

06-652-CD  
JJ Powell vs Samuel D. Brink et al

2006-652-CD  
JJ Powell vs Bank Transportation

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

J.J. POWELL, INC.,

Plaintiff

No. 2006-652-CD

vs.

SAMUEL D. BRINK d/b/a  
BRINK TRANSPORTATION, INC.,  
Defendant

Type of Case:  
**CIVIL**

Type of Pleading:  
**COMPLAINT**

Filed on Behalf of:  
**PLAINTIFF**

Counsel for This Party:  
**Peter F. Smith, Esquire**  
Supreme Court ID #34291  
P. O. Box 130  
30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

**FILED** *W.A. Shaw* *ICC Shff*  
*APR 27 2006* *ICC Atty*  
*W.A. Shaw* *Atty pd. 85.00*  
William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL , INC.,	:	
Plaintiff	:	No. 2006-
vs.	:	
SAMUEL D. BRINK d/b/a	:	
BRINK TRANSPORTATION, INC. and	:	
Defendant	:	

**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 other rights important to you.

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

Clearfield County Court Administrator  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830  
(814) 765-2641, ext. 5982

***AMERICANS WITH DISABILITIES ACT OF 1990***

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830  
(814) 765-2641, ext. 5982

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

J. J. POWELL, INC.,	:	
Plaintiff	:	No. 2006-
vs.	:	
SAMUEL D. BRINK d/b/a	:	
BRINK TRANSPORTATION, INC.	:	
Defendant	:	

**COMPLAINT**

COMES NOW, J. J. Powell, Inc., by its attorney Peter F. Smith, who states in support of this complaint:

1. The Plaintiff, **J. J. POWELL, INC.**, is a Pennsylvania business corporation with principal office in Philipsburg (Chester Hill), Clearfield County, Pennsylvania and with mailing address of P.O. Box 30, Philipsburg, Pennsylvania 16866.
2. The name of the Defendant is **SAMUEL D. BRINK d/b/a BRINK TRANSPORTATION, INC.** with business address of 4654 Green Acre Road, Houtzdale, Clearfield County, Pennsylvania 16651.
3. Plaintiff sells gasoline, diesel fuel and petroleum products at the wholesale and retail levels.
4. For many years, Plaintiff sold deliveries of petroleum products to Defendant on an open account basis.
5. No written agreement was entered.
6. Plaintiff sent Defendant a monthly invoice which Defendant paid. In the event that all or part of any invoice was unpaid, Plaintiff charged, and Defendant agreed to pay and in fact did

pay interest on the outstanding balance at 18% per annum.

7. A statement of the Defendant's account with the Plaintiff commencing on October 19, 2005 and continuing until April 3, 2006 is attached hereto and incorporated herein by reference as Plaintiff's Exhibit 1.

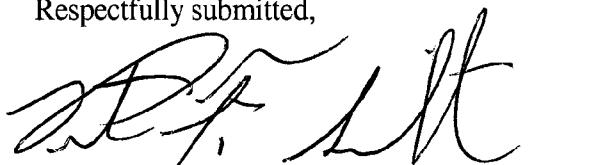
8. Written and oral demand have been made on the Defendant to pay the balance due, but he has failed to do so.

9. As of April 3, 2006, the amounts owed to Plaintiff by the Defendant for purchases of diesel fuel and gasoline follows. As a courtesy to its customer, J. J. Powell, Inc. has waived the interest charge since December of 2005. However, J. J. Powell, Inc. did not waive its right to reinstate its interest charge.

A)	Balance	\$154,218.24
B)	Finance Charges to 11/2005	\$ 10,785.35
C)	Finance Charges accruing at 18% per annum from 01/01/06 (to be added)	\$ _____
D)	Attorney fees (to be added)	\$ _____
E)	Court costs (to be added)	\$ _____
PRELIMINARY TOTAL		\$165,003.59
FINAL TOTAL		\$ _____

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment in its favor and against the Defendant Samuel D. Brink d/b/a Brink Transportation, Inc. in the amount of \$165,003.59 together with interest accruing after January 1, 2006, reasonable attorney fees and court costs.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiff

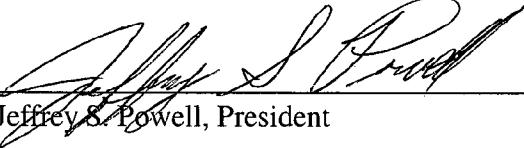
Date: April 26, 2006

## VERIFICATION

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

J. J. POWELL, INC.

Dated: 4/21/06

By:   
Jeffrey S. Powell, President

12169D BRINK TRANSPORTATION<C> FROM: earliest TO: latest

CODE	DOLLARS	GALLONS
15 LSDIE	2411662.93	2274591.5
17 LSPD	7582.50	7500.0
22 SRV P	291.10	
23 SRV L	275.00	
40 TBANB	187.60	
60 SLSTX	5.38	
67 STEXT	273850.98	
68 FDEXT	556830.27	
69 PAFRT	453461.45	
78 FINCH	10785.35	
80 PAYMT	3549923.97	
<hr/>		
TOTAL DEBITS	3714932.56	2282091.5
TOTAL CREDITS	3549923.97	
NET	165003.59	

WHAT ELSE?

12169D BRINK TRANSPORTATION<C>

\* STATUS \* TERMINATED: N DLY HOLD: Y SRV HOLD: Y CLN: 0

\* TERMS \* PREM CODE: 0 PREM BASE: 0 PREM TERMS 0.00 NDN: N ADP: 0

CUST DOLLAR TYPE CODE	TIME CODE	ACTION CODE	ACTION TAKEN	PROMISE AMOUNT	REMIND ON	ON INSTALLMENT	INSTALLMENT START DATE
2 1	4	0	--/--/--	0.00	--/--/--	0.00	--/--/--

\* PAYMENT \* \* BUDGET \*

LAST	AMOUNT	START	# PAYMNT	AMOUNT	CUM PAYMNT	IN CONTRACT
4/03/06	5000.00	0	0	0.00	0.00	N

<----- STATEMENT -----> <-- INVOICE --> <-- FINANCE CHARGE -->

LAST	OSD	INS	ZBS	AGE	NST	ISH	NIN	INV	IVO	KOA	FCG	FGR	FCD	CFC
3/31/06	30	N	N	Y	0	N	0	N	Y	N	Y	0	0	0.00

BALANCE	CURRENT	OVER 30	OVER 60	OVER 90	OVER 120
165003.59	0.00	0.00	0.00	0.00	165003.59

JFMAMJJASOND      BALANCE PAST CRT DAYS( 45 ): 165003.59  
000010001020

WHAT ELSE?

12169D BRINK TRANSPORTATION<C> FROM: earliest TO: latest

DATE	TRANS	TYPE	REF	AMOUNT	BALANCE	T/L/S#	DDD	GAL	INTNK
4/03/06	80	PAYMT	21578	5000.00	165003.59				
2/17/06	80	PAYMT	21453	5000.00	170003.59				
1/26/06	80	PAYMT	21402	5000.00	175003.59				
12/31/05	80	PAYMT	21332	5000.00	180003.59				
12/26/05	80	PAYMT	21313	5000.00	185003.59				
11/30/05	78	FINCH	4199710	742.44	190003.59				
11/18/05	80	PAYMT	21207	5000.00	189261.15				
11/12/05	80	PAYMT	21181	19500.00	194261.15				
11/10/05	69	PAFR	241017	1854.40	213761.15				
11/10/05	15	LSDIE	241017	17373.60	211906.75	1	0	7600.0	
10/31/05	78	FINCH	4192030	733.79	194533.15				
10/31/05	80	PAYMT	21160	25000.00	193799.36				
10/28/05	69	PAFR	240384	1854.40	218799.36				
10/28/05	15	LSDIE	240384	18407.96	216944.96	1	0	7600.0	
10/25/05	80	PAYMT	21142	21000.00	198537.00				
10/24/05	69	PAFR	240143	1854.40	219537.00				
10/24/05	15	LSDIE	240143	19013.68	217682.60	1	0	7600.0	
10/18/05	69	PAFR	239877	1854.40	198668.92				
10/18/05	15	LSDIE	239877	19683.24	196814.52	1	0	7600.0	
10/19/05	80	PAYMT	21137	22000.00	177131.28				

MORE ( Y/N ) < N >?

**FILED**

**APR 27 2006**

*William A. Shaw*  
Prothonotary/Clerk of Courts

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

**J. J. POWELL, INC.,  
Plaintiff**

\*

\*

\*

\*

Docket No. 06-652-CD

**v.**

\*

\*

\*

\*

**SAMUEL D. BRINK, d/b/a  
BRINK TRANSPORTATION, INC.  
Defendant**

\*

\*

**Type of Pleading:  
PRAECIPE TO ENTER APPEARANCE**

**Filed on Behalf of:**

**Defendant:**

**SAMUEL D. BRINK, d/b/a  
BRINK TRANSPORTATION, INC.**

**Counsel of Record for  
This Party:**

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

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

**FILED** 3cc  
MAY 10 2006  
Atty Koerber  
10:59 AM  
MAY 10 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL, INC.,  
Plaintiff

\*

\*

\*

\*

Docket No. 06-652-CD

v.

\*

\*

\*

SAMUEL D. BRINK, d/b/a  
BRINK TRANSPORTATION, INC.  
Defendant

\*

\*

\*

**CERTIFICATE OF SERVICE**

I certify that on the 10<sup>th</sup> day of May, 2006, the undersigned served a certified copy of the Praeclipe to Enter Appearance in the above-captioned matter upon Counsel for Plaintiff. Such documents were served via United States First Class Mail upon the following:

Peter F. Smith, Esquire  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830



Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant: Samuel D. Brink,  
d/b/a Brink Transportation, Inc.

**FILED**

**MAY 10 2006**

**William A. Shaw**  
**Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101490  
NO: 06-652-CD  
SERVICE # 1 OF 1  
COMPLAINT

PLAINTIFF: J.J. POWELL, INC.

vs.

DEFENDANT: SAMUEL D. BRINK d/b/a BRINK TRANSPORT, INC.

SHERIFF RETURN

NOW, May 04, 2006 AT 9:50 AM SERVED THE WITHIN COMPLAINT ON SAMUEL D. BRINK d/b/a BRINK TRANSPORT, INC. DEFENDANT AT 4654 GREEN ACRE ROAD, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO CAROL BRINK, P.I.C. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

FILED  
02/22/01  
MAY 19 2006  
LS

William A. Shaw  
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	POWELL	28830	10.00
SHERIFF HAWKINS	POWELL	28830	34.02

Sworn to Before Me This

\_\_\_\_ Day of \_\_\_\_\_ 2006

So Answers,

*Chester A. Hawkins*  
*by Marilyn Hamr*  
Chester A. Hawkins  
Sheriff

**FILED**

**MAY 19 2006**

**William A. Shaw  
Prothonotary/Clerk of Courts**

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

J. J. Powell, Inc.,  
Plaintiff

\*

VS.

\*

Docket No. 06-652-CD

Samuel D. Brink, d/b/a  
Brink Transportation, Inc.  
Defendant

\*

\*

Type of Pleading:  
PRELIMINARY OBJECTIONS  
OF DEFENDANT

Filed on Behalf of:  
Defendant:  
Samuel D. Brink, d/b/a  
Brink Transportation Inc.

Counsel of Record for  
This Party:

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

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

**FILED**

MAY 25 2006  
0/310 (w) *Kwas*  
William A. Shaw  
Prothonotary  
3 CERT TO ATTY

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

J. J. Powell, Inc., \*  
Plaintiff  
\*  
vs.  
\*  
Samuel D. Brink, d/b/a \*  
Brink Transportation, Inc.  
Defendant \*  
\*

Docket No. 06-652-CD

**PRELIMINARY OBJECTIONS OF DEFENDANT**

COME NOW, Samuel D. Brink, an individual, and Brink Transportation, Inc., a corporation, by and through their attorney, Dwight L. Koerber, Jr., Esquire, and file the within Preliminary Objections to the Complaint filed by Plaintiff herein.

**I.  
LEGAL INSUFFICIENCY OF PLEADING (DEMURRER)**

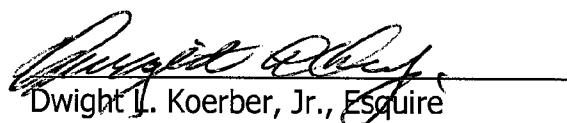
1. Pa. R.C.P. 1028(a)(4) provides Preliminary Objections may be filed for the legal insufficiency of a pleading, in the form of a demurrer.
2. Defendant hereby demurrs to the Complaint and states that there is no legal basis for alleging the Defendant to be Samuel D. Brink, an individual, trading and doing business as Brink Transportation, Inc., a corporation. In support of that, Defendant would point out that the invoice attached to the Complaint identifies Brink Transportation as the customer, and at no point refers to Samuel D. Brink as an individual.

3. In the body of the Complaint itself, paragraph 2, Plaintiff has alleged that the Defendant is an individual trading as a corporation, and has presented no factual basis for even making that allegation.

4. Accordingly, the Complaint is deficient on its face insofar as it purports to name Samuel D. Brink as an individual defendant, due to the lack of correlation between the Defendant's name and the invoice and due to the lack of any factual allegations that would demonstrate that the business entity that Plaintiff has dealt with is an individual, as opposed to Brink Transportation, Inc., which is a properly organized and properly constituted Pennsylvania corporation. See printout, attached hereto as Exhibit A, from the Corporation Bureau.

WHEREFORE, Defendants Samuel D. Brink and Brink Transportation, Inc. pray that their Preliminary Objections be granted and that the Complaint be dismissed.

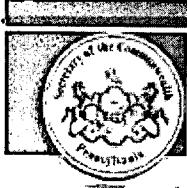
Respectfully submitted,



Dwight J. Koerber, Jr., Esquire  
Attorney for Defendants:  
Samuel D. Brink, d/b/a  
Brink Transportation, Inc.

## **EXHIBIT A**

Attached hereto as Exhibit A is a printout from the Corporation Bureau website showing Brink Transportation, Inc. as an active Pennsylvania corporation.



**PENNSYLVANIA**  
**Department of State**

Search  
By Business Name  
By Business Entity ID  
Verify  
Verify Certification

**Date:** 5/25/2006

**Business Entity**

**Filing History**

(Select the link above to  
view the Business Entity's  
Filing History)

## Corporations

[Corporations](#) | [Forms](#) | [Contact Corporations](#) | [Business Services](#)

### Business Name History

<b>Name</b>	<b>Name Type</b>
BRINK TRANSPORTATION, INC.	Current Name

### Business Corporation - Domestic - Information

<b>Entity Number:</b>	2691333
<b>Status:</b>	Active
<b>Entity Creation Date:</b>	4/22/1996 1:44:24 PM
<b>State of Business.:</b>	PA
<b>Registered Office Address:</b>	RR 1 BOX 316-H HOUTZDALE PA 16651-0
<b>Mailing Address:</b>	No Address

### Officers

<b>Name:</b>	<b>SAMUEL D BRINK</b>
<b>Title:</b>	President
<b>Address:</b>	RR 1 BOX 316-H HOUTZDALE PA 16651-0

<b>Name:</b>	<b>SAMUEL D BRINK</b>
<b>Title:</b>	Secretary
<b>Address:</b>	RR 1 BOX 316-H HOUTZDALE PA 16651-0

<b>Name:</b>	<b>SAMUEL D BRINK</b>
<b>Title:</b>	Treasurer
<b>Address:</b>	RR 1 BOX 316-H HOUTZDALE PA 16651-0

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

J. J. Powell, Inc.,  
Plaintiff

\*

vs.

\*

Docket No. 06-652-CD

Samuel D. Brink, d/b/a  
Brink Transportation, Inc.  
Defendant

\*

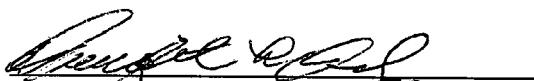
\*

**CERTIFICATE OF SERVICE**

I certify that on the 25<sup>th</sup> day of May 2006, the undersigned served a true and correct copy of the foregoing PRELIMINARY OBJECTIONS OF DEFENDANT in the above-captioned matter by United States First Class Mail upon counsel for Plaintiff as follows:

Peter F. Smith, Esquire  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830

Respectfully submitted,



Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant:  
Samuel D. Brink, d/b/a  
Brink Transportation, Inc.

William A. Shaw  
Prothonotary

MAY 25 2006

FILED

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

J. J. Powell, Inc.,  
Plaintiff

\*

vs.

\*

Docket No. 06-652-CD

Samuel D. Brink, d/b/a  
Brink Transportation, Inc.  
Defendant

\*

\*

**ORDER**

NOW, this 26<sup>th</sup> day of May 2006, upon the filing of the Preliminary Objections  
Of Defendant Samuel D. Brink, d/b/a Brink Transportation, Inc., it is the Order and  
Decree of this Court that Oral Argument thereon shall be held on the 14<sup>th</sup> day of  
July, 2006 at 10:30 (a.m.)/p.m. in Courtroom Number 1 of the  
Clearfield County Courthouse.

BY THE COURT:

  
\_\_\_\_\_  
, JUDGE

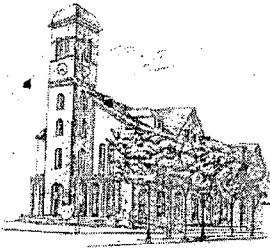
FILED  
01/10/11 RGD  
MAY 30 2006  
3CC  
Amy Koester  
ER

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**MAY 30 2006**

*William A. Shaw*  
Prothonotary/Clerk of Courts



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw  
Prothonotary

DATE: 5/30/06

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

**J. J. POWELL, INC.,**  
Plaintiff

\*

\*

\*

\*

Docket No. 06-652-CD

v.

**SAMUEL D. BRINK, d/b/a  
BRINK TRANSPORTATION, INC.**  
Defendant

\*

\*

\*

\*

\*

Type of Pleading:  
**CERTIFICATE OF SERVICE**

Filed on Behalf of:  
Defendant:  
**SAMUEL D. BRINK, d/b/a  
BRINK TRANSPORTATION, INC.**

Counsel of Record for  
This Party:

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

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

**FILED** 3cc  
01/31/08 Atty Koerber  
JUN 01 2008

William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL, INC.,  
Plaintiff

\*

\*

\*

Docket No. 06-652-CD

v.

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SAMUEL D. BRINK, d/b/a  
BRINK TRANSPORTATION, INC.  
Defendant

\*

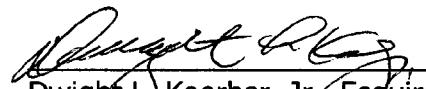
\*

\*

**CERTIFICATE OF SERVICE**

I certify that on the 31<sup>st</sup> day of May, 2006, the undersigned served a certified copy of the Scheduling Order dated May 26, 2006 in the above-captioned matter upon Counsel for Plaintiff. Such document was served via United States First Class Mail upon the following:

Peter F. Smith, Esquire  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830



Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant: Samuel D. Brink,  
d/b/a Brink Transportation, Inc.

**FILED**

**JUN 01 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

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

J.J. POWELL, INC.,

Plaintiff

No. 2006-652-CD

vs.

BRINK TRANSPORTATION, INC.,  
Defendant

Type of Case:  
**CIVIL**

Type of Pleading:  
**AMENDED COMPLAINT**

Filed on Behalf of:  
**PLAINTIFF**

Counsel for This Party:  
**Peter F. Smith, Esquire**  
Supreme Court ID #34291  
P. O. Box 130  
30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

Counsel for Defendant:  
**Dwight L. Koerber, Jr., Esquire**  
Supreme Court ID #16332  
P. O. Box 1320  
110 North Second Street  
Clearfield, PA 16830  
(814) 765-9611

**FILED**  
C 12:00 P.M. 6/15/06  
JUN 15 2006 2 CC TO ATTY  
④  
William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL , INC.,	:	
Plaintiff	:	No. 2006-652-CD
vs.	:	
BRINK TRANSPORTATION, INC.,	:	
Defendant	:	

**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 other rights important to you.

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Clearfield County Court Administrator  
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(314) 765-2641, ext. 5982

***AMERICANS WITH DISABILITIES ACT OF 1990***

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830  
(814) 765-2641, ext. 5982

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

J. J. POWELL, INC.,	:	
Plaintiff	:	No. 2006-652-CD
VS.	:	
BRINK TRANSPORTATION, INC.,	:	
Defendant	:	

**AMENDED COMPLAINT**

COMES NOW, J. J. Powell, Inc., by its attorney Peter F. Smith, who states in support of this complaint:

1. The Plaintiff, **J. J. POWELL, INC.**, is a Pennsylvania business corporation with principal office in Philipsburg (Chester Hill), Clearfield County, Pennsylvania and with mailing address of P.O. Box 30, Philipsburg, Pennsylvania 16866.
2. The name of the Defendant is **BRINK TRANSPORTATION, INC.**, which is believed to be a Pennsylvania business corporation, with business address of 4654 Green Acre Road, Houtzdale, Clearfield County, Pennsylvania 16651.
3. Plaintiff sells gasoline, diesel fuel and petroleum products at the wholesale and retail levels.
4. For many years, Plaintiff sold deliveries of petroleum products to Defendant on an open account basis.
5. No written agreement was entered.
6. Plaintiff sent Defendant a monthly invoice which Defendant paid. In the event that all or part of any invoice was unpaid, Plaintiff charged, and Defendant agreed to pay and in fact did pay interest on the outstanding balance at 18% per annum.

7. A statement of the Defendant's account with the Plaintiff commencing on October 19, 2005 and continuing until April 3, 2006 is attached hereto and incorporated herein by reference as Plaintiff's Exhibit 1.

8. Written and oral demand have been made on the Defendant to pay the balance due, but he has failed to do so.

9. As of April 3, 2006, the amounts owed to Plaintiff by the Defendant for purchases of diesel fuel and gasoline follows. As a courtesy to its customer, J. J. Powell, Inc. has waived the interest charge since December of 2005. However, J. J. Powell, Inc. did not waive its right to reinstate its interest charge.

A)	Balance	\$154,218.24
B)	Finance Charges to 11/2005	\$ 10,785.35
C)	Finance Charges accruing at 18% per annum from 01/01/06 (to be added)	\$
D)	Attorney fees (to be added)	\$
E)	Court costs (to be added)	\$ _____
 PRELIMINARY TOTAL		\$165,003.59
 FINAL TOTAL		\$ _____

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment in its favor and against the Defendant Brink Transportation, Inc. in the amount of \$165,003.59 together with interest accruing after January 1, 2006, reasonable attorney fees and court costs.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiff

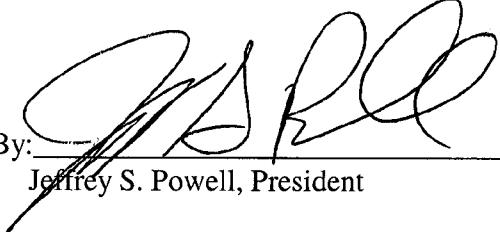
Date: June 15, 2006

## VERIFICATION

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

J. J. POWELL, INC.

Dated: 6/15/2006

By: 

Jeffrey S. Powell, President

12169D BRINK TRANSPORTATION<C> FROM: earliest TO: latest

CODE	DOLLARS	GALLONS
15 LSDIE	2411662.93	2274591.5
17 LSPD	7582.50	7500.0
22 SRV P	291.10	
23 SRV L	275.00	
40 TBANB	187.60	
60 SLSTX	5.38	
67 STEXT	273850.98	
68 FDEXT	556830.27	
69 PAFRT	453461.45	
78 FINCH	10785.35	
80 PAYMT	3549928.97	
-----		
TOTAL DEBITS	3714932.56	2282091.5
TOTAL CREDITS	3549928.97	
NET	165003.59	

WHAT ELSE?

12169D BRINK TRANSPORTATION<C>

\* STATUS \* TERMINATED: N DLY HOLD: Y SRV HOLD: Y CLN: 0

\* TERMS \* PREM CODE: 0 PREM BASE: 0 PREM TERMS 0.00 NDN: N ADP: 0

CUST TYPE	DOLLAR CODE	TIME CODE	ACTION	ACTION	PROMISE	REMIND	ON	INSTALLMENT	INSTALLMENT	START	DATE
2	1	4	0	--/---/--	0.00	--/---/--	0.00	--/---/--	0.00	--/---/--	

\* PAYMENT \* \* BUDGET \*

LAST	AMOUNT	START	# PAYMNT	AMOUNT	CUM PAYMNT	IN CONTRACT
4/03/06	5000.00	0	0	0.00	0.00	N

<----- STATEMENT -----> <-- INVOICE --> <-- FINANCE CHARGE -->

LAST	OSD	INS	ZBS	AGE	NST	ISH	NIN	INV	IVO	KOA	FCG	FGR	FCD	CFC
3/31/06	30	N	N	Y	0	N	0	N	Y	N	Y	0	0	0.00

BALANCE	CURRENT	OVER 30	OVER 60	OVER 90	OVER 120
165003.59	0.00	0.00	0.00	0.00	165003.59

JFMAMJJASOND      BALANCE PAST CRT DAYS( 45 ): 165003.59  
000010001020

WHAT ELSE?

12169D BRINK TRANSPORTATION<C> FROM: earliest TO: latest

DATE	TRANS	TYPE	REF	AMOUNT	BALANCE	T/L/S#	DDD	GAL	INTNK
4/03/06	80	PAYMT	21578	5000.00	165003.59				
2/17/06	80	PAYMT	21453	5000.00	170003.59				
1/26/06	80	PAYMT	21402	5000.00	175003.59				
12/31/05	80	PAYMT	21332	5000.00	180003.59				
12/26/05	80	PAYMT	21313	5000.00	185003.59				
11/30/05	78	FINCH	4199710	742.44	190003.59				
11/18/05	80	PAYMT	21207	5000.00	189261.15				
11/12/05	80	PAYMT	21181	19500.00	194261.15				
11/10/05	69	PAFRT	241017	1854.40	213761.15				
11/10/05	15	LSDIE	241017	17373.60	211906.75	1	0	7600.0	
10/31/05	78	FINCH	4192030	733.79	194533.15				
10/31/05	80	PAYMT	21160	25000.00	193799.36				
10/28/05	69	PAFRT	240384	1854.40	218799.36				
10/28/05	15	LSDIE	240384	13407.96	216944.96	1	0	7600.0	
10/25/05	80	PAYMT	21142	21000.00	198537.00				
10/24/05	69	PAFRT	240143	1854.40	219537.00				
10/24/05	15	LSDIE	240143	19013.68	217682.60	1	0	7600.0	
10/18/05	69	PAFRT	239877	1854.40	198668.92				
10/18/05	15	LSDIE	239877	19683.24	196814.52	1	0	7600.0	
10/19/05	80	PAYMT	21137	22000.00	177131.28				

MORE ( Y/N ) < N >?

FILED

JUN 15 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL , INC., :  
Plaintiff : No. 2006-652-CD  
VS. :  
BRINK TRANSPORTATION, INC., :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Plaintiff in the above-captioned matter, certify that I delivered a certified copy of an **AMENDED COMPLAINT** to Dwight L. Koerber, Jr., attorney for the Defendant by hand delivery on June 15, 2006 to the following address:

HAND DELIVER  
Dwight L. Koerber, Jr., Esquire  
110 North Second Street  
Clearfield, PA 16830

Respectfully submitted,



Date: June 15, 2006

Peter F. Smith, Esquire  
Attorney for Plaintiff  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

FILED  
0 12:00 P.M. 6K  
JUN 15 2006 2cc to Atty  
CR  
William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

JUN 15 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

**J. J. POWELL, INC.,**  
Plaintiff

\*

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Docket No. 06-652-CD

v.

\*

\*

\*

\*

**BRINK TRANSPORTATION, INC.**  
Defendant

\*

Type of Pleading:  
ANSWER AND NEW MATTER TO  
AMENDED COMPLAINT

Filed on Behalf of:

Defendant:

SAMUEL D. BRINK, d/b/a  
BRINK TRANSPORTATION, INC.

Counsel of Record for  
This Party:

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

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

**FILED**  
JUL 3 2006  
SOL 05 2006  
3cc Atty Koerber  
W.A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL, INC.,	*	
Plaintiff	*	
	*	
	*	
	*	Docket No. 06-652-CD
V.	*	
	*	
	*	
BRINK TRANSPORTATION, INC.	*	
Defendant	*	

**ANSWER AND NEW MATTER TO AMENDED COMPLAINT**

COMES NOW, Brink Transportation, Inc., by and through its attorney, Dwight L. Koerber, Jr., Esquire and files the within Answer and New Matter to the Amended Complaint filed herein by Plaintiff.

- (1) Admitted.
- (2) Admitted.
- (3) Admitted.
- (4) Admitted, but see New Matter for further explanation.
- (5) Admitted.
- (6) Admitted, with the understanding that the interest charge was directly tied into the payment arrangement that the parties agreed upon. See New Matter.
- (7) Denied, upon unreasonable investigation, Defendant is unable to confirm the accuracy of the information set forth in Plaintiff's Exhibit #1 and requires strict proof of same at trial.

(8) Admitted in part and denied in part. It is admitted that a request for payment has been made, but it is denied that there was a failure in the part of Defendant to make timely and appropriate payment as agreed upon. See New Matter.

(9) Denied, legal conclusion. To the extent that facts are set forth, they are specifically denied and strict proof of same is required at trial. Furthermore, it is denied that there is an entitlement to reinstate interest charge that had been waived and likewise it is denied that there is any contractual or legal entitlement on Plaintiff's part to assess attorney's fees. See New Matter.

#### **NEW MATTER**

(10) In further support of its position, Defendant sets forth the following New Matter.

(11) As Plaintiff has acknowledged, the parties hereunto have had a long term business relationship, with the parties consistently agreeing that Defendant would be permitted to make periodic payments on charges which it incurred, as long as reasonable installment payments were made. In exchange for the entitlement to make reasonable installment payments, the parties agreed through their course of action and through their discussions, that interest would be assessed on the unpaid balance.

(12) As a matter of fact, Defendant has made monthly installment payments, and has paid on the account in a fashion that was in full harmony with the

agreement that the parties entered into from the outset of their business relationship.

(13) As noted by the Plaintiff, there was no written contract between the parties. Indeed, there was a oral solicitation that occurred, with Plaintiff specifically representing at the time of this solicitation that there is no pre-set amount of payment that would be required each month, as long as a reasonable payment was made.

(14) Defendant relied upon the representation made by Plaintiff concerning the entitlement to making installment payments, and purchased considerable volumes of petroleum products from Plaintiff, in exchange for the entitlement to make periodic payments along with interest.

(15) Plaintiff, notwithstanding the prior agreement of the parties, abruptly cut off Defendant's entitlement to purchase product and to make payment on an installment payment basis, because Defendant as owner refused to sign a personal guarantee covering the past purchases that had occurred. Plaintiff's action, cutting Defendant off from its entitlement to make ongoing purchases, consistent with past arrangements, constituted a breach of contract by Plaintiff. By breaching the understanding between the parties, which had authorized installment payments for the petroleum products that had been charged provided that 18% interest was paid, Plaintiff has breached the agreement between the parties and has thereby lost the entitlement to receive any additional interest on the unpaid balance.

(16) Defendant believes and thereby alleges, that the payments that it has made each month were reasonable payments and were consistent with the payment level which was expected of it under the business relationship between the parties. For those reasons, Defendant maintains that it is entitled to repay the past indebtedness that has occurred from fuel sales/petroleum product sales in accordance with past practices, without there being any entitlement on the part of Plaintiff to accelerate the payment schedule and to declare the full amount due and payable at once.

(17) It is Defendant's position that Plaintiff has no entitlement to reinstate past interest that has been waived, as that entitlement was never reserved. Moreover, the past interest that was waived was done in conjunction with an inducement which Plaintiff directed to Defendant to attempt to increase the amount of monthly payments that were made under the installment arrangement, thereby showing that consideration has already been paid by Defendant to bind the past waiver of interest charges.

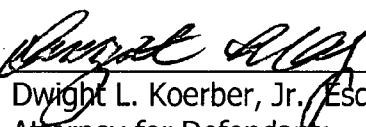
(18) It is Defendant's position that by bringing this lawsuit and by attempting to collect the full indebtedness at once, Plaintiff has breached the oral agreement between the parties that gave rise to the account balance that is in existence, thereby depriving Plaintiff of the entitlement to rely upon that very contract which it has breached. Accordingly, Plaintiff is not entitled to recover further payments against Defendant.

(19) Defendant also asserts as an affirmative defense the failure of Plaintiff to assert any entitlement to attorney's fees in this case.

(20) Defendant also seeks a set off against any amount which might be owed in this matter, which Defendant might owe to Plaintiff, covering the financial harm which Defendant has incurred as a result of the unilateral action taken by Plaintiff in terminating the contract of the parties notwithstanding the fact that Defendant was in compliance with the installment payment arrangement that the parties had agreed to, expressly and impliedly.

WHEREFORE, Defendant, Brink Transportation, Inc. prays that the Amended Complaint filed by Plaintiff, J. J. Powell, Inc. be dismissed and that judgment be entered in Defendant's favor.

Respectfully submitted,

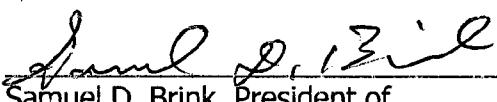
  
Dwight L. Koerber, Jr. Esquire  
Attorney for Defendant:  
Brink Transportation, Inc.

**VERIFICATION**

I verify the statements made in the foregoing documents are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

June 30, 2006

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Samuel D. Brink, President of  
Brink Transportation, Inc.

**FILED**

**JUL 05 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

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

**J. J. POWELL, INC.,**  
Plaintiff

\*

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\*

\*

Docket No. 06-652-CD

v.

\*

\*

\*

\*

**BRINK TRANSPORTATION, INC.**  
Defendant

\*

Type of Pleading:  
**CERTIFICATE OF SERVICE**

Filed on Behalf of:

Defendant:

**SAMUEL D. BRINK, d/b/a  
BRINK TRANSPORTATION, INC.**

Counsel of Record for  
This Party:

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

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

**FILED**  
07/05/2006 3:00 PM  
JUL 05 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL, INC.,  
Plaintiff

\*

\*

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Docket No. 06-652-CD

v.

\*

\*

\*

SAMUEL D. BRINK, d/b/a  
BRINK TRANSPORTATION, INC.  
Defendant

\*

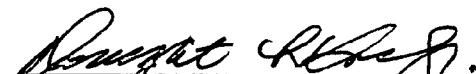
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\*

**CERTIFICATE OF SERVICE**

I certify that on the 5<sup>th</sup> day of July, 2006, the undersigned served a certified copy of the Answer and New Matter to Amended Complaint in the above-captioned matter upon Counsel for Plaintiff. Such document was served via United States First Class Mail upon the following:

Peter F. Smith, Esquire  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830



Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant: Samuel D. Brink,  
d/b/a Brink Transportation, Inc.

**FILED**  
**JUL 05 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

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

J.J. POWELL, INC.,

Plaintiff

No. 2006-652-CD

vs.

BRINK TRANSPORTATION, INC.,  
Defendant

Type of Case:  
**CIVIL**

Type of Pleading:  
**PLAINTIFF'S ANSWER TO  
NEW MATTER**

Filed on Behalf of:  
**PLAINTIFF**

Counsel for This Party:  
**Peter F. Smith, Esquire**  
Supreme Court ID #34291  
P. O. Box 130  
30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

Counsel for Defendant:  
**Dwight L. Koerber, Jr., Esquire**  
Supreme Court ID #16332  
P. O. Box 1320  
110 North Second Street  
Clearfield, PA 16830  
(814) 765-9611

FILED 2cc  
01-49-01  
JUL 24 2006  
WAS  
Clerk

William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL , INC.,	:	
Plaintiff	:	No. 2006-652-CD
vs.	:	
BRINK TRANSPORTATION, INC.,	:	
Defendant	:	

**PLAINTIFF'S ANSWER TO NEW MATTER**

COMES NOW, J. J. Powell, Inc., by its attorney Peter F. Smith, who answers Defendant's New Matter as follows:

10. Paragraphs 1 through 9 of the complaint are incorporated herein by reference as though set forth in full.

11. Denied as stated. The parties did have a long-term business relationship, but there was no express or implied, written or verbal agreement concerning installment payments. The balance due was to be paid in 30 days in full. As a courtesy, Plaintiff would let the account sometimes go as long as 60 days without a payment. Unfortunately, the Defendant made only very small payments which were insufficient to pay the amount due, and Plaintiff was compelled to institute these proceedings.

12. Denied for the reasons set forth in paragraph 11 above and on the facts averred in the complaint.

13. Denied for the reasons set forth in paragraph 11 above and on the facts averred in the complaint.

14. Denied for the reasons set forth in paragraph 11 above, and further averred that notwithstanding the differences between the parties, both would agree that Defendant knew and

acknowledged that he would ultimately have to pay for all quantities of gasoline and other petroleum products purchased from the Plaintiff.

15. Denied. Defendant was warned by Plaintiff on numerous occasions that the account had to be paid within 60 days. When it became clear that Defendant could not abide by the parties' practice and agreement, Plaintiff discontinued sales. Defendant either knew or should have known that his failure to pay for product purchased from Plaintiff jeopardized their ongoing relationship. Any damages that he may have suffered which are denied, are self-inflicted and not the responsibility of Plaintiff.

16. Denied for the reasons set forth in paragraph 11 above and upon the facts averred in the complaint.

17. Denied for the reasons set forth in paragraph 11 above and upon the facts averred in the complaint.

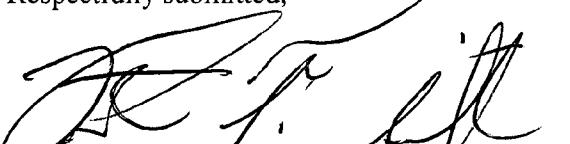
18. Denied for the reasons set forth in paragraph 11 and 15 above.

19. Denied as a legal conclusion to which no response is required.

20. Denied for the reasons set forth in paragraph 15 above.

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against the Defendant in the amount of \$165,003.59 together with interest accruing after January 1, 2006, reasonable attorney fees and court costs.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiff

Date: July 24, 2006

## VERIFICATION

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

J. J. POWELL, INC.

Dated: 7/21/06

By:

  
R. Keith Powell VP  
Name and Title

**FILED**

**JUL 24 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL , INC.,	:	
Plaintiff	:	No. 2006-652-CD
vs.	:	
BRINK TRANSPORTATION, INC.,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Plaintiff in the above-captioned matter, certify that I delivered a certified copy of **PLAINTIFF'S ANSWER TO NEW MATTER** to Dwight L. Koerber, Jr., attorney for the Defendant by hand delivery on July 24, 2006 to the following address:

HAND DELIVER  
Dwight L. Koerber, Jr., Esquire  
110 North Second Street  
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiff  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

Date: July 24, 2006

FILED  
0114931  
JUL 24 2006  
LM Atty Smith

William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL, INC.,  
Plaintiff

vs.

SAMUEL D. BRINK d/b/a  
BRINK TRANSPORTATION, INC.,  
Defendant

: No. 2006-652-CD

FILED  
0120741 NOCC  
OCT 20 2006 \$

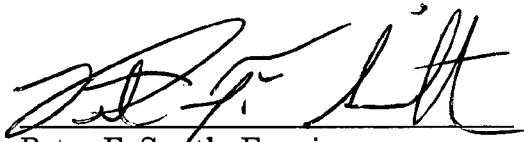
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I delivered a true and correct copy of **NOTICE TO TAKE ORAL DEPOSITIONS** of Samuel D. Brink, to the Attorney for the Defendant on October 20, 2006 by Hand Delivery to the following address:

Dwight D. Koerber, Jr., Esquire  
Attorney at Law  
110 North Second Street  
Clearfield, PA 16830

Respectfully submitted,



Date: October 20, 2006

Peter F. Smith, Esquire  
Attorney for Defendants  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

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

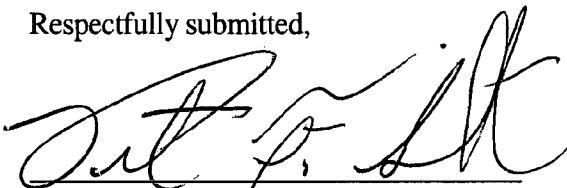
J. J. POWELL, INC., :  
Plaintiff : No. 2006-652-CD  
:  
vs. :  
:  
BRINK TRANSPORTATION, INC., :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Plaintiff, certify that I delivered a true and correct copy of  
**NOTICE TO TAKE ORAL DEPOSITION** of Samuel D. Brink to the Attorney for the  
Defendant on 3/26/07, 2007 by Hand Delivery to the following address:

Dwight D. Koerber, Jr., Esquire  
Attorney at Law  
110 North Second Street  
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiff  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Date: 3/25/07

**FILED**  
03/10/08 2007  
MAR 27 2007  
NO CC  
LAW

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**MAR 27 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL, INC., :  
Plaintiff : No. 2006-652-CD  
:  
vs. :  
:  
SAMUEL D. BRINK d/b/a :  
BRINK TRANSPORTATION, INC., :  
Defendant :  
:

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for Defendants, certify that I delivered a true and correct copy of the PRAECIPE to List for Civil, Non-Jury Trial, to the Attorney for the Defendant on November 1, 2007 by Hand Delivery to the following address:

Dwight D. Koerber, Jr., Esquire  
Attorney at Law  
110 North Second Street  
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendants  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Date: November 1, 2007

FILED NO  
10/30/2007 NO  
NOV 02 2007  
William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**NOV 02 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL , INC.,  
Plaintiff : No. 2006-652-CD  
vs.  
SAMUEL D. BRINK d/b/a  
BRINK TRANSPORTATION, INC.,  
Defendant :

**PREACIPE**

To: William A. Shaw, Sr., Prothonotary

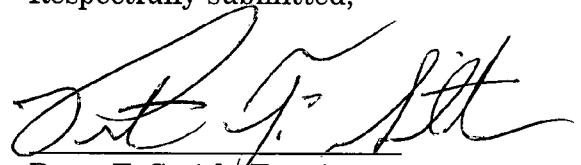
Dear Sir:

Please place this case on the next list for a Civil, Non-Jury Trial.

All Discovery is complete.

I estimate that 3 to 4 hours will be required to try this case.

Respectfully submitted,

  
Peter F. Smith, Esquire  
Attorney for Plaintiff

Date: November 1, 2007

Cc: Dwight D. Koerber, Jr., Esquire  
J.J Powell, Inc.

FILED  
O.P. 30201  
NOV 02 2007  
No CC  
GW

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

NOV 02 2007

William A. Shaw  
Prothonotary/Clerk of Courts

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

J.J. POWELL, INC.,  
Plaintiff

vs.

SAMUEL D. BRINK, d/b/a  
BRINK TRANSPORTATION, INC.,  
Defendant

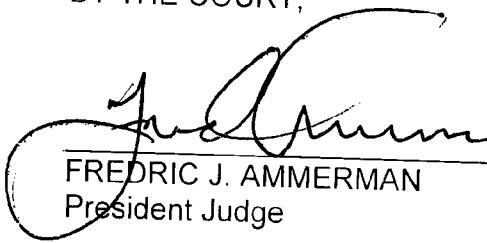
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\*  
\*

NO. 06-652-CD

ORDER

AND NOW, this 29th day of November, 2007, it is the ORDER of the Court  
that a Pre-Trial Conference in the above matter shall be held on the 4<sup>th</sup> day of January,  
2008, in Chambers at 11:00 o'clock a.m.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED 100  
01/14/08  
NOV 29 2007  
Attn: P. Smith  
Koerber  


William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**NOV 29 2007**

**William A. Shaw  
Prothonotary/Clerk of Courts**

DATE: 11/29/07

       You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

       Plaintiff(s)  Plaintiff(s) Attorney \_\_\_\_\_ Other \_\_\_\_\_

       Defendant(s)  Defendant(s) Attorney \_\_\_\_\_

Special Instructions:

1/4/08

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

J. J. Powell, Inc.,  
Plaintiff

\*

vs.

\*

Docket No. 06-652-CD

Brink Transportation, Inc.  
Defendant

\*

\*

Type of Pleading:  
APPLICATION FOR SETTLEMENT  
CONFERENCE

Filed on Behalf of:  
Defendant:  
Brink Transportation Inc.

Counsel of Record for  
This Party:

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

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

*No action*

**FILED**  
01/03/2008 3:00 PM  
JAN 03 2008 Amy Koerber

*BSR*

William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. Powell, Inc.,  
Plaintiff

\*

vs.

\*

Docket No. 06-652-CD

Brink Transportation, Inc.  
Defendant

\*

\*

**APPLICATION FOR SETTLEMENT CONFERENCE**

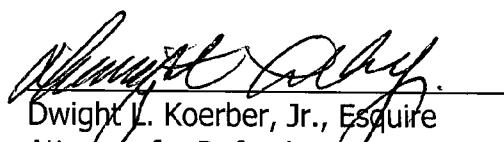
Pursuant to the provisions of Clearfield County Local Rule 212.5, Brink Transportation, Inc. hereby requests that this case be scheduled for a Settlement Conference.

1. This case is currently scheduled for Pre-Trial Conference before the Honorable Fredric J. Ammerman at 11:00 a.m. on Friday, January 4, 2008, thereby rendering many of the elements set forth in the Local Rule 212.5 inapplicable.

2. The undersigned counsel respectfully requests that this matter be assigned to the Honorable Fredric J. Ammerman, with the understanding that the Honorable Judge Fredric J. Ammerman make a determination at the Pre-Trial Conference on January 4, 2008 whether he is agreeable to having this matter assigned for a Settlement Conference.

3. Attached hereto is a proposed Scheduling Order on this matter.

Respectfully submitted,

  
Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant  
Brink Transportation, Inc.

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

J. J. Powell, Inc.,  
Plaintiff

\*

vs.

\*

Docket No. 06-652-CD

Brink Transportation, Inc.  
Defendant

\*

\*

**ORDER**

NOW THIS \_\_\_\_\_ day of January 2008, upon consideration of the Application for Settlement Conference filed by Defendant Brink Transportation, Inc., it is the Order and Decree of this Court that the matter set forth in the application shall be addressed at the Pre-Trial Conference now scheduled at 11:00 a.m. on Friday, January 4, 2008.

By the Court,

---

Fredric J. Ammerman, Judge

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

J. J. Powell, Inc.,  
Plaintiff

\*

vs.

\*

\* Docket No. 06-652-CD

Brink Transportation, Inc.  
Defendant

\*

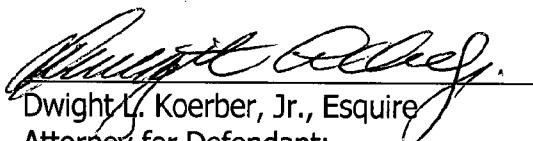
\*

**CERTIFICATE OF SERVICE**

I certify that on the 3<sup>rd</sup> day of January 2008, the undersigned served a true and correct copy of the foregoing APPLICATION FOR SETTLEMENT CONFERENCE in the above-captioned matter via facsimile and via United States First Class Mail upon counsel for Plaintiff as follows:

Peter F. Smith, Esquire  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830

Respectfully submitted,

  
Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant:  
Brink Transportation, Inc.

**FILED**

JAN 03 2008

William A. Shaw  
Prothonotary/Clerk of Courts

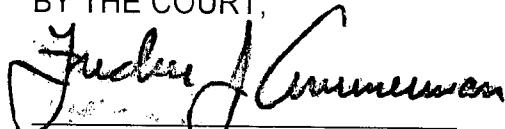
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

J.J. POWELL, INC., \*  
Plaintiff \*  
vs. \* NO. 06-652-CD  
SAMUEL D. BRINK, d/b/a BRINK \*  
TRANSPORTATION INC., \*  
Defendant \*

ORDER

NOW, this 4<sup>th</sup> day of January, 2008, following pre-trial conference among the Court and counsel for the above-captioned parties; it is the ORDER of this Court that a one-half day Non-Jury Trial is scheduled for the **18<sup>th</sup> day of March, 2008** commencing 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 1CC Atlys:  
01/31/2008 JAN 04 2008 P. Smith  
Koerber  
William A. Shaw  
Prothonotary/Clerk of Courts



DATE: 14/08

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)  Defendant(s) Attorney

### Special Instructions:

William A. Shaw  
Prothonotary/Clerk of Courts

JAN 04 2008

三

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

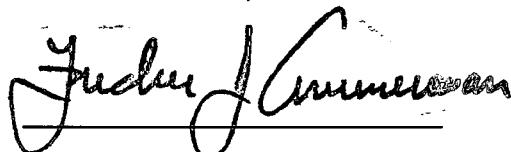
CIVIL DIVISION

J.J. POWELL, INC. :  
VS. : NO. 06-652-CD  
SAMUEL D. BRINK, d/b/a :  
BRINK TRANSPORTATION, INC. :

O R D E R

AND NOW, this 18th day of March, 2008, following the conclusion of non-jury trial, it is the ORDER of this Court that counsel for either party may provide the Court with references to case law concerning the issue of the appropriate finance charge within no more than ten (10) days from this date.

BY THE COURT,



President Judge

FILED

01/10/08  
MAR 19 2008

2ca Atty:  
P. Smith  
Koerber

William A. Shaw  
Prothonotary/Clerk of Courts

GP

**FILED**  
**MAR 19 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 3/19/08

Y You are responsible for serving all appropriate parties.

Y The Prothonotary's office has provided service to the following parties:

       Plaintiff(s) Y Plaintiff(s) Attorney        Other

       Defendant(s) Y Defendant(s) Attorney

       Special Instructions:

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

J. J. POWELL, INC., :  
Plaintiff : No. 2006-652-CD  
vs. :  
BRINK TRANSPORTATION, INC., :  
Defendant :  
UR

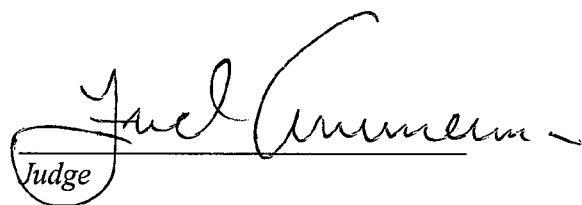
**VERDICT and ORDER**

NOW THIS 30<sup>th</sup> day of April, 2008, following the conclusion of a non-jury trial on  
March 18, 2008, it is;

ORDERED, ADJUDGED and DECREED, that judgment is entered in favor of Plaintiff  
and against the Defendant for principal amount of \$135,132.61 plus interest accrued to November  
1, 2005 of \$10,785.35, plus additional interest accruing at 18% per annum at the rate of \$66.64 per  
day (to be added) and Court costs.

*By the Court,*

Date: 4/30/08

  
\_\_\_\_\_  
Judge

**ORIGINAL**

FILED 3cc  
013:45 AM Atty P. Smith  
APR 30 2008  
GR  
William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

APR 30 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 4/30/08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

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

**J. J. POWELL, INC.,  
Plaintiff**

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

**Docket No. 06-652-CD**

**v.**

**BRINK TRANSPORTATION, INC.  
Defendant**

**Type of Pleading:  
PRAECIPE**

**Filed on Behalf of:  
Defendant:  
BRINK TRANSPORTATION, INC.**

**Counsel of Record for  
This Party:**

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

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

**FILED**  
05/02/2008 4cc  
MAY 02 2008 Atty Koerber  
B6  
William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL, INC.,  
Plaintiff

\*

\*

\*

\*

Docket No. 06-652-CD

v.

\*

\*

\*

BRINK TRANSPORTATION, INC.  
Defendant

\*

\*

**CERTIFICATE OF SERVICE**

*Dwight L. Koerber*  
I certify that on the 1<sup>st</sup> day of May, 2008, the undersigned served a certified copy of the Praeclipe in the above-captioned matter upon Counsel for Plaintiff. Such document was served via United States First Class Mail upon the following:

Peter F. Smith, Esquire  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830

*Dwight L. Koerber*

Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant: Brink Transportation Inc., and for Samuel D. Brink, who was formally listed as a Defendant

**FILED**

**MAY 02 2008**

*William A. Shaw*  
Prothonotary/Clerk of Courts

LAW OFFICES  
OF  
**DWIGHT L. KOERBER, JR.**

**COPY**

*Dwight L. Koerber, Jr.*  
Email: [dkoerber@atlanticbb.net](mailto:dkoerber@atlanticbb.net)  
Telephone (814) 765-9611

*Attorney at Law*  
**110 North Second Street**  
**P. O. Box 1320**  
**Clearfield, PA 16830**

*Eric E. Cummings, Esquire*  
Email: [ee cummings@atlanticbb.net](mailto:ee cummings@atlanticbb.net)  
Facsimile (814) 765-9503

*May 1, 2008*

Peter F. Smith, Esquire  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830

**Re: J. J. Powell v. Brink Transportation, Inc.**  
**Docket No. 06-652-CD**

Dear Peter:

Enclosed herewith is a certified copy of the praecipe that I filed in this case, to make certain that the Prothonotary's records accurately enter the Verdict and Order entered by Judge Ammerman. Since my praecipe corresponds with the manner in which Judge Ammerman issued the Order in this case, I did not think it was necessary to have a joint praecipe, but if the Prothonotary's Office should raise a question, I will be in touch with you at that time.

Very truly yours,

  
Dwight L. Koerber, Jr.

DLK/bdt

Enclosure: Certified Copy of Praecipe

Cc: Mr. Samuel D. Brink

William A. Shaw, Prothonotary

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

J. J. POWELL, INC., :  
Plaintiff : No. 2006-652-CD  
vs. :  
BRINK TRANSPORTATION, INC., :  
Defendant :  
:

PREACIPE TO ENTER JUDGMENT

To: William A. Shaw, Sr., Prothonotary

Dear Sir:

Please enter judgment in favor of the Plaintiff and against the Defendant as directed in the Court's Verdict and Order entered in this matter on the 30<sup>th</sup> day of April, 2008.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiff

Date: 5/4/08  
Cc: Dwight D. Koerber, Jr., Esquire  
J.J Powell, Inc.

FILED *6/2/2008* Atty Smith pd.  
*0/2/2008* \$20.00  
MAY 02 2008 Notice to  
William A. Shaw Brink Transportation  
Prothonotary/Clerk of Courts Inc.

Statement to  
Atty Smith

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

J. J. POWELL, INC.,	:	
Plaintiff	:	No. 2006-652-CD
vs.		
BRINK TRANSPORTATION, INC.,	:	
Defendant	:	

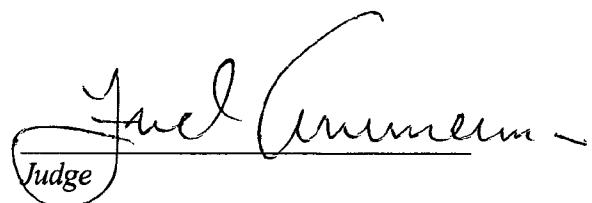
**VERDICT and ORDER**

NOW THIS 30<sup>th</sup> day of April, 2008, following the conclusion of a non-jury trial on March 18, 2008, it is;

ORDERED, ADJUDGED and DECREED, that judgment is entered in favor of Plaintiff and against the Defendant for principal amount of \$135,132.61 plus interest accrued to November 1, 2005 of \$10,785.35, plus additional interest accruing at 18% per annum at the rate of \$66.64 per day (to be added) and Court costs.

*By the Court,*

Date: 4/30/08

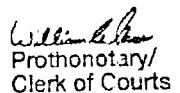


Judge

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

APR 30 2008

Attest.



William L. Baker  
Prothonotary/  
Clerk of Courts

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

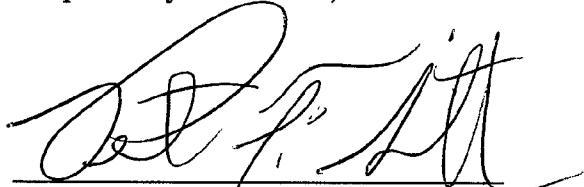
J. J. POWELL , INC.,	:	
Plaintiff	:	No. 2006-652-CD
vs.	:	
SAMUEL D. BRINK d/b/a	:	
BRINK TRANSPORTATION, INC.,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Plaintiff, certify that I delivered a true and correct copy of the **CERTIFIED COPY** of **APRIL 30, 2008 VERDICT and ORDER** and copies of **PRAECIPE to ENTER JUDGMENT and FORM 236** to the Attorney for the Defendant on Amy 1, 2008 by Hand Delivery to the following address:

Dwight D. Koerber, Jr., Esquire  
Attorney at Law  
110 North Second Street  
Clearfield, PA 16830

Respectfully submitted,



Date: May 1, 2008

Peter F. Smith, Esquire  
Attorney for Defendants  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

**FILED**

**MAY 02 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

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

COPY

J. J. POWELL, INC., :  
Plaintiff : No. 2006-652-CD  
:  
vs. :  
:  
BRINK TRANSPORTATION, INC., :  
Defendant :  
:

Notice is given that a judgment has been entered of record in Clearfield County against BRINK TRANSPORTATION, INC. Defendant, and in favor of the Plaintiff in the amount of \$135,132.61, plus interest and costs.

Prothonotary

By Willie Allen 56108, Deputy

Rule of Civil Procedure No. 236

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,  
PENNSYLVANIA  
STATEMENT OF JUDGMENT

CO  
PY

J. J. Powell, Inc.  
Plaintiff(s)

No.: 2006-00652-CD

Real Debt: \$135,132.61 plus interest accrued  
to November 1, 2005, of \$10,785.35, plus  
additional interest accruing at 18% per annum  
at the rate of \$66.64 per day (to be added) and  
Court costs

Atty's Comm: \$

Vs.

Costs: \$

Brink Transportation, Inc.  
Defendant(s)

Int. From: \$

Entry: \$20.00

Instrument: Court-Ordered

Date of Entry: May 2, 2008

Expires: May 2, 2013

Certified from the record this 2nd day of May, 2008.

  
\_\_\_\_\_  
William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on \_\_\_\_\_, \_\_\_\_\_, of defendant full satisfaction of this Judgment,  
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

\_\_\_\_\_  
Plaintiff/Attorney

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

J. J. POWELL, INC., :  
Plaintiff : No. 2006-652-CD  
vs. :  
BRINK TRANSPORTATION, INC., :  
Defendant :

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I delivered a true and correct copy of the Plaintiff's Request for Production of Documents and Plaintiff's Interrogatories, to the Attorney for the Defendant on November 7, 2008 by Hand Delivery to the following address:

Dwight D. Koerber, Jr., Esquire  
Attorney at Law  
110 North Second Street  
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendants  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Date: November 6, 2008

S  
FILED NO CC  
013:55 AM  
NOV 07 2008  
LM  
William A. Shaw  
Prothonotary/Clerk of Courts

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

J. J. POWELL, INC., :  
Plaintiff : No. 2006-652-CD  
vs. :  
BRINK TRANSPORTATION, INC., :  
Defendant :  
: **PLAINTIFF'S REQUEST FOR  
PRODUCTION OF DOCUMENTS  
DIRECTED TO DEFENDANT**  
:  
: Attorney for Plaintiff:  
: J.J. Powell, Inc.  
: Peter F. Smith, Esquire  
: Supreme Court No. 34291  
: 30 South Second Street  
: P.O. Box 130  
: Clearfield, PA 16830  
: (814) 765-5595  
:  
: Attorney for Defendant:  
: Brink Transportation, Inc.  
: Dwight L. Koerber, Jr., Esquire  
: Supreme Court No. 16332  
: 110 North Second Street  
: P.O. Box 1320  
: Clearfield, PA 16830  
: (814) 765-9611

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

J. J. POWELL, INC.,

Plaintiff

No. 2006-652-CD

vs.

BRINK TRANSPORTATION, INC.,

Defendant

**PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO  
DEFENDANTS**

To: Brink Transportation, Inc.,  
C/O Dwight L. Koerber, Esquire  
Attorney for Plaintiffs

COMES NOW, Peter F. Smith, attorney for Plaintiff J.J. Powell, Inc., who kindly requests that you produce the following documents within thirty (30) days of the date below pursuant to Pa.R.C.P. 4009.11:

1. Produce a complete copy of the Defendant's Articles of Incorporation and By-Laws with any Amendments.

2. Produce complete copies of the minutes all shareholder meetings of the Defendant from 1996 to the present.

3. Produce complete copies the minutes of all directors' meetings of the Defendant from 1996 to the present.

4. Produce complete copies of all state and federal income tax returns for the Defendant from 1996 to the present.

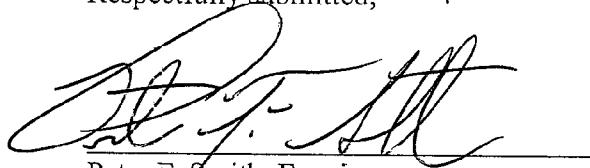
5. Produce complete copies of all profit and loss statements, balance sheets, income statements or other financial statements for the Defendant from 1996 to the present.

6. Produce complete copies of all asset lists, vehicles, inventories or other cataloging of corporate assets owned, leased or operated by the Corporation from 1996 to the present.

7. Produce complete copies of all documents, agreements, and amendments thereto, identified in your answers to the accompanying Interrogatories numbers 11,14,16, 19 and 21.

8. Produce lists of all individuals who have been employed by the Corporation during the preceding 5 years.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiff

Date: 11/7/08

As to Request for Production of Documents,

Date:

\_\_\_\_\_  
Dwight L. Koerber, Jr., Esquire,  
Attorney for Defendant

**VERIFICATION**

I verify that the statements made in this Request for Production of Documents are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Dated: \_\_\_\_\_

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

J. J. POWELL, INC., : Plaintiff : No. 2006-652-CD  
vs. : : Type of Case:  
BRINK TRANSPORTATION, INC., : Defendant : CIVIL  
: :  
: : PLAINTIFF' S  
: : INTERROGATORIES  
: : DIRECTED TO DEFENDANT  
: :  
: : Attorney for Plaintiffs:  
: : J.J. Powell, Inc.  
: : Peter F. Smith, Esquire  
: : Supreme Court No. 34291  
: : 30 South Second Street  
: : P.O. Box 130  
: : Clearfield, PA 16830  
: : (814) 765-5595  
: :  
: : Attorney for Defendant:  
: : Brink Transportation, Inc.  
: : Dwight L. Koerber, Jr., Esquire  
: : Supreme Court No. 16332  
: : 110 N. Second Street  
: : P.O. Box 130  
: : Clearfield, PA 16830  
: : (814)765-9611

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

J. J. POWELL, INC.,	:	
Plaintiff	:	No. 2006-652-CD
vs.	:	
BRINK TRANSPORTATION, INC.,	:	Type of Case:
Defendant	:	CIVIL
	:	
	:	
	:	

**PLAINTIFF'S INTERROGATORIES DIRECTED TO DEFENDANT**

To: Brink Transportation, Inc.  
C/O Dwight L. Koerber, Jr., Esquire  
Attorney for Defendant

**You are directed to file Answers to the following Interrogatories within thirty (30) days of service upon you. These Interrogatories are submitted pursuant to Pa.R.C.P. 4005 and 3117. These Interrogatories are intended to be of a continuing nature, and your Answers thereto must be supplemented in a timely fashion.**

## INSTRUCTIONS AND DEFINITIONS

A. The following Interrogatories call not only for the knowledge of the Defendant, but also for all knowledge that is available to the Defendant by reasonable inquiry, including inquiry of Defendant's representative, agents, employees, and if not privileged, the Defendant's attorney. These interrogatories are considered to be continuing and therefore should be modified or supplements as you receive further or additional information.

B. And/or. "And" and "or" shall be construed conjunctively and disjunctively to mean either "and" or "or," whichever shall be the more inclusive in the context in which it was used.

C. Complaint. The "Complaint" shall mean the Plaintiffs' complaint which your counsel filed on your behalf in this action.

D. Describe. The term "describe" shall mean to describe specifically and in detail.

E. Documents. The term "documents" shall mean every original (or an identical copy if the original is unavailable), and every copy which differs in any way from the original, of every writing, recording or other tangible expression, whether handwritten, typed, drawn, sketched, printed, or recorded by any physical, mechanical, electronic, or electrical means whatsoever, and shall be construed to the fullest extent of Rule 34 of the Pennsylvania Rules of Civil Procedure.

F. Each/any. The term "each" shall include the word "every" and "every" shall include the word "each." "Any" shall include the word "all" and "all" shall include the word "any."

G. Identify.

When used with reference to a person, "identify" shall mean to state the full name, social security number, occupation, employer, last known business and residence address, and telephone number of such person.

When used with reference to a document, "identify" shall mean to state the date the document bears, its author(s), addressee(s), other recipient(s), location and a brief description of its form (e.g., memorandum, letter, note, x-ray, advertisement, etc.) and contents, and to identify all persons having possession, custody or control over the document.

When used with reference to any book, article, published report or other publication, "identify" shall mean to provide the title of the book, article, published report or

other publication, the name of the author(s) and publisher, the issue number, volume number, edition number and date.

When used in reference to communication, "identify" shall mean to state the participants in each such act or communication, the witnesses thereto, and the date of its occurrence; to describe the act or state the substance of the communication; to state whether such act was recorded or described in a document and, if so, to identify all persons having possession, custody, or control over the document.

H. Number/Gender. The use of the singular form of any word includes the plural, and vice versa. The use of the masculine gender includes the feminine, and vice versa.

I. Defendant/You. The term "Defendant" and "you" and any variants thereof, shall mean the Defendant Brink Transportation, Inc. and its employees, agents, attorneys and other persons acting (or who acted) or purporting to act (or who purported to act) on its behalf.

J. Person. The term "person" shall mean any natural person or any business, legal, or governmental entity or association.

K. Relating To/Related To. The terms "relating to" and "related to" shall mean, without limitation, containing, comprising, constituting, stating, setting forth, recording, describing, discussing, reflecting, interpreting, identifying, concerning, referring to, evidencing, confirming, supporting, contradicting, controverting, or in any way pertaining to, in whole or in part, that subject to which it refers or that contention to which it refers.

L. State. The term "state" shall mean to state specifically and in detail.

## INTERROGATORIES

1. Please identify by full name and business address, all individuals who participated in the preparation of the answers to these Interrogatories.

2. Identify by full name, title and residential address all individuals who have served as officers of the Defendant Corporation since the Corporation's creation in 1996 to the present.

3. List the annual compensation and any other benefits, including the value of those benefits paid or provided to each officer from its creation in 1996 to the present.

4. Identify by full name and residential address all individuals who have served as directors of the Defendant Corporation since the Corporation's creation in 1996 to the present.

5. List the annual compensation and any other benefits, including the value of those benefits paid or provided to each director from its creation in 1996 to the present.

6. Identify by full name, title and business address all individuals and/or firms who have served as accountants, business consultants or in any other advisory capacity to the Defendant Corporation since the Corporation's creation in 1996 to the present.

7. Identify by full name and business address of the ten largest customers of the corporation based on annual billing by the Defendant Corporation for each year since the Corporation's creation in 1996 to the present.

8. Provide all addresses where any and all corporate records, including but not limited to, the corporate minute book, the corporate seal, corporate minutes, the corporate stockbook, the shareholder register, business records, bank statements, tax returns, financial statements are kept and identified by full name and title, any and all custodians of those records at each respective location.

9. Identify by full name and residential address all individuals or other entities who or which have been shareholders of the Corporation since its inception in 1996 to present and in so doing state the number of shares owned by each for each year since 1996.

10. List by date and value all contributions of capital by shareholders to the Corporation either in cash or in kind.

11. List by date and amount all loans by shareholders to the Corporation and indicate if the loan is represented by a note or other writing, and state the payment history of the loan and the current balance owing, if any.

12. List by date and amount all dividends paid by the Corporation to its shareholders each year from its inception in 1995 to the present.

13. List by date and amount all other distributions of any type of property by the Corporation to its shareholders either in cash or in kind from its inception in 1996 to the present.

14. List by date, interest rate and amount all loans by the Corporation to officers, directors and/or shareholders, and/or their spouses, parents, children or business entities in which they have an interest from its inception in 1996 to the present and state the history of repayment of each and if it is represented by a note or other writing.

15. State the annual compensation and benefit package paid to and/or provided by the Corporation to its 5 most highly compensated employees for each year from 1996 to the present.

16. List all leases, sales agreements, employment contracts, installment sales agreements, options or other contracts or agreements of the Corporation with a cumulative value exceeding \$1,000, and in so doing indicate whether the agreement is written or verbal, state its date, identify the parties and their addresses and briefly describe the agreement's subject matter.

17. Identify by street or 911 address all offices, garages and other real estate locations, owned, occupied, used or rented by the Corporation.

18. Does the Defendant share any portion of these facilities with any other individual, corporation, business or other entity and if so, identify that party by full name and business address.

19. List all Corporate assets with value exceeding \$500 (with a cumulative value exceeding \$500 if the asset is fungible or part of a set or a system) which have been sold or transferred, or in which an interest has been sold, transferred or leased from 1996 to the present and in so doing identify the asset, the date of the sale or transfer, transferees or all other parties involved, and the consideration received by the Defendant, and state if each transfer was memorialized by a contract, receipt, bill of sale or other writing.

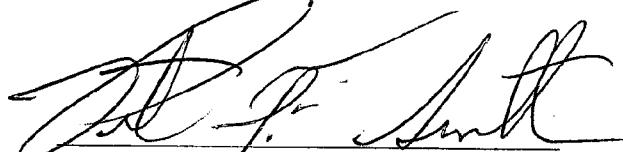
20. Identify by full name, address and account number all banks, brokerage firms, savings and loans or other financial institutions with which the Defendant has had deposit, checking or other business relationships from 1996 to the present.

21. List all loans, lines of credit, open accounts, charge accounts, credit card accounts or other financing engaged by or provided to the Defendant from 1996 to present and in so doing identify by full name and address the lender, the purpose of the loan, the amount of the loan, its rate of interest, the current payment status of the loan and any collateral securing repayment of each loan and state if each is represented by a note or other writing.

22. Were any of the loans listed in your preceding answer guaranteed by an individual, and if so, identify by full name and address that individual.

23. List each and every lawsuit brought against the Defendant in any court or jurisdiction from 1996 to the present and in so doing identify the Court and case number, name all parties to the litigation, and briefly describe the subject matter of the litigation and its current status or outcome.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendant

Date: November 7, 2008

AS TO ANSWERS TO INTERROGATORIES:

Date:

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Dwight L. Koerber, Jr., Esquire,  
Attorney for Defendant

**VERIFICATION**

I verify that the statements made in these Answers to Interrogatories are true and correct.

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

Dated: \_\_\_\_\_

**FILED**

NOV 07 2008

William A. Shaw  
Prothonotary/Clerk of Courts