:

THE LEASE

1. That for and in consideration of the sum of One Dollar ($1.00) paid by the LESSEE to the LESSORS, the receipt whereof is hereby acknowledged, the LESSORS do hereby let, lease and demise unto the LESSEE, its succesors and assigns, the right with such terms, covenants and conditions as hereinafter set forth, to mine and remove all the mineable and merchantable coal in, under and upon that certain tract in the Township of Beccaria and in the Township of Gulich title to which is vested in the LESSORS which tract of land is Parcel #1 - 290 acres in Gulich Township under Ray and Wesley Smith which is shown on Tax Map No. 118-K7-9 and Parcel #2 - 200 acres in Beccaria Township under Ray and Wesley Smith, which is shown on Tax Map No. 101-K17-8. Also, 110.56



110.56 acres in Beccaria Township under William O'Shall, Tax Map No. 101-K17-1.

The LESSORS covenant that they own either the coal or the surface (right of surface support) of the described premises, and do hereby grant and convey the full and complete rights for the mining and removing of the coal in, under and upon the above described premises by all modern mining methods, including but not limited to surface stripping, with the right of ingress, egress and regress, into, upon the under said lands for the purpose of examining, testing, mining, stripping and removing said coal, together with the right to locate and erect such chutes, tipples, buildings, pipe lines, pole lines and other structures as may be necessary for the use and working of mines or strippings, and with the right to deposit spoil therefrom upon the surface with the right to redeposit the same, and with all rights and privileges necessary and convenient in mining, digging, stripping, removing and transporting said coal without liability for any and all damage done to said lands or buildings or the water therein or thereon, caused by the mining, stripping and removal of all said coal, or the exercise of any or all of the mining rights aforesaid.

LESSORS hereby lease unto the LESSEE the right of ingress, egress and regress in and to the leased premises any time within five (5) years after the termination of this lease for the purpose of backfilling or planting trees or otherwise complying with the mining laws of the Commonwealth of Pennsylvania. But this right of re-entry for a period of five (5) years is for the

purpose alone and shall vest in LESSEE no rights whatsoever in the coal, in the mining of coal, or in the property. In addition, LESSORS agree to execute the required written consents on the form furnished by the Commonwealth of Pennsylvania concerning re-entry for backfilling, planting, reclamation and inspection.

2. Term and Effective Date: This lease shall become effective as of the 15th day of April, 1995, by the LESSEE and shall continue for a period of four (4) years with automatic extensions of one (1) year terms from year to year to exhaustion of the coal provided the premises are being actively mined at the end of the original term and each yearly extention thereof. Active mining shall be defined to mean mining operations upon the premises on a regular five (5) days per week.

3. Tonnage Royalty: LESSEE shall pay to LESSORS royalty at the rate of One Dollar and Fifty Cents ($1.50) per net ton or five percent (5%) of the pit selling price per net ton for all merchantable and mineable coal, whichever amount is greater, for all coal mined and removed from the premises. All payments of royalty shall be made on or before the 25th day of each calendar month for all coal mined and removed in the preceding calendar month and shall be accompanied by a statement showing the tonnage mined and royalty due. All payments are to be made to the LESSORS without demand or to any other party or parties LESSORS in writing designate as an agent for receiving payments.

All payments of royalty as herein provided are based on either one hundred percent (100%) ownership of surface (right of

surface support) coal or both surface and coal. In the event LESSORS should own less than one hundred percent (100%) of said surface and/or coal rights said sums shall be adjusted in accordance with the percentage of ownership.

4. Minimum Royalty: LESSEE shall pay to LESSORS the sum of Two Hundred Dollars ($200.00) per month as a minimum royalty for each month that the within lease is in full force and effect. All payments of minimum royalty shall be recoupable by the LESSEE as a credit against tonnage royalty from production as herein provided.

5. Tonnage Measurements: Royalty and other payments shall be based on certified truck scale weights or railroad weights, and all coal mined and removed from the premises shall be weighed on such scales. LESSEE hereby authorizes LESSORS or its agent, to examine any and all of the LESSEE'S records and to examine the records of any truck scale weights or railroad weights concerning the coal which was hauled or shipped from the described premises and the right to make copies of his findings.

6. Mining Methods: LESSEE agrees that all mining operations shall be conducted in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. It is also understood that LESSORS (at its own risk) shall have access to the operation and scale records of LESSEE at all times in person or by duly authorized agent.

7. Taxes: All taxes upon the premises herein demised shall be paid by LESSORS, and all taxes that may be levied, imposed, charged or assessed upon improvements, equipment, or

mining machine placed upon the demised premises by LESSEE for the mining, removing, processing or transportation of the coal shall be paid by LESSEE. Should any federal, state or local subdivision impose any tax upon the mining of coal, the coal mined, or otherwise, said taxes shall be paid by LESSEE.

8. Insurance: LESSEE agrees to keep in force during the term of this lease general liability insurance with a reputable insurance company in the sum of at least One Million Dollars. Upon request LESSEE shall furnish to LESSORS a certificate of said insurance which shall name LESSORS as an additional insured.

9. Timber Removal: If on investigation it appears that there is any appreciable quantity of paper wood or saw timber remaining on the leased premises, the LESSEE will at the request of the LESSORS arrange for the cutting and removal of such paper wood and saw timber by reliable people, subject to the approval of the LESSORS, and will supervise the cutting of such timber and pulpwood, arranging for monthly remittances to the LESSORS at the same time that royalties hereunder are due. The LESSEE shall refrain from destroying pulpwood or saw timber in the progress of its strip mining operations, if these is reasonable opportunity to arrange to have such timber cut off in advance of such operations.

10. Books and Records: LESSEE shall and will keep complete and accurate books of account, showing the amount of coal produced from the said property, and at the time for payment of the monthly royalties hereinbefore mentioned, shall furnish accurate statements of all coal mined and produced during the

preceding calendar month; shall and will keep all mining maps, books, plans and records necessary in operating said leased coal; and shall and will furnish LESSORS, or its duly authorized agent or employee, at any reasonable time, upon request, access to all books of account, records, weigh sheets, maps and plans and will also give LESSORS, or its duly authorized agent or employee, at reasonable request, access to any and all portions of the said leased premises and to the operations in connection with the same.

11. LESSEE agrees to supply to LESSORS, at the first of each month, tonnage on the number of trucks loaded with coal for the previous month.

12. Default in Royalties and Breach of Term: It is understood and agreed that in the event the LESSEE should default in any payment provided for herein when said payments become due, or should LESSEE be in default in any other respect and continue in such default for a period of thirty (30) days after being notified in writing of such default by LESSORS, then, in either event, at the option of the LESSORS, this Lease shall cease and terminate and LESSEE hereby authorizes any attorney of any court of record to appear for it and in its name to confess a judgment against it in an amicable action of ejectment to the end that a writ of habere facias possession may issue forthwith for the delivery of possession to LESSORS together with clause of fieri facias for royalties in arrears and costs.

13. Supplemental "C": LESSORS hereby agrees to execute, acknowledge and deliver to LESSEE within ten (10) days after the

exercise of the within option in quadruplicate the form know as Supplemental "C" required by the Department of Environmental Resources (DER) of the Commonwealth of Pennsylvania and thereafter any other forms required in order to secure the permits necessary for mining operations.

14. Force Majeure: LESSEE shall not be deemed in default for failure to perform any of its obligations under this Agreement during periods in which performance is partially or wholly prevented by any cause, condition or matter beyond LESSEE'S control, such as, and not by way of limitation, strikes, riots, accidents, governmental laws, lack of satisfactory markets for coal from the leased premises and acts of God.

15. No Assignment or Transfer: LESSEE agrees not to mortgage or encumber the leased premises with liens of any kind, or sell, or assign, or setover or sublet the whole or any part of the herein leased premises, or subcontract for the mining thereof, without the express written consent of the LESSOR first had and obtained, which, shall not be unreasonably withheld. It is further agreed and provided that any lawful levy and sale on execution or other legal processes, as well as any assignments or sale in bankruptcy, voluntary or involuntary proceedings, or any receivership created, shall be deemed and taken to be an assignment or subletting within the meaning of this lease agreement, and at the option the LESSORS shall work an immediate forfeiture, without notice, and thereupon possession may be immediately taken by the LESSORS without further formality.

It is understood, however, that anything to the contrary in the foregoing paragraph notwithstanding, LESSEE shall have the right to assign the within lease to LESSEE'S mining company, Penn-Grampian Coal Company or to Al Hamilton Contracting Company or any of its assigns.

16. Memorandum of Lease: Upon exercise of the within option by LESSEE, LESSORS agrees to execute, acknowledge and deliver to LESSEE a "memorandum of Lease" suitable for recording, which Memorandum retains the privacy of this document but gives public notice of the fact that the within lease has been executed. Said Memorandum shall contain a description of the property, the purpose of the lease, the length of the term and the fact that it incorporates the within lease by reference thereto. LESSEE agrees to prepare said Memorandum and deliver it to LESSORS and LESSORS agrees to execute, acknowledge and deliver to LESSEE the said Memorandum within ten (10) days of the receipt thereof.

17. Cancellation: The LESSEE shall have the right to cancel this Agreement at any time upon giving thirty (30) days written notice to the LESSORS, whereupon all accrued royalties including paid past minimum royalties shall be due and payable.

18. Notices: A written notice addressed to B & B Land Company, P.O. Box 249, Clearfield, Pennsylvania, 16830, and sent by certified mail, shall be deemed received by the LESSEE as of one day after the date of mailing. A written notice addressed to Raymond A. Smith, R.D. 1, Box 211-A, Reynoldsville, Pennsylvania

15851 and sent by certified mail shall be deemed received by the LESSORS as of one day after the date of mailing.

19. Water monitoring shall begin within ninety (90) days of the signing of the Agreement.

20. Anything to the contrary herein notwithstanding, mining shall commence within six (6) months after all required permits have been approved by D.E.R., otherwise the within lease shall terminate upon the expiration of thirty (30) days written notice by LESSORS to LESSEE should LESSEE fail to commence mining within said thirty (30) days.

21. This lease agreement is binding on the parties hereto, their heirs, executors, administrators, successors and assigns.

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

ATTEST:

Denise A. McGregor

LESSORS:

R. Wesley Smith

Samantha L. Smith

Raymonda Smith

Phillip D. Smith

ATTEST:

Partner

LESSEES:
B & B LAND COMPANY
By

Partner

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 14th day of May, 2008:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc., and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
LYNNE E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE

Attorney for Laurel Energy, L.P.,
Additional Defendant

NOT A filed document

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs vs. MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	CASE NO. 05-1351-CD
	TYPE OF PLEADING: **MOTION TO STRIKE ADDITIONAL DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT, AND RESPONSE THERETO**
	FILED ON BEHALF OF: Plaintiffs
	COUNSEL OF RECORD: ROBERT P. GING, JR., ESQUIRE Pa. Id. No. 25459 2095 Humbert Road Confluence, PA 15424-2371 (814) 395-3661

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	)	

MOTION TO STRIKE ADDITIONAL DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT, AND RESPONSE THERETO

AND NOW come the Plaintiffs by their attorney, Robert P. Ging, Jr. and set forth the following Motion to Strike the Additional Defendant's Motion for Partial Summary Judgment, and Response Thereto.

1. On or about March 27, 2008 this Honorable Court entered an Order requiring that the Plaintiffs file a Motion for Partial Summary Judgment on or before May 1, 2008, and that the Defendant Laurel Energy file an Answer on or before May 15, 2008.

2. The case had previously been listed for trial.

3. Laurel Energy did not request leave of Court to file a Motion for Summary Judgment,

despite the fact that the case had been scheduled for trial.

4. On or about June 3, 2008, subsequent to the date set forth in the Court's Order, Laurel Energy filed what it purports to be a Motion for Partial Summary Judgment.

5. Motions for Summary Judgment are controlled by Pa.R.C.P. 1035.1 et seq.

6. Pa.R.C.P. 1035.3 addresses the requirements of the Motion. That Rule provides that judgment may only be granted where there is no genuine issue of material fact.

7. Pa.R.C.P. 1035.4 requires that supporting and opposing affidavits be made in the Motion.

8. Pa.R.C.P. 1035.1 defines the record as including pleadings, depositions, answers to interrogatories, admissions and affidavits.

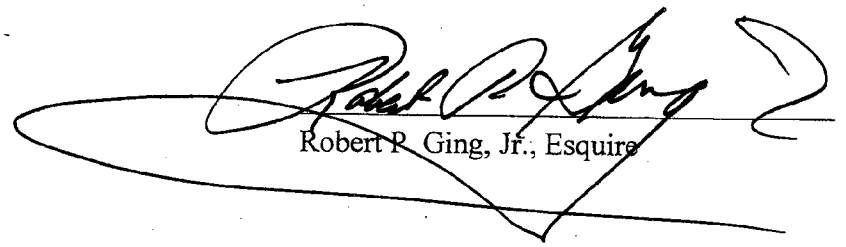
9. The Additional Defendant's purported Motion for Summary Judgment is based on documents which are not of the record, including a letter from a DEP official, a purported Completion Report, a second letter from a DEP official, and no other documents. The Motion is not supported by an affidavit.

10. The Lease in this case requires that mining be conducted in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry. The Complaint alleges that the Defendants and their successors in interest failed to conduct mining operations in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry.

11. The Additional Defendant has filed no counter affidavit to the Plaintiffs' Complaint, and accordingly there are no facts of record which would entitle the Additional Defendant to Summary Judgment.

WHEREFORE, in light of the fact that the Defendant has failed to comply with the Rules of Civil Procedure, and failed to demonstrate that there are no genuine issues of material fact, the Court is respectfully requested to enter the attached Order.

Respectfully submitted,



Robert P. Ging, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	)	

ORDER

AND NOW, to wit, this _____ day of _____, 2008, Additional Defendant's Motion for Partial Summary Judgment is denied.

BY THE COURT

_____

Frederic J. Ammerman
President Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Strike was served on the following parties at their respective addresses on this date via U.S. First Class, Postage Pre-Paid Mail.

Lynn E. Bell, Esquire
10TH Floor
One Gateway Center
Pittsburgh, PA 15222

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

DATED: July 17, 2008

Respectfully submitted,

Robert P. Ging, Jr., Esquire

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1:30

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

BRIEF IN SUPPORT OF ADDITIONAL DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Filed on Behalf of this Party:
Laurel Energy, LP

Counsel of Record for this Party:

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588

LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270

JENNINGS L. HART, III, ESQUIRE
Pa. I.D. No.: 200060

DAVIES, McFARLAND & CARROLL, P.C.
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RECEIVED
JUN 04 2008
Court Administrator's Office

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

CIVIL DIVISION

No.: 05-1351-CD

Plaintiffs,

v.

MORAVIAN RUN RECLAMATION CO., INC., and JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP,

Additional Defendant

BRIEF IN SUPPORT OF ADDITIONAL DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P. (collectively "Laurel"), by and through its counsel, Davies, McFarland & Carroll, P.C., who files the within Brief in Support of its Motion for Partial Summary Judgment, stating as follows:

I. History of the Case

This civil action involves a dispute concerning coal royalties, alleged timber removal and reclamation of real property. *See* Exhibit "A" attached to Additional Defendant's Motion for Partial Summary Judgment.

In April 1995, by a document entitled "Lease Agreement" ("Lease Agreement"), the prior owners of the property in question, R. Wesley Smith, Samantha Smith, Raymond A. Smith and

Shirley B. Smith (collectively "the Smiths"), granted mining rights to B&B Land Company. *See* Exhibit "B" attached to Additional Defendant's Motion for Partial Summary Judgment. This document governed the relationship between the parties to it and their respective successors in interest which are now parties to the instant lawsuit.

In February 2002, the Plaintiffs in this action, Jan Lawrence Chris, Mary Eilyes, Jeff Cookerly and Scott Aldiner, purchased the surface rights to the property at the center of this action. The Plaintiffs claim they are entitled to coal royalties for removal of coal from the property since 2002, removal of timber since 2002 and an unspecified amount for reclamation, revegetation and a failure to assure the absence of mine drainage emanating from the mined area. Exhibit "A", paragraph no. 19.

As to Plaintiffs' claims for reclamation, revegetation and a failure to assure the absence of mine drainage emanating from the mined area, there is no question of material fact and Additional Defendant, Laurel Energy, L.P., is entitled to entry of partial summary judgment in its favor.

II. Statement of the Question Involved

QUESTION 1: Is an additional defendant entitled to partial summary judgment on an issue when the governmental authority charged with ensuring statutory compliance on that issue has ruled that the requirements of the statute upon which a plaintiff must necessarily rely have been met?

PROPOSED ANSWER: Yes.

III. Argument

Under Pennsylvania Rule of Civil Procedure 1035.2 "any party may move for summary judgment...whenever there is no genuine issue of any material fact...." or "if, after the completion of discovery relevant to the motion...an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or

defense...." Pa. R.C.P. 1035.2. In the instant matter, Plaintiffs have made a claim for failure "to reclaim and re-vegetate the site, to implement sedimentation and erosion controls, and to assure that there was no mine drainage emanating from the mined area." Exhibit "A", paragraph no. 19. Plaintiffs based this claim on paragraph 6 of the Lease Agreement which requires that "all mining operations shall be conducted in accordance with the laws of the Commonwealth of Pennsylvania and modern mining methods prevailing in the industry." Exhibit "B", paragraph no. 6. The Lease Agreement makes no further provisions as to the manner in which reclamation and revegetation activities are to be undertaken. *See* Exhibit "B".

The Surface Mining Conservation and Reclamation Act, 52 P.S. § 1396.4, requires that prior to surface mining a party must apply to the Department of Environmental Protection ("the Department" or "DEP") for and be granted a surface mining permit. 52 P.S. § 1396.4. The application process includes submission of a reclamation plan and posting of bonds to ensure that reclamation is completed in accordance with the reclamation plan and the laws of the Commonwealth of Pennsylvania. 52 P.S. § 1396.4(a)(2) and (d).

Once the Department is satisfied that the reclamation activities covered by the bond or a portion of the bond have been accomplished in accordance with 52 P.S. § 1396.4, the Department may release the applicable portion of the bond. 52 P.S. § 1396.4(g).

The Act provides for the release of the bond in three stages:

> (1) At **Stage I**, when **the operator has completed the backfilling, regrading and drainage control of a bonded area in accordance with his approved reclamation plan**, the release of up to sixty percent of the bond for the applicable permit area, so long as provisions for treatment of pollutional discharges, if any, have been made by the operator.
>
> (2) At **Stage II**, when **revegetation has been successfully established on the affected area in accordance with the approved reclamation plan**, the Department shall retain that amount of bond for the revegetated area which would

be sufficient for the cost to the Commonwealth of reestablishing revegetation. Such retention of bond shall be for the duration of liability under the bond as prescribed in subsection (d). No part of the bond shall be released under this subsection so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of law or until soil productivity for prime farmlands has returned to equivalent level of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to subsection (a)(2)I. Where a permanent impoundment is to be retained, that portion of bond under this subsection may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the department.

(3) At **Stage III**, when **the operator has completed successfully all mining and reclamation activities and has made provisions with the Department for the sound future treatment of pollutional discharges, if any, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in subsection (d).** No bond shall be fully released until all requirements of this act are fully met. Upon release of all or part of the bond and collateral as herein provided, the State Treasurer shall immediately return to the operator the amount of cash or securities specified therein.

52 P.S. § 1396.4 (g)

In the instant matter, Stage I of the reclamation of the property in question has been completed to the satisfaction of the Department as is evidenced by the release of the bond relating to the Stage I reclamation. Letter from Kathy W. Keyes, Pennsylvania DEP, dated November 24, 2003, attached to Additional Defendant's Motion as Exhibit "C" and DEP Completion Report No. 4-03-017 attached to Additional Defendant's Motion as Exhibit "D". As the Stage I release has occurred, this indicates that "backfilling, regrading and drainage control of [the] bonded area" has been completed in the area in question to the satisfaction of the DEP

thus defeating Plaintiffs' claims for reclamation and implement sedimentation and erosion controls. *See* 52 P.S. § 1396.4.

Additionally, Stage II of the reclamation of the property in question has been completed to the satisfaction of the Department as is evidenced by the release of the bond relating to the Stage II reclamation. Letter from Karen A. DePaoli, Pennsylvania DEP, dated July 13, 2007, attached to Additional Defendant's Motion as Exhibit "E" and DEP Completion Report No. 4-03-015 to Additional Defendant's Motion hereto as Exhibit "F". As the Stage II release has occurred, this indicates that "revegetation has been successfully established on the affected area" to the satisfaction of the DEP thus defeating Plaintiffs' claims for failure to revegetate the area. *See* 52 P.S. § 1396.4.

Stage III, the final stage of the reclamation bond, has not yet been released but, this portion of the bond may not be released until the passage of five full years after the completion of reclamation work. 52 P.S. § 1396.4 (d). Despite the fact that Stage III of the bond, which relates to pollutional discharges such as mine drainage, cannot be released, inspections conducted by the DEP state that there is no indication that the water in the area has been degraded by pollution. Exhibit "D" and Exhibit "F". Furthermore, the Plaintiffs have provided no evidence contrary to the DEP's reports that there is no evidence of pollutional discharges in the area.

Should pollutional discharges occur within the statutory period, the holder of the mining permit is required to remedy the pollution or forfeit the Stage III portion of the bond to allow the state to remedy the pollution. 52 P.S. § 1396.4. As the Stage III portion of the bond is still in place, Plaintiffs have protection against "mine drainage" if it should occur without resorting to a civil action.

Prior to the release of the Stage III bond, the permit holder will be required to provide proof that a notice to the public has been printed in the local newspaper of general circulation once a week for four consecutive weeks that it is seeking release of this portion of the bond. 52 P.S. § 1396.4 (b). This provides any person with an interest that may be adversely affected by the release of the bond, including the Plaintiffs, to lodge an appeal with the DEP which will allow for a hearing or conference on the matter and potentially block the release of the Stage III bond until such time as any potential pollution issues are resolved. 52 P.S. § 1396.4 (b). It should be noted that Plaintiffs had this opportunity prior to the release of the Stage I and Stage II portions of the bond but the DEP has no record of any complaints or appeals being lodged in response to the notices published prior to their release.

The matter at issue in this Motion is similar to the matter before the Superior Court in the case of ***Woyetk v. Benjamin Coal Co.***, 30 Pa. Super 397, 446 A.2d 914 (1982). In ***Woyetk***, lessors of land which was surface mined were not satisfied that the leased premises had been properly reclaimed and replanted in accordance with the mining lease and filed suit against the miner-lessee. ***Woyetk v. Benjamin Coal Co.***, 30 Pa. Super 397, 446 A.2d 914 (1982). The lease in ***Woyetk*** provided that land in question would be restored in accordance with the applicable statutes and further provided that specific species of trees would be planted during the revegetation activities. ***Woyetk***, 30 Pa. Super 397, 399, 446 A.2d 914, 914 (1982). The miner-lessee filed for summary judgment on the basis that the Department of Environmental Resources ("DER")[1] had exclusive jurisdiction over the matter; the motion for summary judgment was granted but later reversed on appeal. ***Id.*** The Superior Court held that the courts had proper jurisdiction but because of the additional language in the lease pertaining to the specific species of trees to be planted, the case may not be ripe for summary judgment. ***Id.*** In addressing the

[1] The Department of Environmental Resources changed its name to the Department of Environmental Protection in 1995. 71 P.S. § 1340.501.

case before it, the ***Woyetk*** Court spoke directly to the issue presently before this Honorable Court when it stated that if that lease agreement contained only the reclamation requirements contained in the statutes, that summary judgment would have been proper for the miner-lessee. ***Woyetk v. Benjamin Coal Co.***, 30 Pa. Super 397, 403, 446 A.2d 914, 917 (1982). In support of this conclusion, the Court states "[i]t appears that the leased premises were restored in accordance with the requirements of The Surface Mining Conservation and Reclamation Act" and in support thereof cited to letters from the DER advising the miner-lessee that various stages of the reclamation were complete and that their bonding company was relieved of its duties. ***Woyetk v. Benjamin Coal Co.***, 30 Pa. Super 397, 403, 446 A.2d 914, 917 (1982). *See also* Exhibit "C" and Exhibit "E".

Given that the Lease Agreement in the instant matter provides for no reclamation activities or replanting beyond the statutory requirements and those requirements have been met to the full satisfaction of the DEP, there is no question of material fact as to Plaintiffs' claim for failure to "reclaim and re-vegetate the site, [and] to implement sedimentation and erosion controls" and Additional Defendant Laurel is entitled to summary judgment on that claim. *See* ***Woyetk v. Benjamin Coal Co.***, 30 Pa. Super 397, 446 A.2d 914 (1982).

Given that the DEP has found no evidence of pollutional discharges, Plaintiffs' claim for failure to "assure that there was no mine drainage emanating from the mined area" has no basis. Therefore there is no question of material fact as to Plaintiffs' claim and Additional Defendant Laurel is entitled to summary judgment on that claim.

IV. Conclusion

The Lease Agreement provides for no reclamation activities or replanting beyond the statutory requirements and those requirements have been met to the full satisfaction of the DEP. Therefore, Plaintiffs' claim for failure to "reclaim and re-vegetate the site, [and] to implement

sedimentation and erosion controls" must fail and Additional Defendant Laurel is entitled to summary judgment on that claim. Furthermore, the DEP has found no evidence of pollutional discharges and Plaintiffs have failed to produce any supporting evidence their claim for failure to "assure that there was no mine drainage emanating from the mined area" thus entitling Additional Defendant Laurel to summary judgment on that claim. There is no question of material fact as to Plaintiffs' claims for reclamation, revegetation and a failure to assure the absence of mine drainage emanating from the mined area; as such Additional Defendant Laurel is entitled to entry of summary judgment on those matters at this time.

WHEREFORE, Additional Defendant, Laurel Energy, L.P., respectfully requests that this Honorable Court enter the Order, attached to Additional Defendant's Motion, granting Additional Defendant's Motion for Partial Summary Judgment.

Respectfully submitted,

DAVIES, McFARLAND & CARROLL, P.C.

By: _____

LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE

Attorney for Laurel Energy, L.P.,
Additional Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 2nd day of June, 2008:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Attorney for Moravian Run Reclamation Co., Inc., and Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE

Attorney for Laurel Energy, L.P.,
Additional Defendant

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED No CC.
m/10:54cm
OCT 28 2009
William A. Shaw
Prothonotary/Clerk of Courts

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

Plaintiffs,

v.

JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP

Additional Defendant.

CIVIL DIVISION

No.: 05-1351-CD

PETITION TO APPROVE SETTLEMENT

Filed on Behalf of this Party:
Laurel Energy, LP

Counsel of Record for this Party:

LYNN E. BELL, ESQUIRE
Pa. I.D. No.: 38588

LAUREN R. AMES, ESQUIRE
Pa. I.D. No.: 89270

JENNINGS L. HART, III, ESQUIRE
Pa. I.D. No.: 200060

DAVIES, McFARLAND & CARROLL, P.C.
Firm I.D. No.: 281
One Gateway Center; 10th Floor
Pittsburgh, PA 15222

(412) 281-0737

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,	CIVIL DIVISION No.: 05-1351-CD

Plaintiffs,

v.

JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP

Additional Defendant

PETITION TO APPROVE SETTLEMENT

AND NOW, comes Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P. (collectively "Laurel"), by and through its counsel, Davies, McFarland & Carroll, P.C., who files the within Petition for Approval of Settlement, stating as follows:

1. Plaintiffs filed their Complaint in this action on or about August 31, 2005.

2. The Complaint avers that in February of 2002, the Plaintiffs purchased a piece of property located in Clearfield County which, unbeknownst to them, was the subject of a Lease Agreement for surface mining of that property.

3. Plaintiffs' suit sought payment for royalties related to the coal removed from the property, as well as reclamation.

4. Subsequently, the claim for reclamation was resolved on or about August 27, 2008 by the granting of a Motion for Partial Summary Judgment filed on behalf of this Defendant.

5. Upon dismissal of the reclamation claims, the parties reached a Settlement Agreement with regard to the royalty payments.

6. A Release was forwarded to counsel for the Plaintiffs and was eventually returned under cover letter from Plaintiffs' counsel informing the defense that one of the Plaintiffs, Jeffrey Cookerly, had died and enclosing a copy of Mr. Cookerly's Death Certificate and a copy of the Release which was signed by Jennifer Cookerly, who is also a Plaintiff and wife of the deceased, in the place of Mr. Cookerly. Letter to Attorney Bell dated August 14, 2009, Death Certificate of Jeffrey Cookerly and Full and Final Release, attached collectively hereto as Exhibit "A".

7. On August 20, 2009, a letter was forwarded to counsel for the Plaintiffs requesting clarification of the state of Mr. Cookerly's affairs or the ownership of the property as without clarification, there is a question as to whether or not Mr. Cookerly's claim would be resolved by the Release as executed and/or payment of the settlement funds. Letter dated August 20, 2009 to Attorney Ging attached hereto as Exhibit "B".

8. The August 20, 2009 letter received no response and a duplicate of that letter was mailed to Attorney Ging on September 22, 2009. Letter dated September 22, 2009 to Attorney Ging attached hereto as Exhibit "C".

9. Given the concerns which are raised by the lack of information from Plaintiffs' counsel, Additional Defendant Laurel now seeks approval of the settlement by the Court.

10. 20 Pa.C.S.A. § 3323 provides that upon petition by a party in interest, the Court "may enter a decree authorizing the compromise or settlement to be made" whenever there is a proposed compromise or settlement involving an estate. 20 Pa.C.S.A. § 3323(a).

11. Alternatively, if it is determined that an estate has not been opened on behalf of Mr. Cookerly, the Court has authority to enter a ruling based upon Pa.R.C.P. 2064 relating to compromise settlement and distribution of funds when a party is an incapacitated person. Pa.R.C.P. 2064.

12. A deceased individual meets all of the requirements to be deemed incapacitated as that state is defined by Pa.R.C.P. 2051 -"'Incapacitated person' means an adult whose ability to perceive and evaluate information effectively and communicate decisions and in any way is impaired to such a significant extent that the person is partially or totally unable to manage financial resources or to meet the essential requirements for physical health and safety". Pa.R.C.P. 2051.

13. Mr. Cookerly's widow, Jennifer Cookerly, is still a party to the suit and would likely meet the requirements to be considered a guardian of an incapacitated party under Pa.R.C.P. 2056.

14. The attorney for Mrs. Cookerly, who was also the attorney for Mr. Cookerly prior to his passing, has received notice of this Motion.

WHEREFORE, Additional Defendant, Laurel Energy, L.P., now known as Laurel Energy II, LP, successor in interest to Laurel Energy, L.P., respectfully requests that this Honorable Court enter the attached Order approving the settlement as to the Estate of Jeffrey Cookerly.

Respectfully submitted,

DAVIES, McFARLAND & CARROLL, P.C.

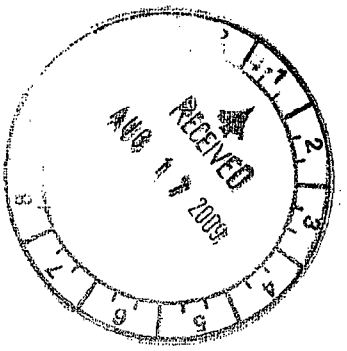
By: _____

LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE
Attorney for Laurel Energy, L.P.,
Additional Defendant

LAW OFFICE OF:

ROBERT P. GING, JR., P.C.
COUNSELOR AND ATTORNEY AT LAW
2095 Humbert Road
Confluence, PA 15424-2371
(814) 395-3661

August 14, 2009



Lynn E. Bell, Esquire
10TH Floor
One Gateway Center
Pittsburgh, PA 15222

RE: JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER VS. MORAVIAN RUN RECLAMATION CO., INC. and JOHNSON BROTHERS COAL COMPANY
CASE NO. 05-1351-CD

Dear Lynn,

I apologize for having taken so long to return the enclosed Release to you, however my clients have scattered since the commencement of the action, and one of the original Plaintiffs has in fact died.

We have enclosed the Death Certificate for your consideration.

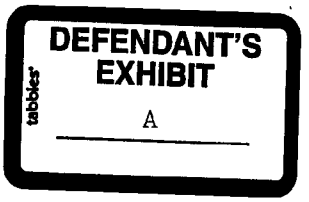
I have also revised the first paragraph of the Release by including language that specifically excepts ReMax Realty and Walt Dishman from the Release.

I trust that this will not be a problem for you, because without such language it would constitute a general release, and likely release those individuals who are defendants in another action.

We have also crossed out the section where this law office agrees to abide by the Release, in that it would be without consideration.

We have named as payees Jan Lawrence and this office, as Ms. Lawrence has been the point person for all of our dealings with the Plaintiffs.

We will assure that appropriate disbursement has been made to the Plaintiffs in accordance with our Contingent Fee Agreement, and the Plaintiffs' distribution wishes.



I thank you for your courtesy and cooperation.

Bob Ging

BG/rae
c/Jan Lawrence

Enclosures

H105.003 REV (01/07)

LOCAL REGISTRAR'S CERTIFICATION OF DEATH

WARNING: It is illegal to duplicate this copy by photostat or photograph.

ee for this certificate, $6.00

P 14717292

Certification Number

This is to certify that the information here given is correctly copied from an original Certificate of Death duly filed with me as Local Registrar. The original certificate will be forwarded to the State Vital Records Office for permanent filing.

Rebecca Sumner 9/2/08

Local Registrar — Date Issued

H105.144 REV 11/2005
TYPE / PRINT IN PERMANENT BLACK INK

COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF HEALTH • VITAL RECORDS

CORONER'S CERTIFICATE OF DEATH

(See instructions and examples on reverse)

STATE FILE NUMBER

DECEDENT'S PERSONAL DATA

1. Name of Decedent (First, middle, last, suffix): Jeffrey Thomas Cookerly
2. Sex: male
3. Social Security Number: 178 - 56 - 3735
4. Date of Death (Month, day, year): August 27, 2008
5. Age (Last Birthday): 37 Yrs. (If under 1 year: Months, Days; If under 1 day: Hours, Minutes)
6. Date of Birth (Month, day, year): July 17, 1971
7. Birthplace (City and state or foreign country): Hanover, Pa.
8a. Place of Death (Check only one): Hospital: ☐ Inpatient ☐ ER / Outpatient ☐ DOA; Other: ☐ Nursing Home ☐ Residence ☑ Other - Specify: Camp
8b. County of Death: Clearfield
8c. City, Boro, Twp. of Death: Beccaria Twp.
8d. Facility Name (If not institution, give street and number): T-534, Wippers Road
9. Was Decedent of Hispanic Origin? ☒ No ☐ Yes (If yes, specify: Cuban, Mexican, Puerto Rican, etc.)
10. Race - American Indian, Black, White, etc. (Specify): White
11. Decedent's Usual Occupation (Kind of work done during most of working life. Do not state retired): Kind of Work: Laborer; Kind of Business / Industry: Construction
12. Was Decedent ever in the U.S. Armed Forces? ☐ Yes ☒ No
13. Decedent's Education (Specify only highest grade completed): Elementary / Secondary (0-12): 12; College (1-4 or 5+):
14. Marital Status (Married, Never Married, Widowed, Divorced) (Specify): Married
15. Surviving Spouse (If wife, give maiden name): Barbara Tyszko
16. Decedent's Usual Address (Street, city / town, state, zip code): 13 Milton Ave. Westminster, MD 21157
17a. Decedent's Actual Residence - State: Maryland
17b. County: Carroll
17c. Did Decedent Live Within Township? ☐ Yes ☒ No
17d. Decedent Lived in: Westminster (City / Boro)
18. Father's Name (First, middle, last, suffix): Thomas Cookerly
19. Mother's Name (First, middle, maiden surname): Linda Markle
20a. Informant's Name (Type / Print): Barbara Cookerly
20b. Informant's Mailing Address (Street, city / town, state, zip code): 13 Milton Ave., Westminster, MD 21157

DISPOSITION

21a. Method of Disposition: ☐ Burial ☒ Removal from State ☐ Other - Specify: ☐ Cremation ☐ Donation
21b. Was Cremation or Donation Authorized by Medical Examiner / Coroner? ☐ Yes ☐ No
21b. Date of Disposition (Month, day, year): Aug-29-2008
21c. Place of Disposition (Name of cemetery, crematory, or other place): Carroll Cremation, Inc.
21d. Location (City / town, state, zip code): Hampstead, MD 21074
22a. Signature of Funeral Service Licensee (or person acting as such): [signature]
22b. License Number: 010338-L
22c. Name and Address of Facility: Koch Funeral Home, 2401 S. Atherton St., State College, PA 16801

PRONOUNCING

Complete items 23a-c only when certifying physician is not available at time of death to certify cause of death.
23a. To the best of my knowledge, death occurred at the time, date and place stated. (Signature and title)
23b. License Number
23c. Date Signed (Month, day, year)

Items 24-29 must be completed by person who pronounces death.
24. Time of Death: approx. 5:30 P.M.
25. Date Pronounced Dead (Month, day, year): August 27, 2008
26. Was Case Referred to Medical Examiner / Coroner or to Person Other than Cremation or Donation? ☑ Yes ☐ No

CAUSE OF DEATH

Item 27. Part I: Enter the chain of events - diseases, injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. List only one cause on each line.

IMMEDIATE CAUSE (Final disease or condition resulting in death): a. pending autopsy results
Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST.
Due to (or as a consequence of):
b.
Due to (or as a consequence of):
c.
Due to (or as a consequence of):
d.

Approximate Interval: Onset to Death:

Part II: Enter other significant conditions contributing to death but not resulting in the underlying cause given in Part I.

27. Did Tobacco Use Contribute to Death? ☐ Yes ☐ Probably ☑ No ☐ Unknown

28. If Female: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to 1 year before death ☐ Unknown if pregnant within the past year

29. Manner of Death: ☐ Natural ☐ Homicide ☐ Accident ☑ Pending Investigation ☐ Suicide ☐ Could Not be Determined

30a. Was an Autopsy Performed? ☑ Yes ☐ No
30b. Were Autopsy Findings Available Prior to Completion of Cause of Death? ☐ Yes ☑ No
30c. Date of Injury (Month, day, year):
30d. Describe How Injury Occurred:
30e. Place of Injury (Home, Farm, Street, Factory, Office Building, etc. (Specify):
30f. Time of Injury: M.
30g. Injury at Work? ☐ Yes ☐ No
30h. If Transportation Injury (Specify): ☐ Driver / Operator ☐ Passenger ☐ Pedestrian ☐ Other - Specify:
30i. Location of Injury (Street, city / town, state):

33a. Certifier (check only one):
- Certifying physician (Physician certifying cause of death when another physician has pronounced death and completed item 23): To the best of my knowledge, death occurred due to the cause(s) and manner as stated. ☐
- Pronouncing and certifying physician (Physician both pronouncing death and certifying to cause of death): To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner as stated. ☐
- Medical Examiner / Coroner: On the basis of examination and / or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner as stated. ☑

33b. Signature and Title of Person: [signature] Coroner
33c. License Number: NA
33d. Date Signed (Month, day, year): August 28, 2008
33e. Registrar's Signature and District Number: Rebecca Sumner 1/141/1517
33f. Date Filed (Month, day, year): AUG 28 2008
34. Name and Address of Person who Completed Cause of Death (Item 27) - Type / Print: B. Joel Heath, 906 Edward St., Philipsburg, PA 16866

Disposition Permit No. 0199075

NAME OF DECEDENT: Cookerly, Jeffrey Thomas

AKAs USED

AUG 1 3 2009

FULL AND FINAL RELEASE

FOR AND IN CONSIDERATION of the sum of FIFTEEN THOUSAND ($15,000.00) DOLLARS, was paid on behalf of TANOMA ENERGY/LAUREL ENERGY, LAUREL MOUNTAIN MANAGEMENT, LAUREL HANNA MANAGEMENT SERVICE, LLC., LAUREL ENERGY II, L.P., TANOMA ENERGY II, ALPHA NATURAL RESOURCES and DAVIES, McFARLAND & CARROLL, P.C. (Releasees), the undersigned, JAN LAWRENCE, CHRIS ILYES, MARY ILYES, JEFF COOKERLY, JENNIFER COOKERLY, SCOTT WILLIAM MILLER, MICHELLE LYNN MILLER AND JAY SCOTT ALDINGER (Releasors), hereby fully and forever releases, acquits and discharges: TANOMA ENERGY/LAUREL ENERGY, LAUREL MOUNTAIN MANAGEMENT, LAUREL HANNA MANAGEMENT SERVICE, LLC., LAUREL ENERGY II, L.P., TANOMA ENERGY II, ALPHA NATURAL RESOURCES and DAVIES, McFARLAND & CARROLL, P.C., their trustees, members, successors, affiliates, directors, officers, employees, agents and servants, and ANY AND ALL OTHER PERSONS, CORPORATIONS AND/OR OTHER ENTITIES that are or might be claimed to be liable to the undersigned whether or not named herein, including the heirs, executors, administrators, successors, assigns, attorneys, insurers, servants and employees of each of them (hereafter referred to collectively as "Releasees"), from any and all actions, causes of action, claims or demands, of whatever kind or nature, and for any known or unknown injuries, losses or damages allegedly sustained by the undersigned and related in any way to breach of contract, stripping coal, and payment of royalties, removing wood and/or saw timber, reclamation, revegetation and/or trespass on Releasors' property and upon which suit was filed in the Court of Common Pleas of Clearfield County at 05-1531-CD. This release specifically does not release ReMax Realty or Walt Dishman.

The acceptance of said sum is in full accord and satisfaction of a disputed claim and the payment of said sum is not an admission of any liability.

This release and settlement is intended to cover and does cover not only all now known injuries, losses or damages, but any future injuries, losses or damages not now known or anticipated, but which may later develop or be discovered, including all the effects and consequences thereof.

The amount stated in this Full and Final Release is the consideration of this release, and the undersigned voluntarily accept said sum for the purpose of making a full and final compromise, adjustment and settlement of all claims that they might now or in the future have for any injuries, losses or damages.

This is the complete release agreement, and there are no written or oral understandings or agreements, directly or indirectly connected with this release and settlement that are not incorporated herein.

The undersigned agree, on behalf of them, and on behalf of all heirs, beneficiaries, successors and/or assigns, to indemnify and save forever harmless the Releasees from and against any and all claims, demands or actions, known or unknown,

made against the Releasees by any person or entity on account of, or in any manner related to the injuries, losses and/or damages covered by this Full and Final Release.

In the event court approval is required for settlement, compromise, distribution or resolution of this claim, this settlement is conditioned upon the undersigned promptly undertaking all necessary action to obtain any required court approval for the settlement, compromise, distribution or resolution of this claim. If this settlement is ever determined by any court to be without effect because some necessary court approval was not obtained, or if any Releasees are subjected to further legal action or claim that could not have been instituted or presented had proper court approval been obtained, the undersigned agrees to indemnify Releasees for any future loss, cost, or expense, including but not limited to, reasonable attorney's fees for defending, litigating and settling any such claim or action, and for any judgment resulting from any such claim or action. It is further agreed that the settlement monies are not payable until thirty (30) days after the undersigned executes and delivers this original Agreement, and a Praecipe of Discontinuance to Releasees' legal counsel.

It is further understood, agreed and made part hereof, that the undersigned shall not reveal either directly or indirectly, to any person (excluding their close family members, attorney(s), accountant(s) or other representatives with a need to know, all of whom agree in writing to keep the information confidential) or any governmental agency, department, bureau or other entity, any aspect of this case or settlement, including the facts of this case, the existence of this settlement or the terms and conditions of this settlement ("Confidential Information"). Furthermore, the undersigned, their attorneys, accountants and other representatives shall not in any way publicize or cause to be publicized the "Confidential Information" in any news or communications media, including but not limited to newspapers, magazines, journals, radio, television, on-line computer systems and law-related publications. If the undersigned, their representatives and/or attorney(s) file any court document(s) identifying the terms and/or conditions of this settlement, they shall request that the court immediately seal such document(s) and take whatever steps are necessary to assure that such document(s) are not accessible or disclosed to anyone. This paragraph is intended to become part of the consideration for settlement of this claim.

This agreement shall be binding upon and inure to the successors, assigns, heirs, executors, administrators, and legal representatives of all parties.

The undersigned represent that there are no asserted or potential claims or liens against them or their assets by any third-party payor. If such a claim or lien is ever asserted, the undersigned agree to satisfy such a claim or lien from the funds received from this settlement and to indemnify and hold harmless the Releasees, their attorneys, and their insurers from and against any and all losses, claims, liens, charges, fees, costs (including reasonable attorney's fees), interest or other sums incurred as a result of any third-party payor asserting, imposing or enforcing a claim or lien related in any way to the injuries or damages for which Releasees are making payment under the terms of this Release.

THE UNDERSIGNED HEREBY DECLARE that they have capacity and are duly authorized to enter into this Full and Final Release, that they have read all of the terms of this Full and Final Release, have discussed them or had the opportunity to discuss them with their legal counsel, fully understands them and accepts them for the express purposes of settling the above-described claim and for precluding forever any further or additional legal action arising out of the aforesaid claims and/or circumstances.

IN WITNESS WHEREOF, I have set my hand and seal this 4th day of August, 2009.

Sworn to and Subscribed before me this
27 day of July 2009.
Kira S. Hills
Notary Public
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
KIRA S. HILLS, Notary Public
West Manchester Twp., York County
My Commission Expires Nov. 21, 2011

Jan Lawrence
Jan Lawrence
SSN: 201-38-9689
Address: P.O. Box 263
Mechanicsburg, Pa. 17055

Sworn to and Subscribed before me this
27 day of July 2009.
Kira S. Hills
Notary Public
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
KIRA S. HILLS, Notary Public
West Manchester Twp., York County
My Commission Expires Nov. 21, 2011

Chris Ilyes
Chris Ilyes
SSN: 160-64-0534
Address: 2160 Esbenshade Rd
York Pa. 17408

Sworn to and Subscribed before me this
27 day of July 2009.
Kira S. Hills
Notary Public
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
KIRA S. HILLS, Notary Public
West Manchester Twp., York County
My Commission Expires Nov. 21, 2011

Mary Ilyes
Mary Ilyes
SSN: 212-82-9908
Address: 2160 Esbenshade Rd
York, Pa. 17408

Sworn to and Subscribed before me this
29 day of August 2009.
Kira S. Hills
Notary Public
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
KIRA S. HILLS, Notary Public
West Manchester Twp., York County
My Commission Expires Nov. 21, 2011

~~Jeff Cookerly~~ Jennifer Cookerly
SSN: 185549130
Address: 1016 Mumma Ave
Hanover, PA 17331

Sworn to and Subscribed before me this

3 day of August, 2009.

Jennifer Lee Lentz

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Jennifer Lee Lentz, Notary Public
Springettsbury Township, York County
My Commission Expires January 24, 2012

Jennifer Cookerly

SSN: 202-46-7387

Address: 310 Peppercorn Sq
Enola, PA 17025

Sworn to and Subscribed before me this

3 day of August, 2009.

Jennifer Lee Lentz

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Jennifer Lee Lentz, Notary Public
Springettsbury Township, York County
My Commission Expires January 24, 2012

Jay Scott Aldinger

SSN: 210-48-4773

Address: 9 TATE WAY
York PA, 17402

Sworn to and Subscribed before me this

3 day of August, 2009.

Jennifer Lee Lentz

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Jennifer Lee Lentz, Notary Public
Springettsbury Township, York County
My Commission Expires January 24, 2012

Scott William Miller

SSN: 160-64-0914

Address: 9 Tate Way
York PA 17402

Sworn to and Subscribed before me this

____ day of _____, 2009.

Michelle Lynn Miller

SSN:

Address:

Notary Public

FOR ATTORNEY SIGNATURE

I am counsel for JAN LAWRENCE, CHRIS ILYES, MARY ILYES, JEFF COOKERLY, JENNIFER COOKERLY, SCOTT WILLIAM MILLER, MICHELLE LYNN MILLER AND JAY SCOTT ALDINGER and I have reviewed the terms of the foregoing release and settlement. I ~~agree on behalf of myself and the other attorneys and employees of my law firm/practice, to be bound to the terms of the settlement relating to non-disclosure of the existence and/or terms of this settlement as set forth above.~~ RPG

I have indicated below who should be named as payee(s) on the settlement draft(s):

Tax I.D. No. : _____

Payees on Settlement Draft :

ROBERT P. GING JR

JAN LAWRENCE

_____

_____

_____

Tax I.D. No. of Payees :

_____

_____

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

DAVIES, McFARLAND & CARROLL, P.C.
ATTORNEYS AT LAW

THE TENTH FLOOR, ONE GATEWAY CENTER
PITTSBURGH, PENNSYLVANIA 15222-1416
(412) 281-0737
Fax (412) 261-7251

LYNN E. BELL
Direct Dial: (412) 338-4729
E-Mail: lbell@dmcpc.com

August 20, 2009

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

RE: Jan Lawrence Chris and Mary Eilyes, Jeff Cookerly and Scott Aldiner vs. Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company and Laurel Energy, LP.
Clearfield County/Docket No.: 05-1531-CD
Our File No.: 108952

Dear Mr. Ging:

I see one problem with the Full and Final Release which you returned and that is that Mr. Cookerly was named a Plaintiff in this suit. He is not a signator on the Release so technically his claim could continue. Did Mrs. Cookerly inherit his portion of the ownership of the land? As I see it, we also have problems regarding the estate taking part in the settlement proceeds. This means that an estate would have to be raised and for $15,000, the raising of the estate to the extent that it hasn't already been done, will further complicate matters. Please advise if the Cookerlys held this property as tenants in entireties so she would inherit his interest in the property. Let me know how you want to handle this complication.

Very truly yours,

COPY

Lynn E. Bell

LEB/sdw

DEFENDANT'S EXHIBIT
tabbies
B

DAVIES, McFARLAND & CARROLL, P.C.
ATTORNEYS AT LAW

THE TENTH FLOOR, ONE GATEWAY CENTER
PITTSBURGH, PENNSYLVANIA 15222-1416
(412) 281-0737
Fax (412) 261-7251

LYNN E. BELL
Direct Dial: (412) 338-4729
E-Mail: lbell@dmcpc.com

August 20, 2009

Second Request – September 22, 2009

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

RE: Jan Lawrence Chris and Mary Eilyes, Jeff Cookerly and Scott Aldiner vs. Moravian Run Reclamation Co., Inc. and Johnson Brothers Coal Company and Laurel Energy, LP.
Clearfield County/Docket No.: 05-1531-CD
Our File No.: 108952

Dear Mr. Ging:

I see one problem with the Full and Final Release which you returned and that is that Mr. Cookerly was named a Plaintiff in this suit. He is not a signator on the Release so technically his claim could continue. Did Mrs. Cookerly inherit his portion of the ownership of the land? As I see it, we also have problems regarding the estate taking part in the settlement proceeds. This means that an estate would have to be raised and for $15,000, the raising of the estate to the extent that it hasn't already been done, will further complicate matters. Please advise if the Cookerlys held this property as tenants in entireties so she would inherit his interest in the property. Let me know how you want to handle this complication.

Very truly yours,

COPY

Lynn E. Bell

LEB/sdw

DEFENDANT'S EXHIBIT
tabbies
C

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing Petition to Approve Settlement to all counsel of record in the following manner on the 26th day of October, 2009:

Via Facsimile	
Via Hand Delivery	
Via First Class U.S. Mail	X
Via Overnight Mail	
Via Certified Mail/ Return Receipt Request	

Robert P. Ging, Jr., Esquire
2095 Humbert Road
Confluence, PA 15424-2371

Attorney for Plaintiffs

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Johnson Brothers Coal Company

DAVIES, McFARLAND & CARROLL, P.C.

By: _____
LYNN E. BELL, ESQUIRE
LAUREN R. AMES, ESQUIRE
JENNINGS L. HART, III, ESQUIRE

Attorney for Laurel Energy, L.P.,
Additional Defendant

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY and SCOTT ALDINGER,

05-1351-CD

Plaintiffs,

v.

JOHNSON BROTHERS COAL COMPANY,

Defendants,

and

LAUREL ENERGY, LP

Additional Defendant

ORDER OF COURT

AND NOW, this 29 day of October, 2009, it is hereby ORDERED, ADJUDGED and DECREED upon consideration of Additional Defendant Laurel Energy's Motion for Approval of Settlement that the Motion is GRANTED. It is further ordered that the settlement is approved with regard to the claims of Jeffrey Cookerly and hereby resolves all claims by Jeffrey Cookerly, the Estate of Jeffrey Cookerly, his successors, assigns, heirs, executors, administrators, or legal representatives as to the released parties upon disbursement of settlement funds.

BY THE COURT:

Fred Ammerman, J.

FILED 3cc
02:01 PM Atty Hart
OCT 30 2009
William A. Shaw
Prothonotary/Clerk of Courts

FILED

OCT 30 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/30/09

X You are responsible for serving all appropriate parties.

___ The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER, Plaintiffs vs. MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY, Defendants and LAUREL ENERGY, L.P., Additional Defendant	CASE NO. 05-1351-CD
	TYPE OF PLEADING: **PRAECIPE TO DISCONTINUE**
	FILED ON BEHALF OF: Plaintiffs
	COUNSEL OF RECORD: ROBERT P. GING, JR., ESQUIRE Pa. Id. No. 25459 2095 Humbert Road Confluence, PA 15424-2371 (814) 395-3661

FILED NO CC
m/12:44/BA
JAN 25 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

JAN LAWRENCE, CHRIS and MARY ILYES, JEFF COOKERLY, and SCOTT ALDINGER,	)	
Plaintiffs	)	
vs.	)	CASE NO. 04-1351-CD
MORAVIAN RUN RECLAMATION CO. INC. and JOHNSON BROTHERS COAL COMPANY,	)	
Defendants	)	
and	)	
LAUREL ENERGY, L.P.,	)	
Additional Defendant	)	

PRAECIPE TO DISCONTINUE

TO: WILLIAM SHAW, PROTHONOTARY

Kindly discontinue the case at the above captioned term. The matter having been settled by the parties.

Respectfully submitted,

Robert P. Ging, Jr., Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praecipe to Discontinue was served on the following party at her respective address on this date via U.S. First Class, Postage Pre-Paid Mail.

Lynn E. Bell, Esquire
10TH Floor
One Gateway Center
Pittsburgh, PA 15222

DATED: January 22, 2010

Respectfully submitted,

Robert P. Ging, Jr., Esquire

FILED

JAN 25 2010

William A. Shaw
Prothonotary/Clerk of Courts