

DC Guelich Explosive vs No 1 Contracting
2006-670-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

NO. 1 CONTRACTING CORPORATION,

Defendant.

No. *06-670-CD*

COMPLAINT

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. G0063332

FILED *Any pd.*
03/11:47/84 *85.00*
MAY 01 2006
accShaf

William A. Shaw
Prothonotary/Clerk of Courts

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

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No.

NO. 1 CONTRACTING CORPORATION,

Defendant.

NOTICE AND COMPLAINT

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 upon you, 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.

Lawyer Referral Service
PA Bar Association
P.O. Box 186
Harrisburg, PA 17108
1-800-692-7375

COMPLAINT

1. Plaintiff D. C. Guelich Explosive Company ("Guelich") is a Pennsylvania corporation maintaining principal offices and place of business at Clearfield, Pennsylvania.

2. Defendant No. 1 Contracting Corporation is a Pennsylvania corporation maintaining principal offices and place of business at 1001 Wilkes-Barre Township Blvd., Wilkes-Barre, Luzerne County, PA 18702 with a mailing address of 49 South Main Street, Ashley, Luzerne County, PA 18706.

3. The actions and events out of which this cause of action arises occurred in Luzerne County, Pennsylvania. However, payments under the contract were to be made to Plaintiff at its main office in Clearfield, Pennsylvania. This Court therefore has both subject matter jurisdiction and venue over the case.

4. On various dates between September of 2005 and March of 2006, Guelich, at the specific request of No. 1 Contracting Corporation, sold and delivered to No. 1 Contracting Corporation various explosive goods and services at the times, in the amounts and for the prices listed on Plaintiff's Invoices with supporting drilling and shipping records, referenced on Plaintiff's Statement, a true and correct copy of which is attached hereto marked as Exhibit "1" and made a part hereof.

5. Defendant No. 1 Contracting Corporation received and accepted each of the aforementioned goods and services for prices, which were agreed upon at the time of the delivery as evidenced by Guelich's Invoices and shipping records, true and correct copies of which are attached hereto, marked collectively as Exhibit "2", and made a part here of.

6. Despite the occurrence of all conditions precedent, Defendant No. 1 Contracting Corporation failed and refused to pay Guelich the principal sum due.

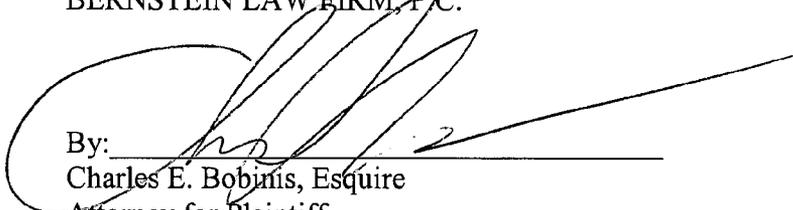
7. The total amount of principal and finance charges due through April 30, 2006, amount to \$13,373.96, per Exhibit "1".

8. Although repeatedly requested to pay, Defendant has failed and refused to pay the aforesaid sums justly due and owing to Guelich.

WHEREFORE, D. C. Guelich Explosive Co. demands Judgment on this Complaint against Defendant No. 1 Contracting Corporation in the amount of \$13,373.96, plus appropriate additional interest at the contractual rate from April 30, 2006, plus record costs and such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
Attorney for Plaintiff
PA I.D. #30665
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

BERNSTEIN FILE NO. G0063332

D.C. GUElich EXPLOSIVE CO.
1442 18 HOLLOW ROAD
CLEARFIELD PA 16830

STATEMENT

PAGE NO
1

STATEMENT DATE
4/30/2006

ACCOUNT NUMBER
30NO1C

NO 1 CONTRACTING
 49 SOUTH MAIN STREET
 ASHLEY, PA 18706

| REFERENCE | DATE | CODE | DESCRIPTION | AMOUNT | BALANCE |
|-----------|------------|------|-------------------------|-----------|-----------|
| 7763 | 9/7/2005 | I | Po: Our Ord: 7763 | 321.27 | 321.27 |
| 7770 | 9/9/2005 | I | Po: Our Ord: 7770 | 153.20 | 474.47 |
| 7782 | 10/4/2005 | I | Po: Our Ord: 7782 | 12,071.99 | 12,546.46 |
| 7805 | 10/31/2005 | I | Po: Our Ord: 7805 | 70.48 | 12,616.94 |
| 20060131 | 1/31/2006 | F | Cus:30NO1C Fch:20060131 | 252.34 | 12,869.28 |
| 20060228 | 2/28/2006 | F | Cus:30NO1C Fch:20060228 | 252.34 | 13,121.62 |
| 20060331 | 3/31/2006 | F | Cus:30NO1C Fch:20060331 | 252.34 | 13,373.96 |

| | | | |
|--|---|-------------------------------|------------------|
| Codes: I = Invoice C = CR Memo D = DR Memo | P = Payment A = Discount Allowed F = Finance Charge | Please Pay This Amount | 13,373.96 |
|--|---|-------------------------------|------------------|

| | | | | |
|-------------|-------------------|-----------------|-----------------|----------------------|
| Aged Total: | CURRENT 252.34 | OVER 30 0.00 | OVER 45 0.00 | OVER 60 13,121.62 |
|-------------|-------------------|-----------------|-----------------|----------------------|

EXHIBIT!..

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE DATE: 10/31/05
 INVOICE NO.: 00007805
 PAGE: 1

invoice

OLD TO: NO. 1 CONTRACTING
 48 SOUTH MAIN STREET
 ACILEY, PA 15706

SHIP TO: JEANVILLE

ORDER NO. 7805 ORDER DATE 10/31/05 CUSTOMER NO. 180201C TERMS NET 30 DA PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|--------------------|------------|----------|--------|
| 4.00 | | 150 | MEDIUM ULTRA 1 1/4 | 3.2338 | LB | 12.94 |
| 4.00 | | 1402400 | SHOULDER 24' 25/5 | 6.1774 | EA | 24.71 |
| 5.00 | | 1802042 | EXEL CTD 20' #42 | 4.8105 | EA | 24.03 |
| 1.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 7.37 |
| 1.00 | | 20 | SECURITY COMPLIA | 1.3500 | EA | 1.38 |

2% Finance charge on all
 Over 30 Day Balances

EXHIBIT...2

OFFICE

| | |
|---------------|-------|
| SALES AMOUNT | 70.48 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 70.48 |
| PAYMENT REC'D | .00 |
| BALANCE DUE | 70.48 |

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE DATE: 10/04/05
 INVOICE NO: 00007782
 PAGE: 1

invoice

ORDER NO: 7782
 ORDER DATE: 10/04/05
 CUSTOMER NO: 30001C
 TERMS: NET 30 DAYS
 PURCHASE ORDER NO:
 SHIP DATE:
 SHIP VIA: OUR TRUCK

SHIP TO: LANCASTER, PA 17606

ORDER NO. 7782 ORDER DATE 10/04/05 CUSTOMER NO. 30001C TERMS NET 30 DAYS PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|---------------------|------------|----------|----------|
| 198.00 | | 101 | #1 SUPER PRIME 600S | 3.6000 | EA | 764.28 |
| 218.00 | | 300 | RED-D-PRIME 1 1/4 X | 1.4490 | LB | 312.98 |
| 3330.00 | | 351 | APEX PLUS 98AP 5 X | .7008 | LB | 2,333.66 |
| 220.00 | | 312 | APEX ULTRA 3 X 16 | .7437 | EA | 163.61 |
| 350.00 | | 407 | POWER PAK 48 5 X 25 | .5409 | LB | 189.32 |
| 17500.00 | | 12 | BULK ANFO | .3126 | LB | 5,470.50 |
| 31.00 | | 1408000 | HANDIDET 80' 25/5 | 13.4600 | EA | 417.26 |
| 69.00 | | 1406000 | HANDIDET 60' 25/5 | 11.1711 | EA | 770.91 |
| 42.00 | | 1403000 | HANDIDET 30' 25/5 | 7.3739 | EA | 309.70 |
| 56.00 | | 1402400 | HANDIDET 24' 25/5 | 6.1774 | EA | 345.93 |
| 29.00 | | 1902017 | LEVEL CTD 20' #17 | 4.8166 | EA | 134.66 |
| 10.00 | | 1902025 | LEVEL CTD 20' #25 | 4.8166 | EA | 48.17 |
| 1.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 7.37 |
| 945.00 | | 4 | HOLES LINED | .4219 | EA | 398.70 |
| 310.00 | | 4 | HOLES LINED | .4219 | EA | 130.79 |
| 20.00 | | 99008 | PIPE | .4329 | EA | 8.66 |
| 6.00 | | 1 | CONNECTING WIRE | 4.7900 | LB | 28.68 |
| 1.00 | | 20 | 2% SECURITY COMPLIA | 236.7100 | EA | 236.71 |

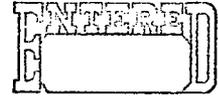
2% Finance Charge on all
 Over 30 Day Balances

SALES AMOUNT 12,071.99
 MISC. CHARGES .00
 FREIGHT .00
 SALES TAX .00
 TOTAL 12,071.99
 PAYMENT REC'D .00
 BALANCE DUE 12,071.99

OFFICE

D.C. GUELICH EXPLOSIVE CO.

P.O. BOX 29, BLOOMSBURG, PA 17815
570-784-4759 • 570-784-4378 • FAX 570-784-4958



SHIPPING RECORD

DATE: 10-4-05

OPC/DEALER ORDER NO.

LICENSE/PERMIT NO.

ORDER/DEL TICKET NO. 7782

SIGNATURE: *[Handwritten Signature]*

CUSTOMER/MAG/DISTRIB: *40 / Can Contracting / Jousville Pa*

| ITEM DESCRIPTION | | | | NUMBER OF CASES | DATE CODE | TOTAL QUANTITY SHIPPED |
|--------------------------------|------------------------|---------------------|-----------------------------|-----------------|-----------|------------------------|
| CL | GRADE POWDER/TYPE CAPS | SIZE | STYLE POWDER/NUMBER OF CAPS | | | |
| HE | Trojan Busters | 1 ^{1/2} | | | | 198 |
| HE | Austin Red D-Prime | 1 ^{1/4} x8 | | | | 216 |
| BA | Apex Plus | 5x30 | | | | 3330 |
| BA | Apex Ultra | 3x16 | | | | 220 |
| BA | Power Pak 48 | 5x25 | | | | 350 |
| BA | NCN Bulk | Bulk | | | | 17,500 |
| HE | Handidet 25/500 | 80' | 31-RS | | | |
| HE | Handidet 25/500 | 60' | 69-RS | | | |
| HE | Handidet 25/500 | 30' | 42-RS | | | |
| HE | Handidet 25/500 | 24' | 56-RS | | | |
| HE | CTD " 17ms | 20' | 28-RS | | | |
| HE | CTD " 25ms | 30' | 10-RS | | | |
| HE | EBC "D Instant | 12' | 1-RS | | | |
| | Bore Hole Liner | 6 ^{1/2} " | 945' | | | |
| | Bore Hole Liner | 4" | 310' | | | |
| | Plastic Pipe | 3" | 20' | | | |
| | Conn Wire | 2000 | 6 ^{1/2} | | | |
| <i>[Handwritten Signature]</i> | | | | | | |

Item should be 7782 not 7781

@ \$1,4490

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE
 DATE

INVOICE
 NO.

PAGE

09/09/05

00007770

1

invoice

TO: NO 1 CONTRACTING
 49 SOUTH MAIN STREET

SHIP TO: CLEARFIELD

ASHLEY, PA 16708

ORDER NO. 7770 ORDER DATE 09/09/05 CUSTOMER NO. 000010 TERMS NET 30 DAYS PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|--------------------|------------|----------|--------|
| 11.00 | | 147 | POWEREX PLUS 2 X 8 | 3.2398 | LB | 35.57 |
| 25.00 | | 13 | ASSG. ANFO | .2913 | LB | 7.28 |
| 11.00 | | 1401600 | LANDIET 16' 25/5 | 4.9387 | EA | 54.22 |
| 4.00 | | 1902017 | EXEL CTD 20' #17 | 4.9166 | EA | 19.27 |
| 2.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 14.74 |
| 4.00 | | 1 | CONNECTING WIRE | 4.7600 | LB | 19.12 |
| 1.00 | | 20 | SECURITY COMPLIA | 3.0000 | EA | 3.00 |

2% Finance Charge on all
 Over 30 Day Balances

| | |
|---------------|--------|
| SALES AMOUNT | 153.20 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 153.20 |
| PAYMENT REC'D | .00 |
| BAI ANCF DUH | 153.20 |

OFFICE

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE DATE: 09/07/05
 INVOICE NO.: 00007753
 PAGE: 1

invoice

LD NO: 1 CONTRACTING
 49 SOUTH MAIN STREET
 ABILEY, PA 16706

SHIP TO: CLEARFIELD

ORDER NO. 7754 ORDER DATE 09/07/05 CUSTOMER NO. 30N01C TERMS NET 30 DAYS PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|--------------------|------------|----------|--------|
| 22.00 | | 147 | POWEREX PLUS 2 X 8 | 3.2538 | LB | 71.14 |
| 200.00 | | 13 | BAGGED ANFO | .2913 | LB | 58.26 |
| 22.00 | | 1401600 | HANDIDET 16' 25/5 | 4.8387 | EA | 108.43 |
| 6.00 | | 1902017 | EXEL CTD 20' #17 | 4.8106 | EA | 28.90 |
| 1.00 | | 1902025 | EXEL CTD 0' #25 | 4.8166 | EA | 4.82 |
| 2.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 14.74 |
| 6.00 | | 1 | CONNECTING WIRE | 4.7800 | LB | 28.68 |
| 1.00 | | 20 | SECURITY COMPLIA | 6.3000 | EA | 6.30 |

2% Finance Charge on all
 Over 30 Day Balances

SALES AMOUNT 321.27
 MISC. CHARGES .00
 FREIGHT .00
 SALES TAX .00
 TOTAL 321.27
 PAYMENT REC'D .00
 BALANCE DUE 321.27

OFFICE

VERIFICATION

The undersigned does hereby verify under penalty of perjury, that he/she is the President of D.C. Guelich Explosive Co., Plaintiff herein, that he/she is duly authorized to make this Verification, and that the facts set forth in the foregoing COMPLAINT are true and correct to the best of his/her knowledge, information and belief.

A handwritten signature in blue ink, appearing to read "D. C. Guelich", is written over a horizontal line.

(Sign in Blue Ink)

FILED

MAY 01 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101503
NO: 06-670-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: D.C. GUELICH EXPLOSIVE CO.
vs.
DEFENDANT: NO. 1 CONTRACTING CORPORATION

SHERIFF RETURN

NOW, May 02, 2006, SHERIFF OF LUZERNE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON NO. 1 CONTRACTING CORPORATION.

NOW, May 20, 2006 AT 2:44 PM SERVED THE WITHIN COMPLAINT ON NO. 1 CONTRACTING CORPORATION, DEFENDANT. THE RETURN OF LUZERNE COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED
0/3:0330
MAY 24 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101503
NO: 06-670-CD
SERVICES 1
COMPLAINT

PLAINTIFF: D.C. GUELICH EXPLOSIVE CO.
vs.
DEFENDANT: NO. 1 CONTRACTING CORPORATION

SHERIFF RETURN

RETURN COSTS

| Description | Paid By | CHECK # | AMOUNT |
|-----------------|-----------|---------|--------|
| SURCHARGE | BERNSTEIN | 36442 | 10.00 |
| SHERIFF HAWKINS | BERNSTEIN | 36442 | 21.00 |
| LUZERNE CO. | BERNSTEIN | 36443 | 26.00 |

Sworn to Before Me This

_____ Day of _____ 2006

So Answers,



Chester A. Hawkins
Sheriff

Luzerne County Sheriff's Department
Luzerne County Courthouse



200 North River Street
Wilkes-Barre, Pennsylvania 18711
(570) 825-1651

CLEARFIELD COUNTY
06-670-CD
D.C. GUELICH EXPLOSIVE COMPANY
VS
NO 1 CONTRACTING CORP.

STATE OF PENNSYLVANIA
LUZERNE COUNTY, SS:

TARA OSMULSKI, DEPUTY SHERIFF, for SHERIFF of said county, being duly sworn according to law, deposes and says, that on FRIDAY the 5TH day of MAY 20 06 at 2:44 P. M., prevailing time, he served the within

NOTICE AND COMPLAINT

upon NO 1 CONTRACTING CORP.

the within named, by handing to MELANIE A. SHAAK - OFFICE MANAGER
the person for the time being in charge at THE OFFICE, 49 SOUTH MAIN STREET, ASHLEY,

in the County of Luzerne, State of Pennsylvania, a true and attested copy and making known the contents thereof.

Sworn to and subscribed before me

Sheriff of Luzerne County

this 11TH day of MAY 20 06

Prothonotary of Luzerne County

by Tara J. Osmulski
Deputy Sheriff of Luzerne County, Pennsylvania



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 101503

D.C. GUELICH EXPLOSIVE CO.

vs.

NO. 1 CONTRACTING CORPORATION

TERM & NO. 06-670-CD

COMPLAINT

SERVE BY: 05/31/06

MAKE REFUND PAYABLE TO BERNSTEIN LAW FIRM, P.C.

SERVE: NO. 1 CONTRACTING CORPORATION

ADDRESS: 1001 WILKES-BARRE TOWNSHIP BLVD., WILKES-BARRE, PA 18702
-or- 49 S. Main St., Ashley, Pa. 18706

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 LUZERNE COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, May 02, 2006.

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

DIRECTIONS TO SHERIFF

To the Sheriff of LUZERNE, County

Re: D.C. GUELICH EXPLOSIVE CO.
Plaintiff(s)

vs.

No. _____, 20__

NO. 1 CONTRACTING CORPORATION
Defendant(s)

Last Day to Serve _____

Please serve: Please serve the Complaint on No. 1 Contracting Corporation at 1001 Wilkes-Barre Township Blvd., Wilkes-Barre, PA 18702 or 49 S. Main Street, Ashley, PA 18706

Date: April 28, _____, 20 06

BERNSTEIN LAW FIRM, P.C.
Suite 2200 Gulf Tower, Pittsburgh, PA 15219
(412) 456-8100

Deputy:

ATTEMPTS

How Served _____

Date and Time of Service _____

Place Served _____

If Residence Service, State Relationship of Party Served to Defendant

If served at place of business, state Relationship of Party Served to Defendant,
and if Individual Defendant, efforts made to get Residence Service

Date of Report _____, 20__

Deputy Sheriff

FILED

MAY 24 2006

William A. Shaw
Prothonotary/Clerk of Courts

Charles E. Gutshall, Esquire
Attorney I.D. No. 39702
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

D.C. GUELICH EXPLOSIVE CO.

Plaintiff

v.

NO. 1 CONTRACTING
CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

FILED

JUN 22 2006

M/12:05/WAY
William A. Shaw
Prothonotary
3 CERT TO AF17

ANSWER

NOW COMES Defendant, No. 1 Contracting Corporation ("Defendant" or "No. 1 Contracting"), by and through its counsel, Rhoads & Sinon LLP, and files the within Answer to Plaintiff, D.C. Guelich Explosive Co.'s ("Plaintiff" or "Guelich") Complaint, and in support thereof avers as follows:

1. After reasonable investigation, Defendant is without knowledge or information sufficient to form a believe as to the truth of the averments contained in this paragraph.

Therefore, all allegations contained in this paragraph are specifically denied.

2. Admitted.

3. Admitted in part and denied in part. It is admitted that No. 1 Contracting purchased goods and services from Plaintiff in Luzerne County, Pennsylvania. It is also admitted that No. 1 Contracting made payment to Plaintiff in Clearfield, Pennsylvania. The remaining allegations contained in this paragraph constitute a legal conclusion for which no

responsive pleading is required. To the extent any further response is required, all remaining allegations contained in this paragraph are specifically denied.

4. Admitted in part and denied in part. It is admitted that between September of 2005 and March of 2006, Guelich, at the specific request of No. 1 Contracting, sold and delivered to No. 1 Contracting various explosive goods and services which amounted to \$12,616.94. By way of further response, Exhibit 1, purporting to be Plaintiff's Statement is a document which speaks for itself. To the extent the documents attached as Exhibit 1 do not reflect the aforementioned amount, the allegations contained in this paragraph are specifically denied.

5. Admitted in part and denied in part. It is admitted that No. 1 Contracting received and accepted the aforementioned goods. By way of further response, the price agreed upon by the parties was \$12,616.94. Exhibit 2, purporting to be Guelich's invoices and shipping records, are documents which speak for themselves. To the extent the documents do not reflect the aforesaid amount, the allegations in this paragraph are specifically denied.

6. Admitted in part and denied in part. It is admitted that No. 1 Contracting has yet to make full payment for the principal sum due to Guelich. It is specifically denied that No. 1 Contracting has refused to pay Guelich the principal sum. By way of further response, No. 1 Contracting has informed Guelich that as a result of its accounts receivable building up, it could not make immediate full payment. Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary industry customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. (A copy of the check along with the June 20, 2006 letter that accompanied it is attached hereto as Exhibit "A".) Thus, Guelich is not

entitled to the amount claimed in its Complaint. To the extent any further response is required, all remaining allegations are specifically denied.

7. Denied. Exhibit 1 is a document which speaks for itself. The price agreed upon by the parties was \$12,616.94. It is specifically denied that that Guelich is entitled to any finance charges. By way of further response, No. 1 Contracting has informed Guelich that as a result of its accounts receivable building up, it could not make immediate full payment. Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. (See Ex. A.) Thus, Guelich is not entitled to the amount claimed in its Complaint. To the extent any further response is required, all remaining allegations are specifically denied.

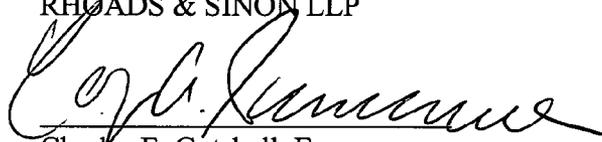
8. Admitted in part and denied in part. It is admitted that No. 1 Contracting has yet to make full payment for the principal sum due to Guelich. It is specifically denied that No. 1 Contracting has refused to pay Guelich the principal sum. By way of further response, No. 1 Contracting has informed Guelich that as a result of its accounts receivable building up, it could not make immediate full payment. Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. (See Ex. A.) Thus, Guelich is not entitled to the amount claimed in its Complaint. To the extent any further response is required, all remaining allegations are specifically denied.

WHEREFORE, No. 1 Contracting respectfully requests this Court to dismiss Plaintiff's Complaint and award No. 1 Contracting all of the relief as this Court deems equitable and just.

Respectfully submitted,

RHOADS & SINON LLP

By:



Charles E. Gutshall, Esq.

Cory A. Iannacone, Esq.

One South Market Square

P.O. Box 1146

Harrisburg, PA 17108-1146

(717) 233-5731

Attorneys for

No. 1 Contracting Corporation

EXHIBIT “A”



NO. 1 CONTRACTING CORPORATION

49 SOUTH MAIN STREET
ASHLEY, PENNSYLVANIA 18706
PHONE: 570-823-0325 FAX: 570-823-9962

June 20, 2006

D.C. Guelich Explosive Co.
1442 18 Hollow Rd.
Clearfield, Pa. 16830

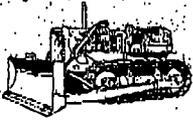
Dear Mr. Guelich:

Enclosed please find an initial installment payment in the amount of \$3,154.24 to be applied to the principal amount due by No. 1 Contracting Corporation to D.C. Guelich Explosive Company for goods and services provided to No. 1 Contracting during the time period of September 2005 to March 2006. As previously mentioned, as a result of its high accounts receivable, No. 1 Contracting is making these installment payments in order to satisfy the principal amount due of \$12,616.94.

Thank you for your cooperation. Please contact me with any questions or concerns you may have.

Sincerely,

Melanie Shaak
Office Manager
No. 1 Contracting Corporation



No. 1 Contracting Corporation
 49 SOUTH MAIN STREET
 ASHLEY, PA 18706
 PHONE: (570) 823-0325

FIRST NATIONAL COMMUNITY BANK
 DUNMORE, PA

60-313/313

1300

6/20/2006

PAY TO THE ORDER OF D.C. GUELICH

\$ **3,154.24

Three Thousand One Hundred Fifty-Four and 24/100***** DOLLARS

D.C. GUELICH EXPLOSIVE CO.
 1442 18 HOLLOW ROAD
 CLEARFIELD, PA 16830

CE

MEMO

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE. RED IMAGE DISAPPEARS WITH HEAT.

⑈001300⑈ ⑆031303132⑆ ⑆56 5011325⑈

NO. 1 CONTRACTING CORPORATION
 ASHLEY, PA 18706

D.C. GUELICH

1300

6/20/2006

| Date | Type | Reference | Original Amt. | Balance Due | Discount | Payment |
|------------|------|-----------|---------------|--------------|----------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

FNCB

3,154.24

NO. 1 CONTRACTING CORPORATION
 ASHLEY, PA 18706

D.C. GUELICH

1300

6/20/2006

| Date | Type | Reference | Original Amt. | Balance Due | Discount | Payment |
|------------|------|-----------|---------------|--------------|----------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

FNCB

3,154.24

BP3001-1

REORDER FROM YOUR LOCAL SAFEGUARD DISTRIBUTOR. IF UNKNOWN, CALL 800-523-2422

SAFEGUARD LITHO IN USA 5751788 6/25/00 115

6111HZ010000 L015/0320998

VERIFICATION

Melanie Shaak, deposes and says, subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, on behalf of No. 1 Contracting Corporation, that she makes this verification by her authority and that the facts set forth in the Answer are true and correct to the best of her knowledge, information and belief.

6/20/00
Date

Melanie Shaak
Melanie Shaak

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2006, a true and correct copy of the foregoing Answer was served by means of United States mail, first class, postage prepaid, upon the following:

Charles E. Bobinis, Esq.
Bernstein Law Firm, P.C.
Suite 2200 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1900s
Attorneys for Plaintiff



FILED

JUN 22 2006

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

NO. 1 CONTRACTING CORPORATION,

Defendant.

No. 06-670-CD

PLAINTIFF'S PRAECIPE FOR JUDGMENT
BY ADMISSION AGAINST THE
DEFENDANT PURSUANT TO
PENNSYLVANIA RULE OF CIVIL
PROCEDURE 1037(b)

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. G0063332

FILED *pt \$20.00 Atty*
m/11:15am *(S)* *Notice to deflt + Atty*
AUG - 7 2006 *Statement to Atty*
No CC.

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

**PLAINTIFF'S PRAECIPE FOR JUDGMENT BY ADMISSION AGAINST THE
DEFENDANT PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1037(b)**

AND NOW COMES Plaintiff, by counsel, to instruct the Prothonotary to enter Judgment by Admission against the Defendant pursuant to Pennsylvania Rule of Civil Procedure 1037(b) for that relief admitted to be due by the Defendant in its Answer, as follows:

1. Plaintiff D.C. Guelich Explosive Co. brought this civil action against the Defendant No. 1 Contracting Corp. in order to recover from the Defendant the principal sum of \$12,616.94, plus service charges through March 31, 2006, or total of \$13,373.96, plus additional interest at the contractual rate from April 30, 2006, plus record costs.

2. The Defendant has filed an Answer in which the Defendant has admitted that the principal sum claimed by Plaintiff, \$12,616.94, is due and owing to the Plaintiff, but Defendant denies the Plaintiff's entitlement to contractual service charges at the rate of 1½% per month as shown by true and correct copy of the Defendant's Answer of record.

3. Defendant further alleges that the Defendant has made a partial payment on the account since the institution of the suit of \$3,154.24, reducing the principal balance to \$9,462.70.

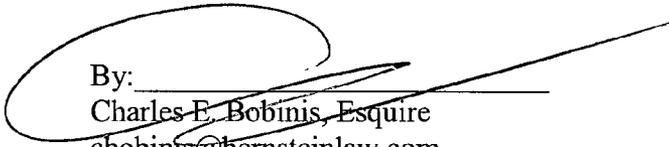
4. Regardless of Plaintiff's entitlement to service charges at the contractual rate of 1½% per month, there is no dispute that Plaintiff is entitled to legal interest at the rate of 6% per annum on the liquidated debt under the laws of the Commonwealth of Pennsylvania. *Miller v. Reading*, 369 Pa. 471, 87 A.2d 223 (Pa., 1952).

5. Legal interest on the undisputed amount through August 5, 2006, amounts to no less than \$9,973.88, as shown by the numerical calculation of said sum on the schedule attached as Exhibit "1."

Accordingly, the principal amount due and owing to Plaintiff being admitted by the Defendant, and being liquidated as a matter of law based on the admissions by the Defendant to a sum certain, the Prothonotary is hereby instructed by counsel for Plaintiff to enter Judgment by Admission against the Defendant No. 1 Contracting Corporation in the amount of \$9,973.88, plus additional legal interest from September 1, 2006, plus costs, pursuant to Pennsylvania Rule of Civil Procedure 1037(b).

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
cbobinis@bernsteinlaw.com
PA ID #30665
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

BERNSTEIN FILE NO. G0063332

| | | |
|----|--|------------|
| 1. | Latest date October 4, 2005, invoice due November 4, 2005. | |
| 2. | Legal interest on \$12,616.94 from November 4, 2005 to June 4, 2006, | \$ 416.56 |
| 3. | Legal interest on \$9,462.70 (\$12,616.94 - \$3,154.24 partial payment), from June 5, 2006 to August 4, 2006, | \$ 94.62 |
| 4. | Total legal interest of remaining balance from November 4, 2005 to August 4, 2006, | \$ 511.18 |
| 5. | \$9,462.70 (principal), plus \$511.18 (interest) equals current balance | \$9,973.88 |

EXHIBIT "1"

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

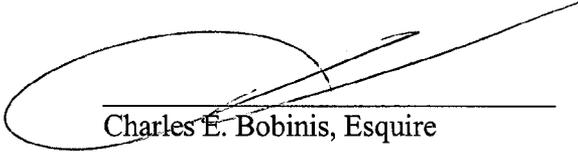
NO. 1 CONTRACTING CORPORATION,

Defendant.

CERTIFICATE OF SERVICE

I, Charles E. Bobinis, Esquire, hereby certify that a true and correct copy of the PLAINTIFF'S PRAECIPE FOR JUDGMENT BY ADMISSION AGAINST THE DEFENDANT PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1037(b) was served on the following parties by regular U.S. Mail, postage prepaid, this 4th day of August, 2006, addressed as follows:

Cory A. Iannacone, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146



Charles E. Bobinis, Esquire

FILED

AUG - 7 2008

William A. Shaw
Prothonotary

BERNSTEIN
LAW FIRM, P.C.

TRADITION • TECHNOLOGY • TALENT

BOARD-CERTIFIED IN CREDITORS' RIGHTS
BY THE AMERICAN BOARD OF CERTIFICATION

CHARLES E. BOBINIS, ESQ.
CBOBINIS@BERNSTEINLAW.COM
412-456-8102 FAX: 412-456-8266

August 4, 2006

Prothonotary
P.O. Box 549
Clearfield, PA 16830

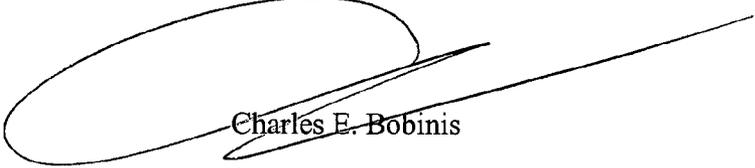
Re: D.C. Guelich Explosive Co.
Vs: No. 1 Contracting Corporation
BERNSTEIN FILE NO. G0063332

Dear Prothonotary:

Enclosed find our Praecipe for Judgment by Admission to be filed with the Court. Please file the original, timestamp the attached coversheet and return in the enclosed envelope. Thank you for your professional cooperation.

Very truly yours,

BERNSTEIN LAW FIRM, P.C.



Charles E. Bobinis

CEB/mek
Enclosure

cc: Cory A. Iannacone, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146
(w/Enclosure)

MEK010071V001

LUZEVILLE
SHERIFF
THANK YOU

MAY 12 '06 12:20

80006670
COMPLAINTS 26.00
CHECK 26.00
Qty 1

7783 SHERIFF

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

COPY

D. C. Guelich Explosive Co.
Plaintiff(s)

No.: 2006-00670-CD

Real Debt: \$9,973.88

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

No. 1 Contracting Corporation
Defendant(s)

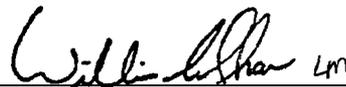
Entry: \$20.00

Instrument: Judgment by Admission

Date of Entry: August 7, 2006

Expires: August 7, 2011

Certified from the record this August 7, 2006



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

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

No. 06-670-CD

vs.

NO. 1 CONTRACTING CORPORATION,

PRAECIPE FOR WRIT OF EXECUTION

Defendant.

FIRST NATIONAL COMMUNITY BANK,

Garnishee.

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. G0063332

FILED ^{no cc}
m/w: 03/01
AUG 16 2006 Atty pd. 20.00

William A. Shaw
Prothonotary/Clerk of Courts

3 writs to Atty
(for Lackawanna
Co.)

OK

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

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

FIRST NATIONAL COMMUNITY BANK,

Garnishee.

PRAECIPE FOR WRIT OF EXECUTION

To the Prothonotary:

Kindly issue a Writ of Execution in the above matter...

1. directed to the Sheriff of Lackawanna County:
2. against Defendant: No. 1 Contracting Corporation
 49 South Main Street
 Ashley, PA 18706
3. against Garnishee: First National Community Bank
 102 East Drinker Street
 Dunmore, PA 18512

| | | |
|--------------------------------------|-------------|---------------------------|
| 4. JUDGMENT | \$9,973.88 | |
| Interest from 8/5/06 – 8/31/06. | \$ 43.16 | |
| Poundage | \$ 200.34 | |
| SUBTOTAL: | \$10,217.38 | |
| Costs (to be added by Prothonotary): | \$ 125.00 | Prothonotary costs |
| TOTAL | \$ | |

Date: 8-11-6

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8102

BERNSTEIN FILE NO. G0063332

FILED

AUG 16 2006

William A. Shaw
Prothonotary/Clerk of Courts

Prothonotary costs

**WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION – LAW**

CCFY

D. C. Guelich Explosive Co.

Vs.

NO.: 2006-00670-CD

No. 1 Contracting Corporation

First National Community Bank
Garnishee

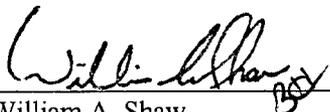
TO THE SHERIFF OF LACKAWANNA COUNTY:

To satisfy the debt, interest and costs due D. C. GUELICH EXPLOSIVE CO., Plaintiff(s) from NO. 1 CONTRACTING CORPORATION, Defendant(s):

- (1) You are directed to levy upon the property of the defendant(s) and to sell interest(s) therein:
Personal Property
- (2) You are also directed to attach the property of the defendant(s) not levied upon in the possession of:
First National Community Bank
Garnishee(s) as follows:
and to notify the garnishee(s) that: (a) an attachment has been issued; (b) the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof;
- (3) If property of the defendant(s) not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify him/her that he/she has been added as a garnishee and is enjoined as above stated.
- (4) **If Social Security or Supplemental Income funds are directly deposited into an account of the defendant, the levy and attachment shall not include any funds that may be traced to Social Security direct deposits. In addition, the levy and attachment shall not include \$300.00 in the account of the defendant.**

AMOUNT DUE/PRINCIPAL:.....\$9,973.88
INTEREST from 8/5/06--8/31/06:.....\$43.16
ATTY'S COMM: \$
DATE: 08/16/2006

PROTHONOTARY'S COSTS PAID:.....\$125.00
SHERIFF: \$
OTHER COSTS: \$
POUNDAGE:.....\$200.34



William A. Shaw
Prothonotary/Clerk Civil Division

Received this writ this _____ day
of _____ A.D. _____
At _____ A.M./P.M.

Requesting Party: Charles E. Bobinis, Esq.
Ste. 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8100

Sheriff

CA

D.C. GUELICH EXPLOSIVE CO.
Plaintiff

v.

NO. 1 CONTRACTING
CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

ORDER

AND NOW, this 18 day of September, 2006,
upon consideration of Defendant, No. 1 Contracting Corp.'s Petition to Strike or in the
Alternative to Open Judgment, it is hereby ordered that:

(1) a rule is issued upon the respondent to show cause why the petitioner is not
entitled to the relief requested;

(2) the respondent shall file an answer to the petition within 20 days of this
date;

(3) the petition shall be decided under Pa. R. Civ. P. 206.7;

(4) deposition shall be completed within _____ days of this date;

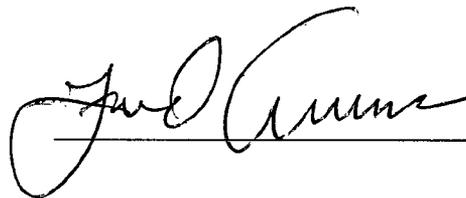
(5) argument shall be held on October 31, 2006 in Courtroom
1 of the Clearfield County Courthouse; and 9:30 A.M

(6) notice of the entry of this order shall be provided to all parties by the petitioner.

FILED 3cc

018:5231 Amy Jannacone
SEP 19 2006

William A. Shaw
Prothonotary/Clerk of Courts


_____ J.

FILED

SEP 19 2006

William A. Shaw
Prothonotary/Clerk of Courts

D.C. GUELICH EXPLOSIVE CO.

Plaintiff

v.

NO. 1 CONTRACTING
CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

ORDER

AND NOW, this _____ day of _____, 2006,

upon consideration of Defendant, No. 1 Contracting Corp.'s Petition to Strike or in the Alternative to Open Judgment and any response(s) thereto, it is hereby ORDERED and DECREED that:

(1) the Petition is GRANTED, that the judgment entered in favor of D.C. Guelich Explosive Co. and against No. 1 Contracting Corp is STRICKEN; **OR IN THE ALTERNATIVE**

(2) the Petition is GRANTED and the judgment entered in favor of D.C. Guelich Explosive Co. is OPENED.

J.

Kenneth L. Joel, Esquire
Attorney I.D. No. 72370
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

D.C. GUELICH EXPLOSIVE CO.

Plaintiff

v.

NO. 1 CONTRACTING
CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

FILED 300
m/11:10 AM
SEP 15 2006
Amy
CR

William A. Shaw
Prothonotary/Clerk of Courts

To: Charles E. Bobinis, Esq.
Bernstein Law Firm, P.C.
Suite 2200 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1900s
Attorneys for Plaintiff

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed Petition to Strike, or in the Alternative, To Open Judgment within twenty (20) days from service hereof or a judgment may be entered against you.

Kenneth L. Joel, Esquire
Attorney I.D. No. 72370
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

CA

Kenneth L. Joel, Esquire
Attorney I.D. No. 72370
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

D.C. GUELICH EXPLOSIVE CO.
Plaintiff

v.

NO. 1 CONTRACTING
CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

**PETITION TO STRIKE, OR IN THE ALTERNATIVE,
TO OPEN JUDGMENT**

NOW COMES Defendant, No. 1 Contracting Corporation (“Defendant” or “No. 1 Contracting”), by and through its counsel, Rhoads & Sinon LLP, and files the within Petition to Open Judgment, and in support thereof avers as follows:

1. On or about May 1, 2006, Plaintiff, D.C. Guelich Explosive Co. (“Plaintiff” or “Guelich”) filed a complaint against No. 1 Contracting, claiming that No. 1 Contracting had failed to make payment on various goods and services which were provided by Guelich. (A copy of the Complaint is attached hereto as Exhibit “A”.)

2. Guelich’s complaint demanded judgment in its favor and against No. 1 Contracting in the amount of \$13,373.96, plus additional interest from April 30, 2006, plus record costs.

4

3. On or about June 12, 2006, Guelich served a Notice of Default upon No. 1 Contracting, indicating that No. 1 Contracting had 10 days to respond to Guelich's complaint. (A copy of the Notice of Default is attached hereto as Exhibit "B".)

4. Subsequent to being served with the Notice of Default, but prior to the expiration of the 10 days available for No. 1 Contracting to respond, Cory A. Iannacone, Esquire, counsel for No. 1 Contracting, contacted Charles E. Bobinis, Esquire, counsel for Guelich, in an attempt to reach a settlement between the parties.

5. Mr. Iannacone indicated to Mr. Bobinis, that it was No. 1 Contracting's intention to make monthly installments to fulfill the debt owed by No. 1 Contracting to Guelich.

6. Because a dispute existed between the parties as to the payment terms and the total amount owed by No. 1 Contracting to Guelich, the parties were not able to reach a settlement.

7. On June 20, 2006, No. 1 Contracting mailed its first monthly installment of \$3,154.24 to Guelich. (Attached hereto as Exhibit "C" is a copy of the check made payable to Guelich, along with the cover letter which accompanied said check.)

8. Because No. 1 Contracting was not given an extension to respond to Guelich's complaint, on June 22, 2006, No. 1 Contracting filed its Answer. (A copy of the Answer is attached hereto as Exhibit "D".)

9. In its Answer, No. 1 Contracting alleged that the price agreed upon by the parties was \$12,616.94, (Answer ¶5), and denied that Guelich is entitled to any finance charges, (Answer ¶7).

10. In addition, the Answer also alleged that Guelich acquiesced to installment payments by No. 1 Contracting, which was in accordance with No. 1 Contracting's usual course of dealings and ordinary customs in the industry:

No. 1 Contracting has informed Guelich that as a result of its accounts receivable building up, it could not make immediate full payment. Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary industry customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. . . . Thus, Guelich is not entitled to the amount claimed in its Complaint.

(Answer ¶¶6, 7, 8.)

11. On or about August 4, 2006 Guelich filed a Praecipe for Judgment by Admission pursuant to Pa. R. Civ. P. 1037(b). (A copy of the Praecipe for Judgment by Admission is attached hereto as Exhibit "E".)

12. In its Praecipe, Guelich alleged that No. 1 Contracting admitted that the principal sum of \$12,616.94 is due and owing to Guelich. (Praecipe ¶2.)

13. The Praecipe also alleged that No. 1 Contracting had made partial payment in the amount of \$3,154.24, reducing the principal balance to \$9,462.70. (Praecipe ¶3.)

14. Lastly, the Praecipe alleged that "[r]egardless of Plaintiff's entitlement to service charges at the contractual rate of 1 1/2 % per month, there is no dispute that Plaintiff is entitled to legal interest at the rate of 6% per annum on the liquidated debt under the laws of the Commonwealth of Pennsylvania." (Praecipe ¶4.)

15. The Praecipe, however, failed to acknowledge that No. 1 Contracting plead in its Answer that a dispute existed between the parties as to the payment terms, and more specifically, that Guelich acquiesced to installment payments by No. 1 Contracting, which was in accordance

with No. 1 Contracting's usual course of dealings and ordinary customs in the industry. (See Answer ¶¶6, 7, 8.)

16. On or about August 7, 2006, a Notice or Judgment was entered by the Prothonotary against No. 1 Contracting. (A copy of the Notice or Judgment is attached hereto as Exhibit "F".)

17. It was not until August 8, 2006 when Mr. Iannacone received the Notice of Judgment or Order.

18. When irregularities and illegalities appear on the face of the record, the Pennsylvania courts have the authority to strike off judgments previously rendered. Harwood v. Bruhn, 170 A. 144 (Pa. 1934).

19. A void judgment may be stricken off where its invalidity appears upon the face of the record. Commonwealth ex rel. Howard v. Howard, 10 A.2d 779 (Pa. Super. Ct. 1940).

20. Where the judgment is entered wholly without authority, it may be stricken on the basis of facts proved by extrinsic evidence. Mullen v. Slupe, 62 A.2d 14 (Pa. 1948).

21. There is no legal basis for entering a judgment against No. 1 Contracting.

22. The Answer filed by No. 1 Contracting raised genuine issues and meritorious defenses to Guelich's Complaint.

23. Guelich has taken portions of No. 1 Contracting's Answer out of context, without reading the document as a whole, and has alleged that Guelich is entitled to \$9,973.88.

24. Guelich fails to acknowledge that the remaining averments contained in No. 1 Contracting's Answer explain that a dispute continues to exist between the parties as to the payment terms of the contract.

25. The correct procedural device under the Pennsylvania Rule of Civil Procedure which should have been utilized by Guelich would have been a Motion for Summary Judgment under Pa. R. Civ. P. 1035.2.

26. The filing of a Praecipe to Enter Judgment by Admission under Pa. R. Civ. P. 1037(b) was the improper procedural device to be utilized by Guelich, and as such, the judgment entered against No. 1 Contracting is improper under Pennsylvania law.

27. A petition to open judgment is an appeal to the equitable powers of the court. As such it is committed to the sound discretion of the hearing court and will not be disturbed absent a manifest abuse of discretion. Lincoln Bank v. C&H Agency, Inc., 456 A.2d 136 (Pa. 1982).

28. Generally speaking, a default judgment may be opened if the moving party has (1) promptly filed a petition to open the default judgment, (2) pleaded a meritorious defense to the allegations contained in the complaint, and (3) provided a reasonable excuse or explanation for failing to file a responsive pleading. Seeger v. First Union National Bank, 836 A.2d 163, 165 (Pa. Super. Ct. 2003).

29. Pa. R. Civ. P. 1037 governs both Judgment Upon Default and Admission, and as such, there is a single rule of law under Pa. R. Civ. P. 1037 for opening judgments.

30. No. 1 Contracting has filed the instant Petition thirty-eight (38) days after the Judgment or Order was entered and thirty-nine (39) days after receiving the Notice or Judgment or Order.

31. The Superior Court has held similar periods of delay comport with the promptness prong of the analysis. See, e.g., Reid v. Boohar, 856 A.2d 156, 162 (one month); Pennys v. Richard Kastner Co., Inc., 443 A.2d 353 (Pa. Super. Ct. 1982) (33 days); but see DiNardo v.

Cent. Penn Air Servs., Inc., 516 A.2d 1187 (Pa. Super. Ct. 1986) (88 days after judgment too long).

32. No. 1 Contracting's Petition comports with the promptness prong for opening a judgment.

33. The requirement of a meritorious defense requires only that a defense be plead that if proven at trial would justify relief. Seeger v. First Union Nat'l Bank, 836 A.2d 163 (Pa. Super. Ct. 2003).

34. The defense does not have to prove every element of its defense; however, it must set forth the defense in precise, specific and clear terms. Id.

35. If any one of the alleged defenses can provide relief from liability, the moving party successfully pleads a meritorious defense satisfies the third requirement to open the default judgment. Id.

36. In its Answer, No. 1 Contracting specifically alleged that there is a dispute as to the amount that is owed.

37. In addition, No. 1 Contracting alleges that Guelich acquiesced to installment payments by No. 1 Contracting, which was in accordance with No. 1 Contracting's usual course of dealings and ordinary customs in the industry.

38. Based upon the pleadings alone, there is clearly a dispute as to, at a minimum, the payment terms of the agreement between the parties.

39. No. 1 Contracting has plead the aforementioned meritorious defenses in its Answer which entitle it to submit these issues to a jury.

40. Opening judgment would result in no prejudice to Plaintiff. Opening the judgment, rather, would allow the genuine issues of material fact, raised in No. 1 Contracting's Answer, to be decided on their merits.

WHEREFORE, No. 1 Contracting Corp. respectfully requests that the judgment entered in favor of D.C. Guelich Explosive Co. and against No. 1 Contracting Corp. be stricken, or in the alternative, that said judgment be opened.

Respectfully submitted,

RHOADS & SINON LLP

By:



Kenneth L. Joel

Cory A. Iannacone

One South Market Square

P. O. Box 1146

Harrisburg, PA 17108-1146

(717) 233-5731

Attorneys for No. 1 Contracting

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

No. *06-670CD*

vs.

COMPLAINT

NO. 1 CONTRACTING CORPORATION,

Defendant.

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. G0063332

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

MAY 01 2006

Attest.

[Signature]
Prothonotary/
Clerk of Courts

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

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No.

NO. 1 CONTRACTING CORPORATION,

Defendant.

NOTICE AND COMPLAINT

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 upon you, 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.

Lawyer Referral Service
PA Bar Association
P.O. Box 186
Harrisburg, PA 17108
1-800-692-7375

COMPLAINT

1. Plaintiff D. C. Guelich Explosive Company ("Guelich") is a Pennsylvania corporation maintaining principal offices and place of business at Clearfield, Pennsylvania.
2. Defendant No. 1 Contracting Corporation is a Pennsylvania corporation maintaining principal offices and place of business at 1001 Wilkes-Barre Township Blvd., Wilkes-Barre, Luzerne County, PA 18702 with a mailing address of 49 South Main Street, Ashley, Luzerne County, PA 18706.
3. The actions and events out of which this cause of action arises occurred in Luzerne County, Pennsylvania. However, payments under the contract were to be made to Plaintiff at its main office in Clearfield, Pennsylvania. This Court therefore has both subject matter jurisdiction and venue over the case.
4. On various dates between September of 2005 and March of 2006, Guelich, at the specific request of No. 1 Contracting Corporation, sold and delivered to No. 1 Contracting Corporation various explosive goods and services at the times, in the amounts and for the prices listed on Plaintiff's Invoices with supporting drilling and shipping records, referenced on Plaintiff's Statement, a true and correct copy of which is attached hereto marked as Exhibit "1" and made a part hereof.
5. Defendant No. 1 Contracting Corporation received and accepted each of the aforementioned goods and services for prices, which were agreed upon at the time of the delivery as evidenced by Guelich's Invoices and shipping records, true and correct copies of which are attached hereto, marked collectively as Exhibit "2", and made a part here of.
6. Despite the occurrence of all conditions precedent, Defendant No. 1 Contracting Corporation failed and refused to pay Guelich the principal sum due.

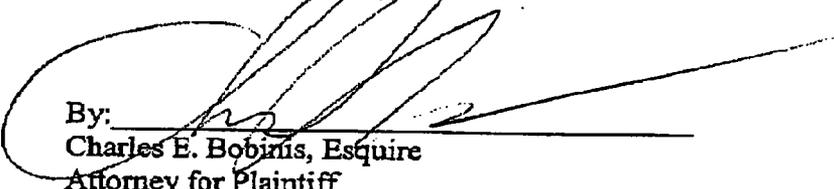
7. The total amount of principal and finance charges due through April 30, 2006, amount to \$13,373.96, per Exhibit "1".

8. Although repeatedly requested to pay, Defendant has failed and refused to pay the aforesaid sums justly due and owing to Guelich.

WHEREFORE, D. C. Guelich Explosive Co. demands Judgment on this Complaint against Defendant No. 1 Contracting Corporation in the amount of \$13,373.96, plus appropriate additional interest at the contractual rate from April 30, 2006, plus record costs and such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
Attorney for Plaintiff
PA I.D. #30665
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

BERNSTEIN FILE NO. G0063332

D.C. GUELICH EXPLOSIVE CO.
1442 18 HOLLOW ROAD
CLEARFIELD PA 16830

STATEMENT

PAGE N

STATEMENT DATE
4/30/2006

ACCOUNT NUMBER
30NO1C

NO 1 CONTRACTING
49 SOUTH MAIN STREET
ASHLEY, PA 18706

| REFERENCE | DATE | CCDE | DESCRIPTION | AMOUNT | BALANCE |
|-----------|------------|------|-------------------------|-----------|-----------|
| 7763 | 9/7/2005 | I | Po: Our Ord: 7763 | | |
| 7770 | 9/9/2005 | I | Po: Our Ord: 7770 | 321.27 | 321.27 |
| 7782 | 10/4/2005 | I | Po: Our Ord: 7782 | 153.20 | 474.47 |
| 7805 | 10/31/2005 | I | Po: Our Ord: 7805 | 12,071.99 | 12,546.46 |
| 20060131 | 1/31/2006 | F | Cus:30NO1C Fch:20060131 | 70.48 | 12,616.94 |
| 20060228 | 2/28/2006 | F | Cus:30NO1C Fch:20060228 | 252.34 | 12,869.28 |
| 20060331 | 3/31/2006 | F | Cus:30NO1C Fch:20060331 | 252.34 | 13,121.62 |
| | | | | 252.34 | 13,373.96 |

| | | | | | | |
|-------------|--|--|---------|---------|---------|-----------|
| Aged Total: | | | CURRENT | OVER 30 | OVER 45 | OVER 60 |
| | | | 252.34 | 0.00 | 0.00 | 13,121.62 |

EXHIBIT.!

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
Clearfield, PA 16830
PH: (814) 765-1558

INVOICE
DATE
10/31/05

INVOICE
NO. PAGE
00007805

invoice

NO. 1 CONTRACTING
24 SOUTH MAIN STREET
ASHLEY, PA 19706

SHIP TO: STANFORD

ORDER NO. 785 ORDER DATE 10/31/05 CUSTOMER NO. 00001C TERMS NET 30 DAYS PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|--------------------|------------|----------|--------|
| 4.00 | | 150 | ROCK ULTRA 1 1/4 | 3.2538 | LB | 12.94 |
| 4.00 | | 1402400 | ROCKET 24' 25/5 | 6.1774 | EA | 24.71 |
| 5.00 | | 1902042 | REL CTD 20' #42 | 4.6106 | EA | 23.05 |
| 1.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 7.37 |
| 1.00 | | 20 | SECURITY COMPLIA | 1.3800 | EA | 1.38 |

2% Finance Charge on all
Over 30 Day Balances

EXHIBIT. 2

OFFICE

| | |
|---------------|-------|
| SALES AMOUNT | 70.48 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 70.48 |
| PAYMENT REC'D | .00 |
| BALANCE DUE | 70.48 |

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
Clearfield, PA 16830
PH: (814) 765-1558

INVOICE
DATE

INVOICE
NO.

PAGE

10/04/05

00007782

invoice

NO 1 CONTRACTING
49 SOUTH MAIN STREET
ASHLEY, PA 18706

SHIP TO: JEFFERSONVILLE

| | | | | | | |
|--------|------------|--------------|-------------|--------------------|-----------|-----------|
| ER NO. | ORDER DATE | CUSTOMER NO. | TERMS | PURCHASE ORDER NO. | SHIP DATE | SHIP VIA |
| 7702 | 10/04/05 | 304010 | NET 30 DAYS | | | OUR TRUCK |

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|---------------------|---------------------|-------------|---------------------|------------|-------------|----------|
| 198.00 | | 101 | 1# SUPER PRIME 800S | 3.8000 | EA | 764.28 |
| 218.00 | | 300 | RED-D-PRIME 1 1/4 X | 1.4400 | LB | 312.96 |
| 3330.00 | | 351 | APEX PLUS 88AP 5 X | .7008 | LB | 2,333.66 |
| 220.00 | | 312 | APEX ULTRA 3 X 16 | .7437 | EA | 163.61 |
| 350.00 | | 407 | POWER PAK 48 5 X 25 | .5409 | LB | 189.32 |
| 17500.00 | | 12 | BULK ANFO | .3126 | LB | 5,470.50 |
| 31.00 | | 1408000 | HANDIDET 60' 25/5 | 13.4600 | EA | 417.26 |
| 69.00 | | 1406000 | HANDIDET 60' 25/5 | 11.1711 | EA | 770.91 |
| 42.00 | | 1403000 | HANDIDET 30' 25/5 | 7.3739 | EA | 309.70 |
| 56.00 | | 1402400 | HANDIDET 24' 25/5 | 6.1774 | EA | 345.93 |
| 26.00 | | 1902017 | EXEL CTD 20' #17 | 4.8186 | EA | 134.86 |
| 10.00 | | 1902025 | EXEL CTD 20' #25 | 4.8186 | EA | 48.17 |
| 1.00 | | 101200 | ELECTRIC MS 12' 40 | 7.3700 | EA | 7.37 |
| 845.00 | | 4 | HOLES LINED | .4219 | EA | 399.70 |
| 310.00 | | 4 | HOLES LINED | .4219 | EA | 130.79 |
| 20.00 | | 99008 | PIPE | .4329 | EA | 8.66 |
| 6.00 | | 1 | CONNECTING WIRE | 4.7600 | LB | 28.68 |
| 1.00 | | 20 | 2% SECURITY COMPLIA | 236.7100 | EA | 236.71 |

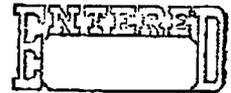
2% Finance Charge on all
Over 30 Day Balances

| | |
|---------------|-----------|
| SALES AMOUNT | 12,071.99 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 12,071.99 |
| PAYMENT REC'D | .00 |
| BALANCE DUE | 12,071.99 |

OFFICE

D.C. GUELICH EXPLOSIVE CO.

P.O. BOX 29, BLOOMSBURG, PA 17815
570-784-4759 • 570-784-4378 • FAX 570-784-4958



SHIPPING RECORD

| | | | |
|-------------------------------|----------------------|---|---------------------------|
| DATE: 10-4-05 | OPC/DEALER ORDER NO. | LICENSE/ PERMIT NO. | ORDER/DEL TICKET NO. 7782 |
| SIGNATURE: <i>[Signature]</i> | | CUSTOMER/ MAG/DISTRIB: #1 Contracting / Jonesville Pa | |

| CL | GRADE POWDER/TYPE CAPS | SIZE | STYLE POWDER/ NUMBER OF CAPS | NUMBER OF CASES | DATE CODE | TOTAL QUANTITY SHIPPED |
|----|------------------------|------------------|------------------------------|-----------------|-----------|------------------------|
| 4E | Trojan Busters | 1 ¹⁶ | | | | 198 |
| 4E | Austin Red D-Prime | 1 ^{4x8} | | | | 216 |
| 5A | Apea Plus | 5x30 | | | | 3330 |
| 5B | Apea Ultra | 3x16 | | | | 220 |
| 5A | Power Pak 48 | 5x25 | | | | 350 |
| 5A | NCN Bulk | Bulk | | | | 17,500 |
| 4E | Handidet 25/500 | 80' | 31-ra | | | |
| 4E | Handidet 25/500 | 60' | 69-ra | | | |
| 4E | Handidet 25/500 | 30' | 42-ra | | | |
| 4E | Handidet 25/500 | 24' | 56-ra | | | |
| 4E | CTD " 17ms | 20' | 28-ra | | | |
| 4E | CTD " 25ms | 30' | 10-ra | | | |
| 4E | EBC "D Instant | 12' | 1-ra | | | |
| | Bore Hole Liner | 6 1/2" | 945' | | | |
| | Bore Hole Liner | 4" | 310' | | | |
| | Plastic Pipe | 3" | 20' | | | |
| | Cora Wire | 200' | 6" | | | |

Handwritten note: Dam should be 7782 not 7781

Handwritten note: @ \$1,4490

Handwritten signature

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
Clearfield, PA 16830
PH: (814) 765-1558

INVOICE DATE: 09/09/05
INVOICE NO.: 00007770
PAGE: 1

invoice

NO 1 CONTRACTING
49 SOUTH MAIN STREET
ASHLEY, PA 16708

SHIP TO: CLEARFIELD

ORDER NO. 777 ORDER DATE 09/09/05 CUSTOMER NO. 800010 TERMS NET 30 DAYS PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|--------------------|------------|----------|--------|
| 11.00 | | 147 | OVEREX PLUS 2 X 8 | 3.2398 | LB | 35.57 |
| 25.00 | | 13 | WGSB. ANFO | .2913 | LB | 7.28 |
| 11.00 | | 1401600 | NOIDET 16' 25/5 | 4.9287 | EA | 54.22 |
| 4.00 | | 1902017 | DEL CTD 20' #17 | 4.8166 | EA | 19.27 |
| 2.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 14.74 |
| 4.00 | | 1 | CONNECTING WIRE | 4.7800 | LB | 19.12 |
| 1.00 | | 20 | SECURITY COMPLIA | 3.0000 | EA | 3.00 |

2% Finance Charge on all
Over 30 Day Balances

OFFICE

| | |
|---------------|--------|
| SALES AMOUNT | 153.20 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 153.20 |
| PAYMENT REC'D | .00 |
| BAI AMCF DRIF | 153.20 |

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
Clearfield, PA 16830
PH: (814) 765-1558

INVOICE
DATE

INVOICE
NO.

PAGE

09/07/05

00007763

invoice

NO. 1 CONTRACTING
40 SOUTH MAIN STREET

SHIP
TO:

BLANKENHORN

ASHLEY, PA 16706

| | | | | | | |
|-----------|------------|--------------|-------------|--------------------|-----------|-----------|
| ORDER NO. | ORDER DATE | CUSTOMER NO. | TERMS | PURCHASE ORDER NO. | SHIP DATE | SHIP VIA |
| 7761 | 09/07/05 | 30001C | NET 30 DAYS | | | OUR TRUCK |

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|---------------------|---------------------|-------------|---------------------|------------|-------------|--------|
| 22.00 | | 147 | POWEREX PLUS 2 X 8 | 3.2338 | LB | 71.14 |
| 200.00 | | 13 | CLASSED ANFO | .2913 | LB | 58.26 |
| 22.00 | | 1401600 | SHANDIDET 16' 25/5 | 4.9287 | EA | 108.43 |
| 5.00 | | 1902017 | EXEL CTD 20' #17 | 4.8106 | EA | 28.90 |
| 1.00 | | 1902025 | EXEL CTD 0' #25 | 4.8166 | EA | 4.82 |
| 2.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 14.74 |
| 6.00 | | 1 | CONNECTING WIRE | 4.7800 | LB | 28.68 |
| 1.00 | | 20 | 25 SECURITY COMPLIA | 6.3000 | EA | 6.30 |

2% Finance Charge on all
Over 30 Day Balances

OFFICE

| | |
|---------------|--------|
| SALES AMOUNT | 321.27 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 321.27 |
| PAYMENT REC'D | .00 |
| BALANCE DUE | 321.27 |

VERIFICATION

The undersigned does hereby verify under penalty of perjury, that he/she is the President of D.C. Guelich Explosive Co., Plaintiff herein, that he/she is duly authorized to make this Verification, and that the facts set forth in the foregoing COMPLAINT are true and correct to the best of his/her knowledge, information and belief.

A handwritten signature in blue ink, appearing to read "George Guelich", written over a horizontal line.

(Sign in Blue Ink)

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

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

IMPORTANT NOTICE

TO: No. 1 Contracting Corporation
49 S. Main Street
Ashley, PA 18706

Date of Notice: June 12, 2006

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A 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:

Lawyer Referral Service
PA Bar Association
PO Box 186
Harrisburg, PA 17108
1-800-692-7375

Bernstein Law Firm, P.C.

By: /s/Charles E. Bobinis
Charles E. Bobinis, Esquire
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102



NO. 1 CONTRACTING CORPORATION

49 SOUTH MAIN STREET
ASHLEY, PENNSYLVANIA 18706
PHONE: 570-823-0325 FAX: 570-823-9962

June 20, 2006

D.C. Guelich Explosive Co.
1442 18 Hollow Rd.
Clearfield, Pa. 16830

Dear Mr. Guelich:

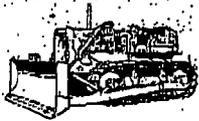
Enclosed please find an initial installment payment in the amount of \$3,154.24 to be applied to the principal amount due by No. 1 Contracting Corporation to D.C. Guelich Explosive Company for goods and services provided to No. 1 Contracting during the time period of September 2005 to March 2006. As previously mentioned, as a result of its high accounts receivable, No. 1 Contracting is making these installment payments in order to satisfy the principal amount due of \$12,616.94.

Thank you for your cooperation. Please contact me with any questions or concerns you may have.

Sincerely,

A handwritten signature in cursive script that reads 'Melanie Shaak'.

Melanie Shaak
Office Manager
No. 1 Contracting Corporation



No. 1 Contracting Corporation
 49 SOUTH MAIN STREET
 ASHLEY, PA 18706
 PHONE: (570) 823-0325

FIRST NATIONAL COMMUNITY BANK
 DUNMORE, PA

80-313/313

1300

6/20/2006

PAY TO THE
 ORDER OF

D.C. GUELICH

\$ **3,154.24

Three Thousand One Hundred Fifty-Four and 24/100***** DOLLARS

D.C. GUELICH EXPLOSIVE CO.
 1442 18 HOLLOW ROAD
 CLEARFIELD, PA 16830

MEMO

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

⑈001300⑈ ⑆031303132⑆ ⑈56 5011325⑈

NO. 1 CONTRACTING CORPORATION
 ASHLEY, PA 18706

D.C. GUELICH

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|------------|------|-----------|---------------|--------------|-----------------------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

1300

FNCB

3,154.24

NO. 1 CONTRACTING CORPORATION
 ASHLEY, PA 18706

D.C. GUELICH

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|------------|------|-----------|---------------|--------------|-----------------------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

1300

FNCB

3,154.24

BF8001-1

REORDER FROM YOUR LOCAL SAFEGUARD DISTRIBUTOR, IF UNKNOWN, CALL 800-323-2422

SAFEGUARD LITHO 18A 0521788 07301115

G1111Z0010000 L015F030998

Charles E. Gutshall, Esquire
Attorney I.D. No. 39702
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

D.C. GUELICH EXPLOSIVE CO.

Plaintiff

v.

NO. 1 CONTRACTING
CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

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

JUN 22 2006

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

ANSWER

NOW COMES Defendant, No. 1 Contracting Corporation ("Defendant" or "No. 1 Contracting"), by and through its counsel, Rhoads & Sinon LLP, and files the within Answer to Plaintiff, D.C. Guelich Explosive Co.'s ("Plaintiff" or "Guelich") Complaint, and in support thereof avers as follows:

1. After reasonable investigation, Defendant is without knowledge or information sufficient to form a believe as to the truth of the averments contained in this paragraph. Therefore, all allegations contained in this paragraph are specifically denied.

2. Admitted.

3. Admitted in part and denied in part. It is admitted that No. 1 Contracting purchased goods and services from Plaintiff in Luzerne County, Pennsylvania. It is also admitted that No. 1 Contracting made payment to Plaintiff in Clearfield, Pennsylvania. The remaining allegations contained in this paragraph constitute a legal conclusion for which no

responsive pleading is required. To the extent any further response is required, all remaining allegations contained in this paragraph are specifically denied.

4. Admitted in part and denied in part. It is admitted that between September of 2005 and March of 2006, Guelich, at the specific request of No. 1 Contracting, sold and delivered to No. 1 Contracting various explosive goods and services which amounted to \$12,616.94. By way of further response, Exhibit 1, purporting to be Plaintiff's Statement is a document which speaks for itself. To the extent the documents attached as Exhibit 1 do not reflect the aforementioned amount, the allegations contained in this paragraph are specifically denied.

5. Admitted in part and denied in part. It is admitted that No. 1 Contracting received and accepted the aforementioned goods. By way of further response, the price agreed upon by the parties was \$12,616.94. Exhibit 2, purporting to be Guelich's invoices and shipping records, are documents which speak for themselves. To the extent the documents do not reflect the aforesaid amount, the allegations in this paragraph are specifically denied.

6. Admitted in part and denied in part. It is admitted that No. 1 Contracting has yet to make full payment for the principal sum due to Guelich. It is specifically denied that No. 1 Contracting has refused to pay Guelich the principal sum. By way of further response, No. 1 Contracting has informed Guelich that as a result of its accounts receivable building up, it could not make immediate full payment. Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary industry customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. (A copy of the check along with the June 20, 2006 letter that accompanied it is attached hereto as Exhibit "A".) Thus, Guelich is not

entitled to the amount claimed in its Complaint. To the extent any further response is required, all remaining allegations are specifically denied.

7. Denied. Exhibit 1 is a document which speaks for itself. The price agreed upon by the parties was \$12,616.94. It is specifically denied that that Guelich is entitled to any finance charges. By way of further response, No. 1 Contracting has informed Guelich that as a result of its accounts receivable building up, it could not make immediate full payment. Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. (See Ex. A.) Thus, Guelich is not entitled to the amount claimed in its Complaint. To the extent any further response is required, all remaining allegations are specifically denied.

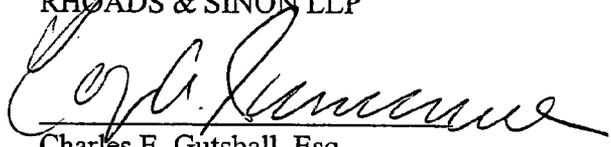
8. Admitted in part and denied in part. It is admitted that No. 1 Contracting has yet to make full payment for the principal sum due to Guelich. It is specifically denied that No. 1 Contracting has refused to pay Guelich the principal sum. By way of further response, No. 1 Contracting has informed Guelich that as a result of its accounts receivable building up, it could not make immediate full payment. Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. (See Ex. A.) Thus, Guelich is not entitled to the amount claimed in its Complaint. To the extent any further response is required, all remaining allegations are specifically denied.

WHEREFORE, No. 1 Contracting respectfully requests this Court to dismiss Plaintiff's Complaint and award No. 1 Contracting all of the relief as this Court deems equitable and just.

Respectfully submitted,

RHOADS & SINON LLP

By:

A handwritten signature in cursive script, appearing to read "Cory A. Iannacone", written over a horizontal line.

Charles E. Gutshall, Esq.

Cory A. Iannacone, Esq.

One South Market Square

P.O. Box 1146

Harrisburg, PA 17108-1146

(717) 233-5731

Attorneys for

No. 1 Contracting Corporation

EXHIBIT "A"



NO. 1 CONTRACTING CORPORATION

49 SOUTH MAIN STREET
ASHLEY, PENNSYLVANIA 18706
PHONE: 570-823-0325 FAX: 570-823-9962

June 20, 2006

D.C. Guelich Explosive Co.
1442 18 Hollow Rd.
Clearfield, Pa. 16830

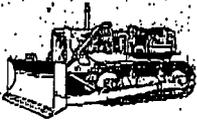
Dear Mr. Guelich:

Enclosed please find an initial installment payment in the amount of \$3,154.24 to be applied to the principal amount due by No. 1 Contracting Corporation to D.C. Guelich Explosive Company for goods and services provided to No. 1 Contracting during the time period of September 2005 to March 2006. As previously mentioned, as a result of its high accounts receivable, No. 1 Contracting is making these installment payments in order to satisfy the principal amount due of \$12,616.94.

Thank you for your cooperation. Please contact me with any questions or concerns you may have.

Sincerely,

Melanie Shaak
Office Manager
No. 1 Contracting Corporation



No. 1 Contracting Corporation
 49 SOUTH MAIN STREET
 ASHLEY, PA 18706
 PHONE: (570) 823-0325

FIRST NATIONAL COMMUNITY BANK
 DUNMORE, PA

80-313/313

1300

6/20/2006

PAY TO THE ORDER OF D.C. GUELICH

\$ 3,154.24

Three Thousand One Hundred Fifty-Four and 24/100***** DOLLARS

D.C. GUELICH EXPLOSIVE CO.
 1442 18 HOLLOW ROAD
 CLEARFIELD, PA 16830

MEMO

MP SAFEGUARD SECURE
 SAFEGUARD SECURE MP

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT

⑈001300⑈ ⑆031303132⑆ ⑈56 5011325⑈

NO. 1 CONTRACTING CORPORATION
 ASHLEY, PA 18706

1300

D.C. GUELICH

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|------------|------|-----------|---------------|--------------|-----------------------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

FNCB

3,154.24

NO. 1 CONTRACTING CORPORATION
 ASHLEY, PA 18706

1300

D.C. GUELICH

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|------------|------|-----------|---------------|--------------|-----------------------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

FNCB

3,154.24

BF001-1

SAFEGUARD LITHO IN USA SPSL188 6/75/01/115

REORDER FROM YOUR LOCAL SAFEGUARD DISTRIBUTOR, IF UNKNOWN, CALL 800-823-2422

G11THZ0010000 L015P030298

VERIFICATION

Melanie Shaak, deposes and says, subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, on behalf of No. 1 Contracting Corporation, that she makes this verification by her authority and that the facts set forth in the Answer are true and correct to the best of her knowledge, information and belief.

6/20/00
Date

Melanie Shaak
Melanie Shaak

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2006, a true and correct copy of the foregoing Answer was served by means of United States mail, first class, postage prepaid, upon the following:

Charles E. Bobinis, Esq.
Bernstein Law Firm, P.C.
Suite 2200 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1900s
Attorneys for Plaintiff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

**PLAINTIFF'S PRAECIPE FOR JUDGMENT BY ADMISSION AGAINST THE
DEFENDANT PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1037(b)**

AND NOW COMES Plaintiff, by counsel, to instruct the Prothonotary to enter Judgment by Admission against the Defendant pursuant to Pennsylvania Rule of Civil Procedure 1037(b) for that relief admitted to be due by the Defendant in its Answer, as follows:

1. Plaintiff D.C. Guelich Explosive Co. brought this civil action against the Defendant No. 1 Contracting Corp. in order to recover from the Defendant the principal sum of \$12,616.94, plus service charges through March 31, 2006, or total of \$13,373.96, plus additional interest at the contractual rate from April 30, 2006, plus record costs.

2. The Defendant has filed an Answer in which the Defendant has admitted that the principal sum claimed by Plaintiff, \$12,616.94, is due and owing to the Plaintiff, but Defendant denies the Plaintiff's entitlement to contractual service charges at the rate of 1½% per month as shown by true and correct copy of the Defendant's Answer of record.

3. Defendant further alleges that the Defendant has made a partial payment on the account since the institution of the suit of \$3,154.24, reducing the principal balance to \$9,462.70.

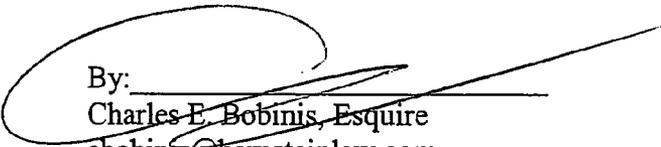
4. Regardless of Plaintiff's entitlement to service charges at the contractual rate of 1½% per month, there is no dispute that Plaintiff is entitled to legal interest at the rate of 6% per annum on the liquidated debt under the laws of the Commonwealth of Pennsylvania. *Miller v. Reading*, 369 Pa. 471, 87 A.2d 223 (Pa., 1952).

5. Legal interest on the undisputed amount through August 5, 2006, amounts to no less than \$9,973.88, as shown by the numerical calculation of said sum on the schedule attached as Exhibit "1."

Accordingly, the principal amount due and owing to Plaintiff being admitted by the Defendant, and being liquidated as a matter of law based on the admissions by the Defendant to a sum certain, the Prothonotary is hereby instructed by counsel for Plaintiff to enter Judgment by Admission against the Defendant No. 1 Contracting Corporation in the amount of \$9,973.88, plus additional legal interest from September 1, 2006, plus costs, pursuant to Pennsylvania Rule of Civil Procedure 1037(b).

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
cbobinis@bernsteinlaw.com
PA ID #30665
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

BERNSTEIN FILE NO. G0063332

| | | |
|----|--|------------|
| 1. | Latest date October 4, 2005, invoice due November 4, 2005. | |
| 2. | Legal interest on \$12,616.94 from November 4, 2005 to June 4, 2006, | \$ 416.56 |
| 3. | Legal interest on \$9,462.70 (\$12,616.94 - \$3,154.24 partial payment), from June 5, 2006 to August 4, 2006, | \$ 94.62 |
| 4. | Total legal interest of remaining balance from November 4, 2005 to August 4, 2006, | \$ 511.18 |
| 5. | \$9,462.70 (principal), plus \$511.18 (interest) equals current balance | \$9,973.88 |

EXHIBIT "1"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

NOTICE OF JUDGMENT OR ORDER

TO: Plaintiff
 Defendant
 Garnishee

You are hereby notified that the following Order or Judgment was entered against you on August 7, 2006

- Assumpsit Judgment in the amount of \$9,973.88 plus costs.
- Trespass Judgment in the amount of \$_____ plus costs.
- If not satisfied within sixty (60) days, your motor vehicle operator's license and/or registration will be suspended by the Department of Transportation, Bureau of Traffic Safety, Harrisburg, PA.

- Entry of Judgment of
 - Court Order
 - Non-Pros
 - Confession
 - Default
 - Verdict
 - Arbitration Award

No. 1 Contracting Corporation
c/o Cory A. Iannacone, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146

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

AUG - 7 2006

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

Prothonotary

By: *William L. Shaw*
PROTHONOTARY (OR DEPUTY)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

**PLAINTIFF'S PRAECIPE FOR JUDGMENT BY ADMISSION AGAINST THE
DEFENDANT PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1037(b)**

AND NOW COMES Plaintiff, by counsel, to instruct the Prothonotary to enter Judgment by Admission against the Defendant pursuant to Pennsylvania Rule of Civil Procedure 1037(b) for that relief admitted to be due by the Defendant in its Answer, as follows:

1. Plaintiff D.C. Guelich Explosive Co. brought this civil action against the Defendant No. 1 Contracting Corp. in order to recover from the Defendant the principal sum of \$12,616.94, plus service charges through March 31, 2006, or total of \$13,373.96, plus additional interest at the contractual rate from April 30, 2006, plus record costs.
2. The Defendant has filed an Answer in which the Defendant has admitted that the principal sum claimed by Plaintiff, \$12,616.94, is due and owing to the Plaintiff, but Defendant denies the Plaintiff's entitlement to contractual service charges at the rate of 1½% per month as shown by true and correct copy of the Defendant's Answer of record.
3. Defendant further alleges that the Defendant has made a partial payment on the account since the institution of the suit of \$3,154.24, reducing the principal balance to \$9,462.70.

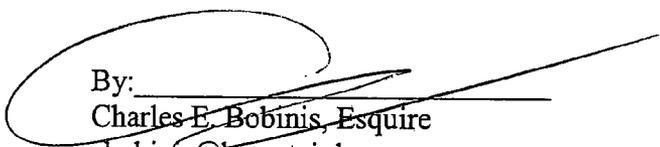
4. Regardless of Plaintiff's entitlement to service charges at the contractual rate of 1½% per month, there is no dispute that Plaintiff is entitled to legal interest at the rate of 6% per annum on the liquidated debt under the laws of the Commonwealth of Pennsylvania. *Miller v. Reading*, 369 Pa. 471, 87 A.2d 223 (Pa., 1952).

5. Legal interest on the undisputed amount through August 5, 2006, amounts to no less than \$9,973.88, as shown by the numerical calculation of said sum on the schedule attached as Exhibit "1."

Accordingly, the principal amount due and owing to Plaintiff being admitted by the Defendant, and being liquidated as a matter of law based on the admissions by the Defendant to a sum certain, the Prothonotary is hereby instructed by counsel for Plaintiff to enter Judgment by Admission against the Defendant No. 1 Contracting Corporation in the amount of \$9,973.88, plus additional legal interest from September 1, 2006, plus costs, pursuant to Pennsylvania Rule of Civil Procedure 1037(b).

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
cbobinis@bernsteinlaw.com
PA ID #30665
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

BERNSTEIN FILE NO. G0063332

| | | |
|----|--|------------|
| 1. | Latest date October 4, 2005, invoice due November 4, 2005. | |
| 2. | Legal interest on \$12,616.94 from November 4, 2005 to June 4, 2006, | \$ 416.56 |
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| 4. | Total legal interest of remaining balance from November 4, 2005 to August 4, 2006, | \$ 511.18 |
| 5. | \$9,462.70 (principal), plus \$511.18 (interest) equals current balance | \$9,973.88 |

EXHIBIT "1"

VERIFICATION

Melanie Shaak, deposes and says, subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, that she is the Office Manager of No. 1 Contracting, that she makes this verification by its authority and that the facts set forth in the Petition to Strike, or in the Alternative, to Open Judgment are true and correct to the best of her knowledge, information and belief.

9/14/00
Date

Melanie Shaak
Melanie Shaak

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2006, a true and correct copy of the foregoing Petition to Strike Judgment, or in the Alternative, Open Judgment and Brief in Support were served by means of United States mail, first class, postage prepaid, upon the following:

Charles E. Bobinis, Esq.
Bernstein Law Firm, P.C.
Suite 2200 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1900s
Attorneys for Plaintiff

Lj Sharpe

FILED

SEP 15 2006

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

No. 06-670-CD

vs.

NO. 1 CONTRACTING CORPORATION,

Defendant.

GUELICH'S ANSWER TO THE PETITION
TO OPEN OR STRIKE JUDGMENT BY
ADMISSION FILED BY DEFENDANT
NO. 1 CONTRACTING CORPORATION

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. G0063332

FILED *rec*
m/12:51/01
SEP 27 2006 *(S)*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

**GUELICH'S ANSWER TO THE PETITION TO OPEN OR STRIKE JUDGMENT
BY ADMISSION, FILED BY DEFENDANT NO. 1 CONTRACTING CORPORATION**

AND NOW comes Plaintiff D. C. Guelich Explosive Co., ("Guelich") by counsel, to Answer the Petition to Strike or in the Alternative Open the Judgment filed on behalf of Defendant No. 1 Contracting Corporation, as follows:

1. It is admitted that Guelich filed its Complaint for explosive goods and services sold and delivered to the Defendant and that a true copy of the Complaint is attached as Exhibit A to the Defendant 's Petition.

2. Denied as stated. To the contrary, Exhibits 1 and 2 of the Complaint clearly demonstrate that the principal balance claimed was \$12,616.94 [the first four invoices], and that the remainder constituted finance charges through April 30, 2006 as indicated on the account statement at Complaint Exhibit "1."

3. It is admitted on June 12, 2006, more than 37 days following service of the Complaint on May 5, 2006, Guelich's counsel sent the "ten-day notice" required by Pennsylvania Rule of Civil Procedure 237.1.

4. Admitted in part and denied in part. It is admitted that counsel for the Defendant contacted counsel for the Guelich during the 10 day period following Notice of Default, informing counsel for Guelich that no part of the principal debt was disputed, but that the Defendant would like to be allowed to satisfy the debt in four equal monthly installments. In response, Plaintiff's counsel advised the Defendant's counsel that some finance charges and costs would also have to be paid as part of any settlement, and that this commitment must be evidenced by a stipulation providing for entry of judgment upon default. On June 16, 2006, Plaintiff's counsel prepared and delivered an e-mail to the Defendant's counsel enclosing a Stipulation for Entry of Judgment and embodying these terms, offering to withhold filing of the Stipulation and Entry of Judgment so long as each of the four monthly installments were delivered to Plaintiff's counsel within five days of their stated due date, all as more fully shown by the true and correct copy of the e-mail of June 16, 2006, and proposed Stipulation attached and marked as Exhibit "1."

On or about June 20, 2006, the Defendant and/or its counsel apparently elected to "bypass" Plaintiff's counsel by sending a letter with the check for $\frac{1}{4}$ of the principal balance directly to Guelich. Neither the letter nor the check of June 20, 2006, attached as Exhibit "A" to Defendant's Answer, made a conditional tender, or attempted to vary the terms of Plaintiff's proposed Stipulation. To the contrary, Defendant's letter expressly admitted that the entire principal balance was due and owing to Plaintiff. See the true and correct copy of Defendant's June 20, 2006, letter and check, attached hereto for the convenience of the Court at Exhibit "2."

Guelich negotiated the check believing it was delivered pursuant to the Stipulation, as per Guelich's letters to Debtor, dated June 22, 2006 and June 26, 20206, attached as Exhibits "3" and "4."

With the mailing of the letter and check, Defendant's counsel simultaneously filed the subject Answer.

Guelich confirmed to its counsel that a single payment of \$3,154.24 had been received, but no subsequent payment had been made in July. On August 2, 2006, Guelich's counsel filed his Praecipe for Judgment by Admission pursuant to Pennsylvania Rule of Civil Procedure 1037(b), in the principal amount of \$9,460.70, based upon the Defendant's express admission at Exhibit "A" of the Answer that the entire principal balance of \$12,616.94 was due and owing, minus credit for the principal payment of \$3,154.24.

5. It is admitted that Mr. Iannacone originally indicated to Mr. Bobinis that the Defendant intended to make four monthly installments towards the principal debt owed by No. 1 Contracting to Guelich, as expressly admitted in Paragraph 5 of the subject Petition.

6. It is specifically denied that any dispute existed between the parties as to the payment terms or the total principal amount owed by No. 1 Contracting. Defendant expressly admitted that the entire principal amount was due in Exhibit "A" of its Answer, and voluntarily sent a partial payment to Guelich, albeit on an "end run" around of Plaintiff's counsel of record. The Prothonotary is empowered to perform the ministerial act of entering judgment for that amount expressly admitted to be due and owing by Defendant's Answer. In its Answer, the Defendant expressly admits the principal amount owing to Guelich, subject to a credit for partial payment of \$3,154.29. Calculation of the principal admitted to be due, minus the payment claimed to be made, i.e. \$9,462.70, is a simple ministerial act of arithmetic. While the Defendant did dispute Plaintiff's entitlement to finance charges, the Praecipe for Partial Judgment by Admission did not instruct the Prothonotary to enter judgment for any finance

charges, but for legal interest only, which is due automatically as a matter of law on a contract balance not paid when due. Defendant now attempts to tardily raise in bad faith a “dispute” based on a single sentence in its Answer, because Guelich has garnished Defendant’s bank account.

The sole “defense” relied upon by Defendant No. 1 Contracting Corporation is the conclusory allegation in Paragraph 6 of its Answer “Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with Number 1 Contracting's usual course of dealings and ordinary customs in the industry.”

This is directly contradicted by the express judicial admission at Exhibit “A” of the Answer that the entire principal balance of \$12,616.94 was both due and owing; and by Paragraph 5 of the Defendant’s own Petition admitting that the Defendant offered monthly payments on principal, and the parties did not reach any settlement agreement.

The first payment, times four, exactly equals the total principal balance of Guelich's principal debt admitted by Defendant to be due and owing. The statement in the Answer does not reveal any definite installment terms, i.e., when the payments will be made, nor does it reveal any mutuality or consideration, i.e. there is nothing alleged in the Answer to bind Defendant No. 1 Contracting to make any definite payment on any definite date, nor to do anything that it isn’t already legally obligated to do (pay its bills). Therefore, there is no consideration stated to bind Guelich to any accord to accept indefinite payments.

Where the Defendant simply undertakes to bypass record counsel for Plaintiff and make a partial payment in its discretion on an admitted debt for “1/4” of the sum it expressly admits is owed, with the stated general “intention” to forward additional principal payments, no “dispute” is raised and no defense is pled.

7. It is admitted that Guelich received a “one quarter” installment of principal admitted to be due of \$3,154.24 “around about” Plaintiff’s counsel of record. No extension was given to Defendant to plead because no meritorious defense existed, and Defendant did not commit to the tendered stipulation providing for definite payment dates and providing for judgment upon default.

8. It is believed that Defendant and his counsel had the intention to file an Answer, regardless of what Guelich’s counsel did.

9. Denied as stated. Defendant denied Guelich’s entitlement to finance charges, only.

10. Guelich’s receipt of a partial payment on an admitted debt does not raise a legal defense in favor of the Defendant. The Defendant sent a partial payment “behind the back” of Plaintiff’s counsel of record while the suit was pending. No legally sufficient basis of a dispute was stated in the Answer under P.A.R.C.P. 1029. In fact, in Exhibit “A” of the Defendant’s Answer, Defendant expressly admitted that the entire principal amount was due and owing. The exhibits would control the pleadings, even if the pleadings had made an inconsistent allegation.

11. It is admitted that Plaintiff’s counsel, on August 4, 2006, filed its Praecipe for Entry of Partial Judgment by Admission, for the net remaining uncontested principal balance of \$9,462.70.

12. Defendant did admit that the entire principal sum of \$12,616.94 was due and owing, subject to the credit for the partial payment, which had been sent “around” Plaintiff’s counsel after counsel had communicated with each other and while the suit was pending.

13. It is admitted that a partial payment of \$3,154.24 was received, and that it reduced the principal balance to \$9,462.70.

14. It is admitted that Plaintiff is entitled to legal interest on the undisputed principal debt balance of \$9,460.70 as a matter of right.

15. Based on the admitted fact that Defendant could not pay its bills timely, and that it sent Plaintiff a partial payment on the undisputed principal balance after suit was filed bypassing Plaintiff's counsel of record, and with a cover letter expressly admitting that the entire principal balance was both due and owing, there is no consideration to bind Plaintiff to an accord to accept indefinite payments over an indefinite period of time, even if one had properly been pled. However, Defendant did not even allege facts sufficient to support a denial under Pennsylvania Rules of Civil Procedure 1029, that is, an agreement based upon consideration and mutuality, binding upon the parties.

16. It is admitted that the Prothonotary did perform the ministerial duty of entering judgment based on the admissions in the Defendant's Answer, for the undisputed principal sum of \$9,462.70 plus legal interest.

17. Plaintiff does not know when Mr. Iannacone received the Notice of Judgment, but has no reason to dispute the August 8, 2006 date.

18. The multiple averments at Paragraphs 18 are scandalous and impertinent and involve erroneous conclusions of law which are denied. Rather it is the Defendant who was attempting to "game the system" by bypassing Plaintiff's counsel of record, and misusing the courts and the Rules of Civil Procedure to hinder and delay its creditors, and is now attempting to misuse the Rules to foist upon Guelich additional unnecessary delay and expense, disparage Plaintiff's counsel, and delay execution, without even stating a meritorious defense.

19. The entry of judgment by admission under Pennsylvania Rules of Civil Procedure 1037(b), comports with the guidelines established by Pennsylvania Rule of Civil Procedure 126. Neither Defendant's Answer nor its Petition raises any meritorious defense to the admitted principal balance of \$9,462.70, or to Guelich's entitlement to legal interest on the principal sum admitted to be due. All the Defendant is doing is inflicting unnecessary counsel fees and expenses upon Guelich, delaying Guelich's recovery of its monies and clogging the courts with unmeritorious pleadings intended solely to hinder and delay Guelich's attachment of Defendant's bank account.

20. Specifically denied. To the contrary, Guelich has placed the allegations of Defendant's Answer exactly in context, Defendant failed to plead a sufficient defense under Pennsylvania Rules of Civil Procedure 1029, or a sufficient basis to open or strike the judgment in its Petition.

21. Denied. The Defendant's Answer fails to make an effective denial under the circumstances, and the Petition to Open or Strike the Judgment fails to raise a valid defense.

22. Specifically denied. To the contrary, in the Defendant's own verified Petition, Paragraph 5, the Defendant admits an offer to make monthly payments, which the Defendant did not perform. The Defendant and its counsel should have more respect for the Court and for opposing counsel, and the adverse party than to cause a multiplicity of pleadings where there is no *bona fide* issue of any material fact, and the debt is admittedly due and owing. Pennsylvania Rules of Civil Procedure 126 provides guidelines for such a situation.

23. Denied. It is Defendant who has presented matters out of context to the Court.

24. Specifically denied. Where the Defendant expressly admits the principal amount sued for is due and owing, which sum can be ascertained from the simple exercise of arithmetic by the

Prothonotary, the Prothonotary is empowered by Rule 1037(b) on Praecipe of Plaintiff to enter judgment for the amount admitted to be due, including legal interest thereon.

25. Denied as an erroneous conclusion of law.

26. Denied as an erroneous conclusion of law.

27. It is admitted that a petition to open a judgment is an appeal to the equitable powers of the Court, and as such is committed to the sound discretion of the Court and will not be disturbed absent a manifest abuse of discretion. It is the Defendant who is seeking to misuse the court system, misuse court procedure, and inflict unnecessary costs and expenses on the Plaintiff, where no sufficient defense was alleged, and almost five months after the Complaint had been filed and served, the purported "monthly" installment payments have never been made.

28. It is believed that the recitation of Pennsylvania Law in Paragraph 28 is correct although the Defendant does not qualify for relief under that standard.

29. Said allegations are conclusions of law.

30. It is admitted that the Defendant waited over 38 days after notice of judgment, and after attachment of Defendant's Bank account, to take any action, which is inequitable and prejudicial to Plaintiff, especially where Defendant has never denied that the money is due and owing, but has expressly admitted it.

31. Denied as an erroneous conclusion of law. Had the Defendant performed as per its (own) alleged agreement, the principal debt would have been satisfied by now. Under the facts of this case,

Defendant's conduct is inequitable and prejudicial to Plaintiff, and is not supported by case precedent, and should not be permitted by this court.

32. Denied that the Defendant acted promptly under the facts and equities of this case.

33. Denied as stated. To the contrary, under the case law, the Defendant must plead a reasonable defense in good faith, and not plead absurdities to the court, or seek to work injustice on other parties.

34. Said allegations are conclusions of law which no response is required.

35. Said allegations are conclusions of law which response is required.

36. Denied. Defendant admitted the principal debt in its Answer.

37. Denied. The allegations of the Defendant's Answer were legally insufficient to raise a defense under Pa. R. C. P. 1029, in the context of the entire Answer.

38. Denied. Defendant has not alleged in its Petition that it made monthly payments according to any agreement, or that it otherwise has a meritorious defense.

39. It is outrageous that the Defendant would even consider inflicting the costs, expenses and delays of a jury trial on Guelich and on the court system under the facts of this case.

40. Specifically denied. Further delay and incurrence of counsel fees is severely prejudicial to the Plaintiff where, as in the case of this modest size, there is no meritorious defense and the court system is being misused merely to delay and frustrate a creditor's attachment execution on its judgment.

WHEREFORE, Plaintiff prays this Honorable Court will deny the Petition to Open or Strike Judgment.

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By 

Charles E. Bobinis, Esquire
cbobinis@bernsteinlaw.com

PA ID #30665

Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

BERNSTEIN FILE NO. G0063332

Charles E
Bobinis/Bernsteinlaw
06/16/2006 04:15 PM

To ciannacone@rhoads-sinon.com
cc
bcc
Subject No. 1 Contracting

Cory:

Enclosed is our Stipulation for Entry of Judgment, which I agree to hold and not to enter Judgment on so long as your client has each of the 4 installments in my hands within five calendar days of their due date.

I will expect the Stipulation to be executed and returned to me by Tuesday, June 27th. I will then expect the payments to start as scheduled commencing on July 1, 2006. Thank you.



MEK009974V001.doc

Charles E. Bobinis, Esq. - Bernstein Law Firm, P.C.
Suite 2200 Gulf Tower - Pittsburgh, PA 15219
Direct Phone - 412-456-8102
Direct Fax - 412-456-8266
cbobinis@bernsteinlaw.com- <http://www.bernsteinlaw.com/>
Board Certified - Creditors' Rights by the American Board of Certification

CONFIDENTIALITY NOTICE: This e-mail message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

EXHIBIT. 1 . .

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

NO. 1 CONTRACTING CORPORATION,

Defendant.

CIVIL DIVISION

No. 06-670-CD

STIPULATION FOR ENTRY OF
JUDGMENT BY CONSENT

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. G0063332

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

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

**STIPULATION FOR SETTLEMENT AND FOR
ENTRY OF JUDGMENT BY CONSENT**

AND NOW COMES D.C. Guelich Explosive Company, by counsel, and Defendant No. 1 Contracting Corporation, by counsel, to Stipulate for Settlement and Entry of Judgment by Consent in favor of Plaintiff D.C. Guelich Explosive Company and against Defendant No. 1 Contracting Corporation, pursuant to their agreed settlement, as follows:

1. No. 1 Contracting Corporation hereby admits its indebtedness to D.C. Guelich Explosive Company in the amount of \$14,000.00.

2. No. 1 Contracting Corporation wishes to be allowed to satisfy said indebtedness by making four equal installment payments of \$3,500.00 each, the first by 4:30 p.m. the close of business on July 1, 2006; the second by 4:30 p.m. the close of business on August 1, 2006; the third by 4:30 p.m. the close of business on September 1, 2006; and the fourth and final installment by 4:30 p.m. the close of business on October 1, 2006.

3. Time is of the essence of this agreement and should No. 1 Contracting Corporation fail to have in the hands of Guelich's counsel any installment in full by within 5 calendar days of its stated due

date, then No. 1 Contracting Corporation will be deemed to be in default of this Stipulation and Guelich shall be immediately free to issue execution and to pursue all other remedies in law and equity to collect the full balance of the Judgment, minus credit for payments received, plus all appropriate interest and costs.

INTENDING TO BE BOUND the parties, through counsel, enter into this Stipulation this _____ day of _____, 2006.

D.C. GUELICH EXPLOSIVE COMPANY

By: _____
Charles E. Bobinis, Esquire
Bernstein Law Firm, P.C.
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

NO. 1 CONTRACTING CORPORATION

By: _____
Cory A. Iannacone, Esquire
Rhoads & Sinon, LLP
One South Market Street, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731

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

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2006, upon consideration of the record it is hereby ORDERED, ADJUDGED AND DECREED that Judgment is entered in favor of Plaintiff D.C. Guelich Explosive Company and against Defendant No. 1 Contracting Corporation in the amount of \$14,000.00, subject to the terms and conditions of the foregoing Stipulation.

BY THE COURT:

_____ J.



NO. 1 CONTRACTING CORPORATION

49 SOUTH MAIN STREET
ASHLEY, PENNSYLVANIA 18706
PHONE: 570-823-0325 FAX: 570-823-9962

June 20, 2006

D.C. Guelich Explosive Co.
1442 18 Hollow Rd.
Clearfield, Pa. 16830

Dear Mr. Guelich:

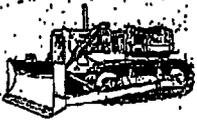
Enclosed please find an initial installment payment in the amount of \$3,154.24 to be applied to the principal amount due by No. 1 Contracting Corporation to D.C. Guelich Explosive Company for goods and services provided to No. 1 Contracting during the time period of September 2005 to March 2006. As previously mentioned, as a result of its high accounts receivable, No. 1 Contracting is making these installment payments in order to satisfy the principal amount due of \$12,616.94.

Thank you for your cooperation. Please contact me with any questions or concerns you may have.

Sincerely,

Melanie Shaak
Office Manager
No. 1 Contracting Corporation

EXHIBIT. 2.



No. 1 Contracting Corporation
49 SOUTH MAIN STREET
ASHLEY, PA 18706
PHONE: (570) 823-0325

60-313/313

6/20/2006

PAY TO THE
ORDER OF

D.C. GUELICH

\$ 3,154.24

Three Thousand One Hundred Fifty-Four and 24/100 ***** DOLLARS

D.C. GUELICH EXPLOSIVE CO.
1442 18 HOLLOW ROAD
CLEARFIELD, PA 16830

MEMO

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.
⑈001300⑈ ⑆031303132⑆ ⑆56 5011325⑆

NO. 1 CONTRACTING CORPORATION
ASHLEY, PA 18706

1300

D.C. GUELICH

6/20/2006

| Date | Type | Reference | Original Amt. | Balance Due | Discount | Payment |
|------------|------|-----------|---------------|--------------|----------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

FNCB

3,154.24

NO. 1 CONTRACTING CORPORATION
ASHLEY, PA 18706

1300

D.C. GUELICH

6/20/2006

| Date | Type | Reference | Original Amt. | Balance Due | Discount | Payment |
|------------|------|-----------|---------------|--------------|----------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

FNCB

3,154.24

June 22, 2006

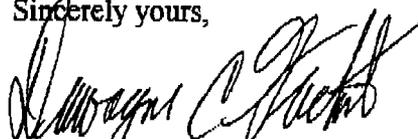
Ms. Melanie Shaak
Office Manager
No. 1 Contracting Corp.
49 South Main Street
Ashley, PA 18706

Dear Ms. Shaak:

Thank you for sending the D. C. Guelich Explosive Company the first monthly installment towards the debt No. 1 Contracting Corporation is in arrears to us. Please keep in mind that there will be costs and finance charges that will need to be paid before we will release our judgment on No. 1 Contracting Corporation.

Please contact Tom Neff or myself if you have any further questions.

Sincerely yours,



Duwayne C. Guelich
President

EXHIBIT. 3 . . .



Guelich

D.C. Guelich Explosive Co.
1442-18 Hollow Road
Clearfield, PA 16830
Phone: (814)765-1558
Fax: (814)765-2962

June 26, 2006

Mr. Al Roman
NO 1 Contracting
49 South Main St.
Ashley, PA 18706

VIA: Certified Mail

Dear Mr. Roman:

We are in receipt of your partial payment check number 1300 for \$3,154.24 dated 06/20/2006. The total judgment against No. 1 Contracting is for \$14,000.00 and was to be paid in four installments of \$3,500.00 each with the first payment due by July 1, 2006. Please be aware there remains an unpaid balance on the first payment of \$345.76 which must be received in our office by the due date of July 1, 2006 to avoid additional collection efforts.

Very Truly Yours,
D.C. Guelich Explosive Co.

Thomas C. Neff
Controller

CC: Ms. Melanie Shaak, No. 1 Contracting
Mr. Charles Bobinis, Bernstein Law Firm

EXHIBIT. 4...

VERIFICATION

The undersigned does hereby verify subject to the penalties of 18 Pa C. S. Section 4904 relating to unsworn falsification to authorities, that he is Secretary of D. C. Guelich Explosives Co., Plaintiff herein, that he is duly authorized to make this Verification, and that the facts set forth in the foregoing Answer to Petition are true and Correct to the best of his knowledge, information and belief.

A handwritten signature in cursive script, appearing to read "John C. Guelich", is written over a horizontal line.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

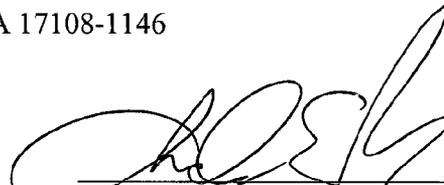
NO. 1 CONTRACTING CORPORATION,

Defendant.

CERTIFICATE OF SERVICE

I, Charles E. Bobinis, Esquire, hereby certify that a true and correct copy of the GUELICH'S ANSWER TO THE PETITION TO OPEN OR STRIKE JUDGMENT BY ADMISSION, FILED BY DEFENDANT NO. 1 CONTRACTING CORPORATION was served on the following parties by regular U.S. Mail, postage prepaid, this 26th day of September, 2006, addressed as follows:

Cory A. Iannacone, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146



Charles E. Bobinis, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff.

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

ORDER OF COURT

And now, to-wit this ___ day of _____, 2006, upon consideration of the record, it appearing to the Court that the Defendant has failed to raise a meritorious defense, has alleged in its Answer only some indefinite and conclusory reference to Guelich's "acquiescence" to a partial payment on a principal debt expressly admitted to be both due and owing in a sum certain at Exhibit "A" of Defendant's Answer, and has admitted in Paragraph 5 of its Petition to Open or Strike Judgment that at best Defendant would claim these to be ongoing monthly payments, which it has not alleged in its Petition that it has made despite the time therefore having passed, and there appearing to be no alleged meritorious defense as a matter of law to the judgment as entered, and the procedures falling within the parameters of P.A.R.C.P. 126, the Petition to Open or Strike of the Defendant is dismissed with prejudice.

BY THE COURT

J.

FILED

SEP 27 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

D.C. GUELICH EXPLOSIVE CO. :
-VS- :
NO. 1 CONTRACTING :
CORPORATION :

No. 06-670-CD

FILED

OCT 17 2006

William A. Shaw
Prothonotary/Clerk of Courts

2 cert to App's

BOBINIS & IANNA COM

FAXED COPIES TO
IS NATIONAL COMM BANK
APP'S BOBINIS & IANNA COM

ORDER

NOW, this 17th day of October, 2006, the Court

having reviewed the file in the above-captioned matter and
the Court notes as follows:

1. Plaintiff commenced the action with the filing of a Complaint on May 1, 2006;
2. Defendant filed an Answer to the Complaint on June 22, 2006;
3. For reasons unknown to the Court, Plaintiff filed on August 7, 2006, a Praecipe for Judgment "by admission" allegedly pursuant to Rule of Civil Procedure 1037(b). The Court notes that Rule 1037(b) authorizes the Prothonotary to enter judgment against a defendant upon a defendant's failure to file a pleading to a complaint;
4. The provisions of Rule 1037(b) are clearly inapplicable to the above-captioned matter as the Defendant did file an Answer to the Complaint;
5. The Prothonotary of Clearfield County acted

on the Plaintiff's Praecipe for Judgment and entered judgment in favor of the Plaintiff and against the Defendant on August 7, 2006;

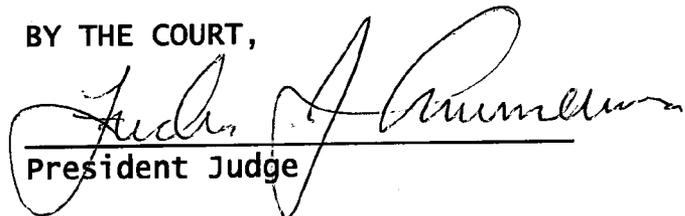
6. Entry of the judgment was clearly inappropriate, and the Court will vacate the same. It would appear to the Court, upon review of the case file, that a Motion for Judgment on the Pleadings may be more appropriate from a procedural standpoint;

7. It is the ORDER of this Court that the judgment entered on August 7, 2007, is hereby vacated, and the Prothonotary shall so mark the judgment index. Any costs associated with the entry of the judgment or the vacation of the same shall be borne by the Plaintiff;

8. All execution proceedings are vacated and dismissed, including, but not limited to, any garnishment by Plaintiff of any bank account(s) belonging to the Defendant;

9. The issuance of this Order by the Court renders the Defendant's Petition to Strike or Open Judgment filed September 15, 2006, moot. Argument on the same scheduled for October 31, 2006, at 9:30 a.m. is hereby cancelled.

BY THE COURT,



President Judge

FILED

OCT 17 2006

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

*** FAX TX REPORT ***

TRANSMISSION OK

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| JOB NO. | 0188 |
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| PSWD/SUBADDRESS | |
| DESTINATION ID | |
| ST. TIME | 10/17 13:56 |
| USAGE T | 00' 24 |
| PGS. | 3 |
| RESULT | OK |

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659



Fax

| | |
|--|-------------------------------|
| To: 1 st National Comm. Bank | From: William A. Shaw |
| Attn: Steve Kavolich | |
| Fax: 570-348-6454 | Date: October 17, 2006 |
| Phone: | Pages: 3 |
| Re: 2006-670-CD Court Order | CC: |

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Faxed to: Atty. Bobinis

Atty. Iannacone

1st National Comm. Bank , Attn: Steve Kavolich

per Judge Fredric J. Ammerman

*** FAX TX REPORT ***

TRANSMISSION OK

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| DESTINATION ID | |
| ST. TIME | 10/18 13:37 |
| USAGE T | 00' 22 |
| PGS. | 1 |
| RESULT | OK |

scheduled for October 31, 2006, at 9:30 a.m. is hereby
cancelled.

BY THE COURT



President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

D.C. GUELICH EXPLOSIVE CO. :

-VS-

NO. 1 CONTRACTING
CORPORATION

No. 06-670-CD

FILED

OCT 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

*100 Atty's
Bobinis*

Jannacone

*1 copy faxed
to First National
Community Bank*

(CP)

O R D E R

NOW, this 18th day of October, 2006, the Order entered on October 17, 2006, is hereby amended to read as follows:

O R D E R

NOW, this 17th day of October, 2006, the Court having reviewed the file in the above-captioned matter and the Court notes as follows:

1. Plaintiff commenced the action with the filing of a Complaint on May 1, 2006;
2. Defendant filed an Answer to the Complaint on June 22, 2006;
3. For reasons unknown to the Court, Plaintiff filed on August 7, 2006, a Praecipe for Judgment "by admission" allegedly pursuant to Rule of Civil Procedure 1037(b). The Court notes that Rule 1037(b) authorizes the Prothonotary to enter judgment against a defendant upon a

defendant's failure to file a pleading to a complaint;

4. The provisions of Rule 1037(b) are clearly inapplicable to the above-captioned matter as the Defendant did file an Answer to the Complaint;

5. The Prothonotary of Clearfield County acted on the Plaintiff's Praecipe for Judgment and entered judgment in favor of the Plaintiff and against the Defendant on August 7, 2006;

6. Entry of the judgment was clearly inappropriate, and the Court will vacate the same. It would appear to the Court, upon review of the case file, that a Motion for Judgment on the Pleadings may be more appropriate from a procedural standpoint;

7. It is the ORDER of this Court that the judgment entered on August 7, 2006, is hereby vacated, and the Prothonotary shall so mark the judgment index. Any costs associated with the entry of the judgment or the vacation of the same shall be borne by the Plaintiff;

8. All execution proceedings are vacated and dismissed, including, but not limited to, any garnishment by Plaintiff of any bank account(s) belonging to the Defendant;

9. The issuance of this Order by the Court renders the Defendant's Petition to Strike or Open Judgment filed September 15, 2006, moot. Argument on the same

scheduled for October 31, 2006, at 9:30 a.m. is hereby
cancelled.

BY THE COURT

Judith J. Ammenman

President Judge

FILED

OCT 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/18/06

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:

*** FAX TX REPORT ***

TRANSMISSION OK

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| PGS. | 3 |
| RESULT | OK |

Prothonotary
 PO Box 549
 Clearfield, PA 16830
 Phone: 814-765-2641, Ext. 1330
 Fax: 814-765-7659



Fax

To: 1st National Comm. Bank

From: William A. Shaw

Attn: Steve Kavolich

Fax: 570-348-6454

Date: October 18, 2006

Phone:

Pages: 3

Re: 2006-670-CD Court Order

CC:

Amended Order

Urgent
 For Review
 Please Comment
 Please Reply
 Please Recycle

Comments:

Faxed to:

1st National Comm. Bank, Attn: Steve Kavolich

*** FAX TX REPORT ***

TRANSMISSION OK

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| JOB NO. | 0190 |
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| PSWD/SUBADDRESS | |
| DESTINATION ID | |
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| USAGE T | 00' 53 |
| PGS. | 3 |
| RESULT | OK |

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659



Fax

To: Charles E. Bobinis, Esq. **From:** William A. Shaw

Fax: 412-456-8266 **Date:** October 17, 2006

Phone: **Pages:** 3

Re: 2006-670-CD Court Order **CC:**

Urgent For Review Please Comment Please Reply Please Recycle

•Comments:

Faxed to: Atty. Bobinis
Atty. Iannacone
1st National Comm. Bank , Attn: Steve Kavolich
per Judge Fredric J. Ammerman

*** FAX TX REPORT ***

TRANSMISSION OK

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| PSWD/SUBADDRESS | |
| DESTINATION ID | |
| ST. TIME | 10/17 14:00 |
| USAGE T | 00' 26 |
| PGS. | 3 |
| RESULT | OK |

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659



Fax

To: Cory A. Iannacone, Esq. **From:** William A. Shaw

Fax: 717-231-6698 **Date:** October 17, 2006

Phone: **Pages:** 3

Re: 2006-670-CD Court Order **CC:**

Urgent For Review Please Comment Please Reply Please Recycle

•Comments:

Faxed to: Atty. Bobinis

Atty. Iannacone

1st National Comm. Bank , Attn: Steve Kavolich

per Judge Fredric J. Ammerman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

No. 06-670-CD

vs.

NO. 1 CONTRACTING CORPORATION,

Defendant.

MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF PLAINTIFF D.C.
GUELICH EXPLOSIVE CO. PURSUANT
TO PENNSYLVANIA RULE OF CIVIL
PROCEDURE 1035

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. G0063332

FILED (E.M.)
NOV 03 2006
m/1:00/w
William A. Shaw
Prothonotary/Clerk of Courts
NO CERT COPIES

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

**MOTION FOR SUMMARY JUDGMENT ON BEHALF OF
PLAINTIFF D.C. GUELICH EXPLOSIVE CO. PURSUANT
TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1035**

1. AND NOW COMES Plaintiff D.C. Guelich Explosive Co. (“Guelich”), by counsel, to move for Summary Judgment against Defendant No. 1 Contracting Corporation, based upon the following:

2. Guelich filed its Complaint for explosive goods and services sold and delivered to the Defendant, in the principal amount of \$12,616.94, together with finance charges through April 30, 2006, bringing the total amount prayed for in the Complaint to \$13,373.96 as per the Statement of Account attached as Exhibit “1” of Guelich’s Complaint, with supporting invoices, drilling records and shipping records, attached collectively as Exhibit “2” of the Complaint, all attached hereto for the convenience of the Court and collectively marked Exhibit “A.”

3. The Defendant No. 1 Contracting Corporation (“No. 1”) filed an Answer claiming to be without knowledge of the public fact that Guelich is a registered Pennsylvania corporation as alleged in the Verified Complaint, and admitting the sale and delivery of the goods and the debt in the principal amount of \$12,616.94. Defendant did allege that Guelich “acquiesced” the Defendant making installment payments in order to satisfy the principal “in accordance with No. 1’s usual course of dealings and

ordinary industry customs in the industry,” pursuant to a copy of No. 1’s check and cover letter to Guelich attached as Exhibit “A” to the Answer, attached hereto for the convenience of the Court as Exhibit “B.”

4. The letter of June 20, 2006 at Exhibit “B” clearly constitutes an unqualified admission by No. 1 of its indebtedness to Guelich in the principal amount of \$12,616.94. No. 1 expressly admits in the letter “No. 1 Contracting is making these installment payments in order to satisfy the principal amount due of \$12,616.94.” The installment payment attached the amount of \$3,154.24, exactly coincides mathematically with one-quarter of the principal amount due.

5. In Paragraph 5 of the Defendant’s Petition Open or Strike Judgment, the Defendant states that it offered to make to Guelich monthly installments.

6. As per the attached Affidavit of Thomas C. Neff, Comptroller of Guelich, attached as Exhibit “C.” Guelich has received only the initial \$3,154.24 installment by the check at Exhibit “B.”

7. As per the attached Affidavits of Guelich’s representatives, Tomas C. Neff, Comptroller, and Duwayne Guelich, President (Exhibit “C” & “D” hereto). Guelich never agree to accept the sum of only \$12,616.94 in full settlement, but at all times understood that Defendant had executed the Stipulation prepared by Guelich’s counsel which allowed for retirement of the entire debt, including finance charges and costs, secured by a provision for the Entry of Judgment upon default, as more fully set forth in the e-mail and Stipulation prepared by Plaintiff’s counsel attached marked as Exhibit “D.”

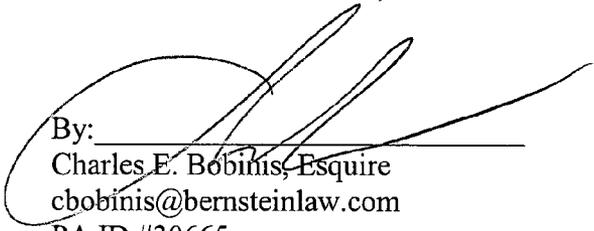
8. Regardless, more than four months have passed, yet the pretext advanced by the Defendant, i.e., an “acquiescence” to accept four monthly installment payments, with the exception of the first payment. Plaintiff is entitled as a matter of law to the entry of Summary Judgment for the remaining principal balance of \$9,460.77 admitted by the Defendant to be due, together with the legal interest at the

rate of 6% per annum, which through November 4, 2006, amounts to \$653.12 per Exhibit "E," based upon the legal precedent more fully set forth in the attached Brief which is incorporated hereto in reference thereto.

WHEREFORE, Guelich prays that this Honorable Court will enter Summary Judgment against the Defendant, in the amount due as a matter of law \$10,115.80, plus costs, and additional legal interest from November 5, 2006.

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
cbobinis@bernsteinlaw.com
PA ID #30665
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

BERNSTEIN FILE NO. G0063332

D.C. GUELICH EXPLOSIVE CO.
1442 18 HOLLOW ROAD
CLEARFIELD PA 16830

STATEMENT

PAGE NO
 1

STATEMENT DATE
 4/30/2006

ACCOUNT NUMBER
 30NO1C

NO 1 CONTRACTING
 49 SOUTH MAIN STREET
 ASHLEY, PA 18706

| REFERENCE | DATE | CODE | DESCRIPTION | AMOUNT | BALANCE |
|-----------|------------|------|-------------------------|-----------|-----------|
| 7763 | 9/7/2005 | I | Po: Our Ord: 7763 | 321.27 | 321.27 |
| 7770 | 9/9/2005 | I | Po: Our Ord: 7770 | 153.20 | 474.47 |
| 7782 | 10/4/2005 | I | Po: Our Ord: 7782 | 12,071.99 | 12,546.46 |
| 7805 | 10/31/2005 | I | Po: Our Ord: 7805 | 70.48 | 12,616.94 |
| 20060131 | 1/31/2006 | F | Cus:30NO1C Fch:20060131 | 252.34 | 12,869.28 |
| 20060228 | 2/28/2006 | F | Cus:30NO1C Fch:20060228 | 252.34 | 13,121.62 |
| 20060331 | 3/31/2006 | F | Cus:30NO1C Fch:20060331 | 252.34 | 13,373.96 |

Codes:

I = Invoice
 C = CR Memo
 D = DR Memo
 P = Payment
 A = Discount Allowed
 F = Finance Charge

Please Pay This Amount

13,373.96

Aged Total: CURRENT OVER 30 OVER 45 OVER 60
 252.34 0.00 0.00 13,121.62

EXHIBIT.A

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE DATE: 10/31/05
 INVOICE NO.: 00007605
 PAGE: 1

invoice

OLD TO: MULLY CONTRACTING
 199 SOUTH MAIN STREET
 ADILEY, PA 15708

SHIP TO: JEANVILLE

ORDER NO. 7005 ORDER DATE 10/31/05 CUSTOMER NO. 200101C TERMS NET 30 DA PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|--------------------|------------|----------|--------|
| 4.00 | | 150 | MAXIM ULTRA 1 1/4 | 3.2338 | LB | 12.94 |
| 4.00 | | 1402400 | INSIDET 24' 25/5 | 6.1774 | EA | 24.71 |
| 5.00 | | 1902042 | REL CTD 20' #42 | 4.8106 | EA | 24.03 |
| 1.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 7.37 |
| 1.00 | | 20 | SECURITY COMPLIA | 1.3800 | EA | 1.38 |

20% finance charge on all
 Over 30 Day Balances

OFFICE

SALES AMOUNT 70.48
 MISC. CHARGES .00
 FREIGHT .00
 SALES TAX .00
 TOTAL 70.48
 PAYMENT REC'D .00
 BALANCE DUE 70.48

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE DATE: 10/04/05
 INVOICE NO.: 00007782
 PAGE: 1

invoice

ORDER NO: 7782
 ORDER DATE: 10/04/05
 CUSTOMER NO: 30001C
 TERMS: NET 30 DAYS
 PURCHASE ORDER NO:
 SHIP DATE:
 SHIP VIA: OUR TRUCK

SHIP TO: JEFFERSONVILLE
 TO:

ASHLEY, PA 16706

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|---------------------|------------|----------|----------|
| 198.00 | | 101 | #1 SUPER PRIME BOOS | 3.6000 | EA | 764.28 |
| 216.00 | | 300 | RED-D-PRIME 1 1/4 X | 1.4490 | LB | 312.96 |
| 3330.00 | | 351 | APEX PLUS 8GAP 5 X | .7008 | LB | 2,333.56 |
| 220.00 | | 312 | APEX ULTRA 3 X 16 | .7437 | EA | 163.61 |
| 350.00 | | 407 | POWER PAK 48 5 X 25 | .5409 | LB | 189.32 |
| 17500.00 | | 12 | BULK ANFO | .3126 | LB | 5,470.50 |
| 31.00 | | 1408000 | HANDIDET 80' 25/5 | 13.4600 | EA | 417.26 |
| 69.00 | | 1406000 | HANDIDET 60' 25/5 | 11.1711 | EA | 770.81 |
| 42.00 | | 1403000 | HANDIDET 30' 25/5 | 7.3739 | EA | 309.70 |
| 56.00 | | 1402400 | HANDIDET 24' 25/5 | 6.1774 | EA | 345.93 |
| 29.00 | | 1902017 | EVEL CTD 20' #17 | 4.8166 | EA | 134.86 |
| 10.00 | | 1902025 | EVEL CTD 20' #25 | 4.8166 | EA | 48.17 |
| 1.00 | | 101200 | ELECTRIC MS 12' 80 | 7.3700 | EA | 7.37 |
| 945.00 | | 4 | HOLES LINED | .4219 | EA | 398.70 |
| 310.00 | | 4 | HOLES LINED | .4219 | EA | 130.79 |
| 20.00 | | 99008 | PIPE | .4329 | EA | 8.66 |
| 6.00 | | 1 | CONNECTING WIRE | 4.7900 | LB | 28.68 |
| 1.00 | | 20 | 2% SECURITY COMPLIA | 236.7100 | EA | 236.71 |

2% Finance Charge on all
 Over 30 Day Balances

SALES AMOUNT 12,071.99
 MISC. CHARGES .00
 FREIGHT .00
 SALES TAX .00
 TOTAL 12,071.99
 PAYMENT REC'D .00
 BALANCE DUE 12,071.99

OFFICE

D.C. GUELICH EXPLOSIVE CO.

P.O. BOX 29, BLOOMSBURG, PA 17815
570-784-4759 • 570-784-4378 • FAX 570-784-4958



SHIPPING RECORD

DATE: 10-4-05

OPC/DEALER ORDER NO.

LICENSE/ PERMIT NO.

ORDER/DEL TICKET NO. 7782

SIGNATURE: *[Signature]*

CUSTOMER/MAG/DISTRIB: *10/ Con Contracting / Jermansville Pa*

| ITEM DESCRIPTION | | | | NUMBER OF CASES | DATE CODE | TOTAL QUANTITY SHIPPED |
|------------------|-------------------------|---------------------------------|---------------------------------|-----------------|-----------|------------------------|
| CL | GRADE POWDER/TYPER CAPS | SIZE | STYLE POWDER/ NUMBER OF CAPS | | | |
| HE | Trojan Boosters | 1 ¹⁶ | | | | 198 |
| HE | Austin Red D-Prime | 1 ⁴ x8 | | | | 216 |
| BO | Apex Plus | 5x30 | | | | 3330 |
| BO | Apex Ultra | 3x16 | | | | 220 |
| BA | Power Pak 48 | 5x25 | | | | 350 |
| BA | NCN Bulk | Bulk | | | | 17,500 |
| HE | Handidet 25/500 | 80' | 31-RA | | | |
| HE | Handidet 25/500 | 60' | 69-RA | | | |
| HE | Handidet 25/500 | 30' | 42-RA | | | |
| HE | Handidet 25/500 | 24' | 56-RA | | | |
| HE | CTD " 17ms | 20' | 28-RA | | | |
| HE | CTD " 25ms | 30' | 10-RA | | | |
| HE | EBC "D Instant | 12' | 1-RA | | | |
| | Bore Hole Liner | 6 ¹ / ₂ " | 945' | | | |
| | Bore Hole Liner | 4" | 310' | | | |
| | Plastic Pipe | 3" | 20' | | | |
| | Conn Wire | 20' <i>20</i> | 6 ¹ / ₂ " | | | |

Item should be 7782 not 7781

@# 14490

[Signature]

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE DATE: 09/09/05
 INVOICE NO.: 00007770
 PAGE: 1

invoice

TO: NO 1 CONTRACTING
 49 SOUTH MAIN STREET
 ASHLBY, PA 16708

SHIP TO: CLEARVILLE

ORDER NO. 7770 ORDER DATE 09/09/05 CUSTOMER NO. 100010 TERMS NET 30 DAYS PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|---------------------|------------|----------|--------|
| 11.00 | | 147 | POWEREX PLUS 2 X 8 | 3.2398 | LB | 35.57 |
| 25.00 | | 13 | BAGGED ANFO | .2913 | LB | 7.28 |
| 11.00 | | 1401600 | LANDIET 16' 25/5 | 4.9397 | EA | 54.22 |
| 4.00 | | 1902017 | EMEL CTD 20' #17 | 4.8166 | EA | 19.27 |
| 2.00 | | 101200 | ELECTRIC MS 12' 50 | 7.3700 | EA | 14.74 |
| 4.00 | | 1 | CONNECTING WIRE | 4.7800 | LB | 19.12 |
| 1.00 | | 20 | 2% SECURITY COMPLIA | 3.0000 | EA | 3.00 |

2% Finance Charge on all
 Over 30 Day Balances

| | |
|---------------|--------|
| SALES AMOUNT | 153.20 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 153.20 |
| PAYMENT REC'D | .00 |
| BALANCE DUE | 153.20 |

OFFICE

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE DATE: 09/07/05
 INVOICE NO.: 00007753
 PAGE: 1

invoice

LD NO: 1 CONTRACTING
 CO: 50 SOUTH MAIN STREET
 ASHLBY, Pa 16706

SHIP TO: LAWRENCE

ORDER NO. 7754 ORDER DATE 09/07/05 CUSTOMER NO. 30001C TERMS NET 30 DAYS PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|---------------------|------------|----------|--------|
| 22.00 | | 147 | POWEREX PLUS 2 X 8 | 3.2598 | LB | 71.14 |
| 200.00 | | 13 | PACKED ANFO | .2913 | LB | 58.26 |
| 22.00 | | 1401600 | MANDIDET 16' 25/5 | 4.9287 | EA | 108.43 |
| 5.00 | | 1902017 | EXEL CTD 20' #17 | 4.8100 | EA | 28.90 |
| 1.00 | | 1902025 | EXEL CTD 0' #25 | 4.8166 | EA | 4.82 |
| 2.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 14.74 |
| 6.00 | | 1 | CONNECTING WIRE | 4.7600 | LB | 28.58 |
| 1.00 | | 20 | 25 SECURITY COMPLIA | 6.3000 | EA | 6.30 |

2% Finance Charge on all
 Over 30 Day Balances

SALES AMOUNT 321.27
 MISC. CHARGES .00
 FREIGHT .00
 SALES TAX .00
 TOTAL 321.27
 PAYMENT REC'D .00
 BALANCE DUE 321.27

OFFICE



NO. 1 CONTRACTING CORPORATION

49 SOUTH MAIN STREET
ASHLEY, PENNSYLVANIA 18706
PHONE: 570-823-0325 FAX: 570-823-9962

June 20, 2006

D.C. Guelich Explosive Co.
1442 18 Hollow Rd.
Clearfield, Pa. 16830

Dear Mr. Guelich:

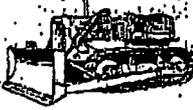
Enclosed please find an initial installment payment in the amount of \$3,154.24 to be applied to the principal amount due by No. 1 Contracting Corporation to D.C. Guelich Explosive Company for goods and services provided to No. 1 Contracting during the time period of September 2005 to March 2006. As previously mentioned, as a result of its high accounts receivable, No. 1 Contracting is making these installment payments in order to satisfy the principal amount due of \$12,616.94.

Thank you for your cooperation. Please contact me with any questions or concerns you may have.

Sincerely,

Melanie Shaak
Office Manager
No. 1 Contracting Corporation

EXHIBIT. B. . .



No. 1 Contracting Corporation
49 SOUTH MAIN STREET
ASHLEY, PA 18706
PHONE: (570) 823-0326

60-312/313

6/20/2006

PAY TO THE ORDER OF D.C. GUELICH

\$ 3,154.24

Three Thousand One Hundred Fifty-Four and 24/100 ***** DOLLAR

D.C. GUELICH EXPLOSIVE CO.
1442 18 HOLLOW ROAD
CLEARFIELD, PA 16830

MEMO

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HEREIN - RED IMAGE DISAPPEARS WITH HEAT.

⑈001300⑈ ⑆031303132⑆ ⑈56 5011325⑈

NO. 1 CONTRACTING CORPORATION
ASHLEY, PA 18706

1300

D.C. GUELICH

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|------------|------|-----------|---------------|--------------|-----------------------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

FNCB

3,154.24

NO. 1 CONTRACTING CORPORATION
ASHLEY, PA 18706

1300

D.C. GUELICH

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|------------|------|-----------|---------------|--------------|-----------------------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

FNCB

3,154.24

BF3001-1

REORDER FROM YOUR LOCAL SAFEGUARD DISTRIBUTOR, IF UNKNOWN, CALL 800-822-2423

COMMONWEALTH OF *Pennsylvania*)
COUNTY OF *Clearfield*) SS:

AFFIDAVIT IN SUPPORT OF D.C. GUELICH EXPLOSIVE CO.'S
MOTION FOR SUMMARY JUDGMENT

Before me, the undersigned authority, personally appeared Thomas C. Neff, who deposes and says that he is the Controller of D.C. Guelich Explosive Co. ("Guelich"), that he authored the letter of June 26, 2006 attached hereto as Exhibit "A" to set forth Guelich's understanding as to the receipt of a partial payment of June 21, 2006 in the amount of \$3,154.24 which Guelich believed was pursuant to the written Stipulation proposed by Guelich's counsel, and that Guelich has received no additional payments from the Defendant, and that according to Guelich's books and records, maintained at or about the time of the transactions, under the supervision of Affiant, and relied upon in the normal course of business, there remains due and owing to Guelich by No. 1 Contracting Corporation, the principal sum of \$9,462.70, as shown by a true and correct copy of Guelich's Statement of Account, attached hereto as Exhibit "B," and further your Affiant sayeth not.

Thomas C. Neff

Thomas C. Neff

Sworn to and subscribed
before me this *30th* day
of *October*, 2006

Pamela E. Davis

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Pamela E. Davis, Notary Public
Lawrence Twp., Clearfield County
My Commission Expires May 22, 2008
Member, Pennsylvania Association Of Notaries

EXHIBIT. C.



Guelich

D.C. Guelich Explosive Co.
1442-18 Hollow Road
Clearfield, PA 16830
Phone: (814)765-1558
Fax: (814)765-2962

June 26, 2006

Mr. Al Roman
NO 1 Contracting
49 South Main St.
Ashley, PA 18706

VIA: Certified Mail

Dear Mr. Roman:

We are in receipt of your partial payment check number 1300 for \$3,154.24 dated 06/20/2006. The total judgment against No. 1 Contracting is for \$14,000.00 and was to be paid in four installments of \$3,500.00 each with the first payment due by July 1, 2006. Please be aware there remains an unpaid balance on the first payment of \$345.76 which must be received in our office by the due date of July 1, 2006 to avoid additional collection efforts.

Very Truly Yours,
D.C. Guelich Explosive Co.

Thomas C. Neff
Controller

CC: Ms. Melanie Shaak, No. 1 Contracting
Mr. Charles Bobinis, Bernstein Law Firm

EXHIBIT.A..

Oct 25, 2006 - 3:05pm

D.C. GUELICH EXPLOSIVE CO.

Page

ACCOUNTS RECEIVABLE AGING REPORT

Aged As Of 10/25/2006

Printed In Customer Number, Apply-To Number Order, Detail

Minimum Balance Due: All

In Aging Period Or Older: All

Balance Forward Totals to Current Period Only

Document Types I = Invoice P = Payment C = Cr Memo D = Dr Memo B = Balance Forward F = Finance Charge

Notes: Types I, B And F Are Aged By Their Doc Date. Types P, C And D Are Aged By Doc Date Of The Document To Which They Apply.

On Types I, B, C And D Amount-1 Is Sale Amt. On Type P Amount-1 Is Cash Receipt Amt. On Type F Amount-1 Is Fin Charge Am
On Types I, C, and D Amount-2 Is Other Charges. On Type P Amount-2 Is Discount And Allowance. (No Amount-2 For Types F & B

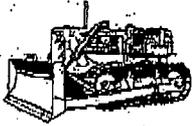
| Cust-No | Name | Bal-Mthd | Contact | Phone-No | Terms | Slsmn | Collectr | Terr | Loc | Crdt-Lmt | ***** Aged Customer Balance ***** | | | | | | | | |
|--------------|------------------|----------|---------|----------|-------|-------|----------|------|-----|----------|-----------------------------------|---------|---------|---------|--|--|--|--|--|
| | | | | | | | | | | | CURRENT | OVER 30 | OVER 45 | OVER 60 | | | | | |
| 30NO1C | NO 1 CONTRACTING | | | | | | | | | | | | | | | | | | |
| Opn-Itm | | | | | | | | | | | | | | | | | | | |
| 576-823-0325 | NET 30 DAYS | | | | 99 | | | | | 30 | 1,000,000 | | | | | | | | |

| Doc-No | Doc-Date | Tp | Apply-To | Due-Date | Amount-1 | Amount-2 | | | | |
|------------------------------|------------|----|----------|----------|-----------|----------|--|--|-----|-----------|
| 7782 | 10/04/2005 | I | 7782 | 11/03/05 | 12,071.99 | .00 | | | | |
| 1300 | 06/21/2006 | P | 7782 | 06/21/06 | 2,609.29 | .00 | | | | 9,462.70 |
| 20060131 | 01/31/2005 | F | 20060131 | 01/31/06 | 252.34 | .00 | | | | 252.34 |
| 20060228 | 02/28/2005 | F | 20060228 | 02/28/06 | 252.34 | .00 | | | | 252.34 |
| 20060331 | 03/31/2006 | F | 20060331 | 03/31/05 | 252.34 | .00 | | | | 252.34 |
| Customer Total: | | | | | 10,219.72 | .00 | | | .00 | 10,219.72 |
| 1 Cust Printed Grand Totals: | | | | | 10,219.72 | .00 | | | .00 | 10,219.72 |
| 3 Of Balance: | | | | | | .00 | | | .00 | 100.00 |
| Outstand B,D,I | | | | | 9,462.70 | .00 | | | .00 | 9,462.70 |
| Unapplied C,P | | | | | .00 | .00 | | | .00 | .00 |
| Finance Charges | | | | | 757.02 | .00 | | | .00 | 757.02 |

CK # 1300 for \$3,154.24

| ANO # | Amount |
|-------|----------------|
| 7763- | 321.27 |
| 7770- | 153.20 |
| 2805- | 70.48 |
| 7782- | 2609.29 |
| | <u>3154.24</u> |

6-20-06



No. 1 Contracting Corporation
49 SOUTH MAIN STREET
ASHLEY, PA. 18706
PHONE: (570) 623-0325

FIRST NATIONAL COMMUNITY BANK
DUNMORE, PA

60-313/313

1300

6/20/2006

PAY TO THE ORDER OF

D.C. GUELICH

\$ **3,154.24

Three Thousand One Hundred Fifty-Four and 24/100*****

DOLLA

D.C. GUELICH EXPLOSIVE CO.
1442 18 HOLLOW ROAD
CLEARFIELD, PA 16830

MEMO

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESSURE - RED IMAGE DISAPPEARS WITH HEAT
⑈001300⑈ ⑆031303132⑆ ⑈56 5011325⑈

NO. 1 CONTRACTING CORPORATION
ASHLEY, PA 18706

1300

D.C. GUELICH

| Date | Type | Reference | Original Amt. | Balance Due | Discount | Payment |
|------------|------|-----------|---------------|--------------|----------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

6/20/2006

FNCB

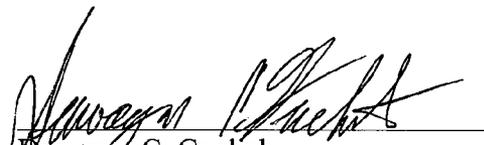
Tom,
 This check was sent after I had a verbal conversation with Melanie on 6-20-06. He was to take the amount of judgement ÷ by 4 and send monthly installments. I guess she only decided to pay principle hence my letter to her. This should keep you in the loop.

3,154.24
 [Signature]

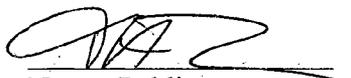
COMMONWEALTH OF)
) SS:
COUNTY OF)

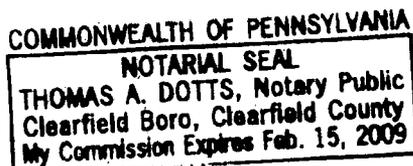
**AFFIDAVIT IN SUPPORT OF D.C. GUELICH EXPLOSIVE CO.'S
MOTION FOR SUMMARY JUDGMENT**

Before me, the undersigned authority, personally appeared Duwayne C. Guelich, who, being duly sworn according to law deposes and says that he is President of Plaintiff D.C. Guelich Explosive Co., a Pennsylvania corporation, that he authored the attached letter of June 22, 2006 to the Defendant in the belief that the Defendant had entered into the Stipulation prepared by Guelich's counsel, and that the omission from the payment of Court costs and finance charges was an error or oversight by the Defendant, that the Defendant has not made any payments on the amount admitted to be due since the partial payment of June 21, 2006 of \$3,154.24, leaving an unpaid principal balance due and owing of \$5,462.70, and further your Affiant sayeth not.


Duwayne C. Guelich

Sworn to and subscribed
before me this 30 day
of October, 2006


Notary Public



June 22, 2006

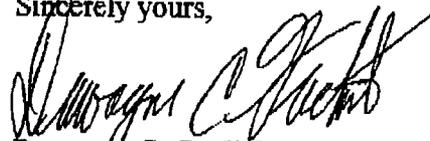
Ms. Melanie Shaak
Office Manager
No. 1 Contracting Corp.
49 South Main Street
Ashley, PA 18706

Dear Ms. Shaak:

Thank you for sending the D. C. Guelich Explosive Company the first monthly installment towards the debt No. 1 Contracting Corporation is in arrears to us. Please keep in mind that there will be costs and finance charges that will need to be paid before we will release our judgment on No. 1 Contracting Corporation.

Please contact Tom Neff or myself if you have any further questions.

Sincerely yours,



Duwayne C. Guelich
President

EXHIBIT. 3..

| | | |
|----|--|-------------|
| 1. | Latest date October 4, 2005, invoice due November 4, 2005. | |
| 2. | Legal interest on \$12,616.94 from November 4, 2005 to June 4, 2006, | \$ 416.56 |
| 3. | Legal interest on \$9,462.70 (\$12,616.94 - \$3,154.24 partial payment), from June 5, 2006 to August 4, 2006, | \$ 94.62 |
| 4. | Total legal interest of remaining balance from November 4, 2005 to November 4, 2006, | \$ 141.94 |
| 5. | \$9,462.70 (principal), plus \$511.18 (interest) equals current balance | \$10,115.80 |

EXHIBIT "E"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

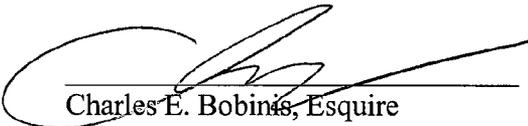
NO. 1 CONTRACTING CORPORATION,

Defendant.

CERTIFICATE OF SERVICE

I, Charles E. Bobinis, Esquire, hereby certify that a true and correct copy of the MOTION FOR SUMMARY JUDGMENT ON BEHALF OF PLAINTIFF D.C. GUELICH EXPLOSIVE CO. PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1035 was served on the following parties by regular U.S. Mail, postage prepaid, this 1st day of November, 2006, addressed as follows:

Cory A. Iannacone, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146


Charles E. Bobinis, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2006, upon consideration of the record, and it appearing to the Court that the Defendant has admitted that the remaining principal balance of \$9,460.77 is due and owing to Plaintiff Guelich, and it further appearing to the Court that there is no sufficient defense thereto, as a matter of law, and it further appearing to the Court that Plaintiff is entitled to the assessment of legal interest on the declining principal balance at the rate of 6% per annum from November 4, 2005, to November 4, 2006, of \$653.12, it is hereby ORDERED, ADJUDGED AND DECREED that Summary Judgment is entered in favor of D.C. Guelich Explosive Co. and against Defendant No. 1 Contracting Corporation in the amount of the \$10,115.80, plus appropriate additional interest from the date of Judgment, plus costs.

BY THE COURT:

U.S. Bankruptcy Judge

13

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

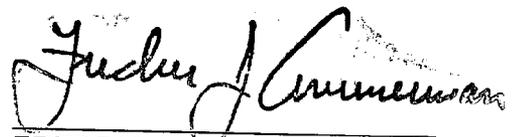
D.C.GUELICH EXPLOSIVE CO., *
Plaintiff *
vs. * NO. 06-670-CD *
NO. 1 CONTRACTING CORPORATION, *
Defendant *

ORDER

NOW, this 7th day of November, 2006, upon review of the Motion for Summary Judgment filed on behalf of the Plaintiff, it is the ORDER of this Court that:

- 1) A rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested;
- 2) The respondent shall file an answer to the petition within no more than twenty (20) days of this date; and
- 3) Argument on the Motion for Summary Judgment shall be held on the 15th day of December, 2006 at 11:00 a.m. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED ICCA/MS:
010:1460 Bobinis
NOV 08 2006 Iannacore

William A. Shaw
Prothonotary/Clerk of Courts

610

DATE: 11/8/06

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

NOV 08 2006

William A. Shaw
Prothonotary/Clerk of Courts

Kenneth L. Joel, Esquire
Attorney I.D. No. 72370
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

FILED ^{NO}
NOV 22 2006 ^{cc}

William A. Shaw
Prothonotary/Clerk of Courts

D.C. GUELICH EXPLOSIVE CO.

Plaintiff

v.

NO. 1 CONTRACTING
CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

ANSWER TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
PURSUANT TO PA. R. CIV. P. 1035

NOW COMES Defendant, No. 1 Contracting Corporation ("Defendant" or "No. 1 Contracting"), by and through its counsel, Rhoads & Sinon LLP, and files the within Answer to Plaintiff, D.C. Guelich Explosive Co.'s ("Plaintiff" or "Guelich") Motion for Summary Judgment, and in support thereof avers as follows:

1. Denied. This paragraph fails to contain any material averments and as such no responsive pleading is required. To the extent a responsive pleading is required, all averments contained in this paragraph are specifically denied.

2. Admitted in part and denied in part. It is admitted that Guelich filed a Complaint for explosive goods and services that it allegedly sold and delivered to No. 1 Contracting. The Complaint filed by Guelich is a document which speaks for itself, and as such, no responsive pleading is required as to its contents. Furthermore, the Statement of Account, attached as

Exhibit "1" to the Complaint, along with the supporting invoices, drilling records and shipping records, collectively attached as Exhibit "2" to the Complaint, with both Exhibits collectively being attached as Exhibit "A" to Guelich's Motion for Summary Judgment, are all documents which speak for themselves. As such, no responsive pleading is required. To the extent a response is required, those remaining allegations are specifically denied. By way of further response, it is specifically denied that Guelich is entitled to either the alleged principal amount of \$12,616.94 or the total amount prayed for in the Complaint of \$13,373.96. No. 1 Contracting has in fact made partial payment for explosive goods and services sold and delivered by Guelich.

3. Admitted in part and denied in part. It is admitted that No. 1 Contracting filed an Answer in this matter. No. 1 Contracting's Answer and all exhibits attached to its Answer are documents which speaks for themselves, and as such, no responsive pleading is required. To the extent a response is required, all remaining averments contained in this paragraph are specifically denied.

4. Denied. Whether the letter of June 20, 2006 constitutes an unqualified admission is a legal conclusion for which no responsive pleading is required. Furthermore, the letter is a document which speaks for itself. As such, no responsive pleading is required. To the extent a response is required, all averments contained in this paragraph are specifically denied.

5. Denied. No. 1 Contracting's Petition to Strike, or in the Alternative, Open Judgment ("Petition") is a document which speaks for itself. As such, no responsive pleading is required. To the extent a response is required, all allegations contained in this paragraph are specifically denied. By way of further response, Paragraph 5 of the Petition, which Guelich references, actually provides that "Mr. Iannacone [counsel for No. 1 Contracting] indicated to Mr. Bobinis, that it was No. 1 Contracting's intention to make monthly installments to fulfill the

debt owed by No. 1 Contracting to Guelich.” There is no language contained in this paragraph would constitutes an “offer” or any sort of formal contract which would include “monthly installments” as a term.

6. Denied. The Affidavit of Thomas C. Neff, attached as Exhibit “C” to Guelich’s Motion for Summary Judgment is a document which speaks for itself, and as such, no responsive pleading is required. To the extent a response is required, all remaining averments contained in this paragraph are specifically denied. By way of further response the Nanty-Glo rule precludes this Court from considering this affidavit in ruling on Guelich’s Motion for Summary Judgment. The “Nanty-Glo rule” prevents entry of summary judgment where the moving party relies exclusively on oral testimony, either through testimonial affidavits or deposition testimony, to establish the absence of a genuine issue of material fact. Penn Center House, Inc. v. Hoffman, 553 A.2d 900 (Pa. 1989). Such evidence will not afford a sufficient basis for the entry of summary judgment, even if uncontradicted, since the credibility of the testimony is a matter for the jury. Penn Center House, Inc. v. Hoffman, 553 A.2d 900 (Pa. 1989).

7. Denied. The Affidavits of Guelich’s representatives, Thomas C. Neff, Comptroller, and Duwayne Guelich, President, collective attached to Guelich’s Motion for Summary Judgment at Exhibit “D” are documents which speak for themselves, and as such, no responsive pleading is required. To the extent a response is required, all remaining averments contained in this paragraph are specifically denied. By way of further response the Nanty-Glo rule precludes this Court from considering these affidavits in ruling on Guelich’s Motion for Summary Judgment. The “Nanty-Glo rule” prevents entry of summary judgment where the moving party relies exclusively on oral testimony, either through testimonial affidavits or deposition testimony, to establish the absence of a genuine issue of material fact. Penn Center

House, Inc. v. Hoffman, 553 A.2d 900 (Pa. 1989). Such evidence will not afford a sufficient basis for the entry of summary judgment, even if uncontradicted, since the credibility of the testimony is a matter for the jury. Penn Center House, Inc. v. Hoffman, 553 A.2d 900 (Pa. 1989).

8. Denied. It is specifically denied that No. 1 Contracting has advanced any alleged pretext of acquiescence to accept four monthly installment payments. To accurately quote No. 1 Contracting's Answer, "Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary industry customs in the industry." There is no language contained in No. 1 Contracting's Answer which would indicate that these installment payments were promised to be made on a "monthly" basis, let only, specifically in four month's time. Furthermore, it is specifically denied that Guelich is entitled as a matter of law to the entry of Summary Judgment for the alleged remaining balance of \$9,460.77, allegedly admitted by No. 1 Contracting. It is also specifically denied that Guelich is entitled to any legal interest at the rate of 6% annum, allegedly amounting to \$653.12. In addition, Exhibit "E" along with Guelich's attached Brief are documents which speak for themselves, and as such, no responsive pleading is required. Guelich's Brief contains legal conclusions for which no responsive pleading is required. To the extent any further response is required, all remaining allegations are specifically denied. Lastly, and by way of further response, *information needed to defeat the motion is exclusively in the possession of the Guelich and can only be obtained only if an opportunity is given for its discovery.* Specifically, a genuine issue as to material fact exists as to the terms of the agreement between Guelich and No. 1 Contracting, in particular, the manner in which payment was to take place. Guelich initially claims in its Complaint that a total amount of \$13,373.96 was due by No.

1 Contracting, (Compl. ¶7), and then argues that it was entitled to four monthly installment payments totaling \$9,460.77 in its Motion for Summary Judgment, (Mot. for Summ. J. ¶ 8). No. 1 Contracting, to the contrary, has always maintained that it was making “installment payments,” and never claims that it was agreed upon between the parties that they would be made on a monthly basis:

Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting’s usual course of dealings and ordinary industry customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. . . . Thus, Guelich is not entitled to the amount claimed in its Complaint.

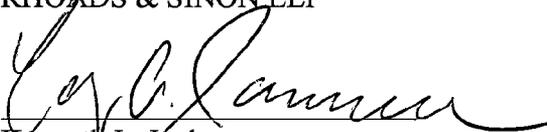
(Answer ¶¶6-8.)

WHEREFORE, No. 1 Contracting Corp. respectfully requests that D.C. Guelich Explosive, Co.’s Motion for Summary Judgment be denied in its entirety.

Respectfully submitted,

RHOADS & SINON LLP

By:



Kenneth L. Joel

Cory A. Iannacone

One South Market Square

P. O. Box 1146

Harrisburg, PA 17108-1146

(717) 233-5731

Attorneys for No. 1 Contracting

VERIFICATION

Melanie Shaak, deposes and says, subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, that she is the Office Manager of No. 1 Contracting Corp., that she makes this verification by its authority and that the facts set forth in the Answer to Plaintiff's Motion for Summary Judgment are true and correct to the best of her knowledge, information and belief.

11/21/08
Date

Melanie Shaak
Melanie Shaak



A

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

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No.

NO. 1 CONTRACTING CORPORATION,

Defendant.

NOTICE AND COMPLAINT

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 upon you, 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.

Lawyer Referral Service
PA Bar Association
P.O. Box 186
Harrisburg, PA 17108
1-800-692-7375

COMPLAINT

1. Plaintiff D. C. Guelich Explosive Company ("Guelich") is a Pennsylvania corporation maintaining principal offices and place of business at Clearfield, Pennsylvania.

2. Defendant No. 1 Contracting Corporation is a Pennsylvania corporation maintaining principal offices and place of business at 1001 Wilkes-Barre Township Blvd., Wilkes-Barre, Luzerne County, PA 18702 with a mailing address of 49 South Main Street, Ashley, Luzerne County, PA 18706.

3. The actions and events out of which this cause of action arises occurred in Luzerne County, Pennsylvania. However, payments under the contract were to be made to Plaintiff at its main office in Clearfield, Pennsylvania. This Court therefore has both subject matter jurisdiction and venue over the case.

4. On various dates between September of 2005 and March of 2006, Guelich, at the specific request of No. 1 Contracting Corporation, sold and delivered to No. 1 Contracting Corporation various explosive goods and services at the times, in the amounts and for the prices listed on Plaintiff's Invoices with supporting drilling and shipping records, referenced on Plaintiff's Statement, a true and correct copy of which is attached hereto marked as Exhibit "1" and made a part hereof.

5. Defendant No. 1 Contracting Corporation received and accepted each of the aforementioned goods and services for prices, which were agreed upon at the time of the delivery as evidenced by Guelich's Invoices and shipping records, true and correct copies of which are attached hereto, marked collectively as Exhibit "2", and made a part here of.

6. Despite the occurrence of all conditions precedent, Defendant No. 1 Contracting Corporation failed and refused to pay Guelich the principal sum due.

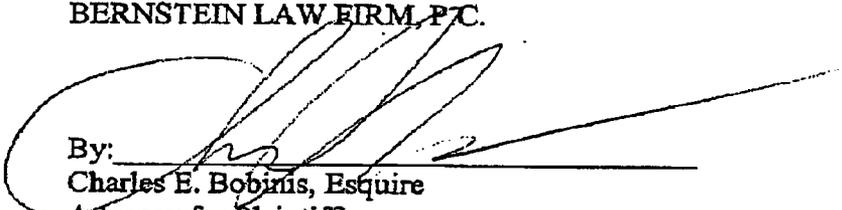
7. The total amount of principal and finance charges due through April 30, 2006, amount to \$13,373.96, per Exhibit "1".

8. Although repeatedly requested to pay, Defendant has failed and refused to pay the aforesaid sums justly due and owing to Guelich.

WHEREFORE, D. C. Guelich Explosive Co. demands Judgment on this Complaint against Defendant No. 1 Contracting Corporation in the amount of \$13,373.96, plus appropriate additional interest at the contractual rate from April 30, 2006, plus record costs and such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
Attorney for Plaintiff
PA I.D. #30665
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

BERNSTEIN FILE NO. G0063332

J.C. GUELICH EXPLOSIVE CO.
1442 18 HOLLOW ROAD
CLEARFIELD PA 16830

STATEMENT

PAGE NO
1

STATEMENT DATE
4/30/2006

ACCOUNT NUMBER
30NO1C

NO 1 CONTRACTING
49 SOUTH MAIN STREET
ASHLEY, PA 18706

| REFERENCE | DATE | CCDE | DESCRIPTION | AMOUNT | BALANCE |
|-----------|------------|------|-------------------------|-----------|-----------|
| 7763 | 9/7/2005 | I | Po: Our Ord: 7763 | 321.27 | 321.27 |
| 7770 | 9/9/2005 | I | Po: Our Ord: 7770 | 153.20 | 474.47 |
| 7782 | 10/4/2005 | I | Po: Our Ord: 7782 | 12,071.99 | 12,546.46 |
| 7805 | 10/31/2005 | I | Po: Our Ord: 7805 | 70.48 | 12,616.94 |
| 20060131 | 1/31/2006 | F | Cus:30NO1C Fch:20060131 | 252.34 | 12,869.28 |
| 20060228 | 2/28/2006 | F | Cus:30NO1C Fch:20060228 | 252.34 | 13,121.62 |
| 20060331 | 3/31/2006 | F | Cus:30NO1C Fch:20060331 | 252.34 | 13,373.96 |

| | | | | | | | |
|------------|--|--|--|---------|---------|---------|-----------|
| Aged Total | | | | CURRENT | OVER 30 | OVER 45 | OVER 60 |
| | | | | 252.34 | 0.00 | 0.00 | 13,121.62 |

EXHIBIT...!

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
Clearfield, PA 16830
PH: (814) 765-1558

INVOICE
DATE
10/31/05

INVOICE
NO. PAGE
00007605

invoice

NO. 1 CONTRACTING
49 SOUTH MAIN STREET
ASHLEY, PA 16706

SHIP TO: STANFORDVILLE

| ER NO. | ORDER DATE | CUSTOMER NO. | TERMS | PURCHASE ORDER NO. | SHIP DATE | SHIP VIA |
|--------|------------|--------------|------------|--------------------|-----------|-----------|
| 79 | 10/31/05 | 00001C | NET 30 DAY | | | OUR TRUCK |

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|---------------------|---------------------|-------------|--------------------|------------|-------------|--------|
| 4.00 | | 150 | PRIM ULTRA 1 1/4 | 3.2380 | LB | 12.94 |
| 4.00 | | 1402400 | ROCKET 24' 25/5 | 6.1774 | EA | 24.71 |
| 5.00 | | 1902042 | EL. CTD 20' #42 | 4.6108 | EA | 24.09 |
| 1.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 7.37 |
| 1.00 | | 20 | SECURITY COMPLIA | 1.3800 | EA | 1.38 |

2% Finance Charge on all
Over 30 Day Balances

EXHIBIT. 2

OFFICE

| | |
|---------------|-------|
| SALES AMOUNT | 70.48 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 70.48 |
| PAYMENT REC'D | .00 |
| BALANCE DUE | 70.48 |

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
Clearfield, PA 16830
PH: (814) 765-1558

INVOICE
DATE

INVOICE
NO.

PAGE

10/04/05

00007782

invoice

NO 1 CONTRACTING
49 SOUTH MAIN STREET

SHIP TO: CLEVELAND

ASHLEY, PA 18706

| | | | | | | |
|-------|------------|--------------|-------------|--------------------|-----------|-----------|
| 1 NO. | ORDER DATE | CUSTOMER NO. | TERMS | PURCHASE ORDER NO. | SHIP DATE | SHIP VIA |
| 7742 | 10/04/05 | 30010 | NET 30 DAYS | | | OUR TRUCK |

| QUANTITY ORDER | SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|-------------------|---------|-------------|-----------------------|------------|-------------|----------|
| 198.00 | | 101 | 1/4" SUPER PRIME 800S | 3.8000 | EA | 764.28 |
| 218.00 | | 300 | RED-D-PRIME 1 1/4 X | 1.4490 | LB | 312.98 |
| 3330.00 | | 351 | APEX PLUS 89AP 5 X | .7008 | LB | 2,333.66 |
| 220.00 | | 312 | APEX ULTRA 3 X 16 | .7437 | EA | 163.61 |
| 350.00 | | 407 | POWER PAK 48 5 X 25 | .5409 | LB | 189.32 |
| 17500.00 | | 12 | BULK ANFO | .3126 | LB | 5,470.50 |
| 31.00 | | 1408000 | HANDIDET 60' 25/5 | 13.4600 | EA | 417.26 |
| 89.00 | | 1406000 | HANDIDET 60' 25/5 | 11.1711 | EA | 770.91 |
| 42.00 | | 1403000 | HANDIDET 30' 25/5 | 7.3739 | EA | 309.70 |
| 56.00 | | 1402400 | HANDIDET 24' 25/5 | 6.1774 | EA | 345.93 |
| 28.00 | | 1902017 | DEL CTD 20' #17 | 4.8166 | EA | 134.86 |
| 10.00 | | 1902025 | DEL CTD 20' #25 | 4.8166 | EA | 48.17 |
| 1.00 | | 101200 | ELECTRIC MS 12' 40 | 7.3700 | EA | 7.37 |
| 845.00 | | 4 | HOLES LINED | .4219 | EA | 399.70 |
| 310.00 | | 4 | HOLES LINED | .4219 | EA | 130.79 |
| 20.00 | | 99008 | PIPE | .4329 | EA | 8.66 |
| 6.00 | | 1 | CONNECTING WIRE | 4.7800 | LB | 28.68 |
| 1.00 | | 20 | 25 SECURITY COMPLIA | 236.7100 | EA | 236.71 |

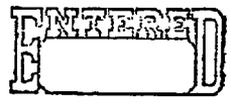
2% Finance Charge on all
Over 30 Day Balances

| | |
|---------------|-----------|
| SALES AMOUNT | 12,071.99 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 12,071.99 |
| PAYMENT REC'D | .00 |
| BALANCE DUE | 12,071.99 |

OFFICE

D.C. GUELICH EXPLOSIVE CO.

P.O. BOX 29, BLOOMSBURG, PA 17815
 570-784-4759 • 570-784-4378 • FAX 570-784-4958



SHIPPING RECORD

DATE: 10-4-05

GPC/DEALER ORDER NO.

LICENSE/ PERMIT NO.

ORDER/DEL TICKET NO. 7782

SIGNATURE: *[Signature]*

CUSTOMER/ MAG/D-STRIE/ *401 Can Contracting / Joansville Pa*

| ITEM DESCRIPTION | | | | NUMBER OF CASES | DATE CODE | TOTAL QUANTITY SHIPPED |
|------------------|-------------------------|---------------------|------------------------------|-----------------|-----------|------------------------|
| L | GRADE POWDER/TYPER CAPS | SIZE | STYLE POWDER/ NUMBER OF CAPS | | | |
| 6 | Trojan Boosters | 1 ^{1/2} | | | | 198 |
| 6 | Austin Red D-Powder | 1 ^{1/2} x8 | | | | 216 |
| 0 | Apex Plus | 5x30 | | | | 3330 |
| 0 | Apex Ultra | 3x16 | | | | 220 |
| 4 | Power Pak 48 | 5x25 | | | | 350 |
| 0 | NCW Bulk | Bulk | | | | 17,500 |
| 6 | Handidet 25/500 | 80' | 31-RP | | | |
| 6 | Handidet 25/500 | 60' | 69-RP | | | |
| 6 | Handidet 25/500 | 30' | 42-RP | | | |
| 6 | Handidet 25/500 | 24' | 56-RP | | | |
| 6 | CTD " 17ms | 20' | 28-RP | | | |
| 6 | CTD " 25ms | 20' | 10-RP | | | |
| 6 | EBC "D Instant | 12' | 1-RP | | | |
| | Bore Hole Liner | 6 ^{1/2} " | 945' | | | |
| | Bore Hole Liner | 4" | 310' | | | |
| | Plastic Pipe | 3" | 20' | | | |
| | Corr Wire | 30 ⁰⁰ | 6 ⁰⁰ | | | |

Item should be 7782 not 7781

@ \$1,4490

[Signature]

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
Clearfield, PA 16830
PH: (814) 765-1558

INVOICE
DATE

INVOICE
NO.

PAGE

09/09/05

00007770

1

invoice

NO 1 CONTRACTING
49 SOUTH MAIN STREET

SHIP
TO:

LEBANON, PA

ASHLEY, PA 16708

| INO. | ORDER DATE | CUSTOMER NO. | TERMS | PURCHASE ORDER NO. | SHIP DATE | SHIP VIA |
|------|------------|--------------|-------------|--------------------|-----------|-----------|
| 777 | 09/09/05 | 160010 | NET 30 DAYS | | | OUR TRUCK |

| QUANTITY | RED | SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|----------|-----|---------|-------------|--------------------|------------|----------|--------|
| 11.00 | | | 147 | EMEREX PLUS 2 X 8 | 3.2348 | LB | 35.57 |
| 25.00 | | | 13 | WISSED ANFO | .2913 | LB | 7.28 |
| 11.00 | | | 1401600 | NOIDET 16' 25/5 | 4.9087 | EA | 54.22 |
| 4.00 | | | 1902017 | EXEL CTD 20' #17 | 4.8166 | EA | 19.27 |
| 2.00 | | | 101200 | ELECTRIC MS 12' 50 | 7.0700 | EA | 14.74 |
| 4.00 | | | 1 | CONNECTING WIRE | 4.7800 | LB | 19.12 |
| 1.00 | | | 20 | SECURITY COMPLIA | 3.0000 | EA | 3.00 |

2% Finance Charge on all
Over 30 Day Balances

OFFICE

| | |
|---------------|--------|
| SALES AMOUNT | 153.20 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 153.20 |
| PAYMENT REC'D | .00 |
| BAI ANCF DRIP | 153.20 |

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
Clearfield, PA 16830
PH: (814) 765-1558

INVOICE
DATE

INVOICE
NO.

PAGE

09/07/05

00007763

1

invoice

NO 1 CONTRACTING
40 SOUTH MAIN STREET

SHIP
TO:

BLANK

ASHLEY, PA 16706

| R.NO. | ORDER DATE | CUSTOMER NO. | TERMS | PURCHASE ORDER NO. | SHIP DATE | SHIP VIA |
|---------------------|---------------------|--------------|--------------------|--------------------|-------------|-----------|
| 776 | 09/07/05 | 30001C | NET 30 DAYS | | | OUR TRUCK |
| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
| 22.00 | | 147 | POWEREX PLUS 2 X 8 | 3.2338 | LB | 71.14 |
| 200.00 | | 13 | CLASSED ANFO | .2913 | LB | 58.26 |
| 22.00 | | 1401600 | HANDIDET 16' 25/5 | 4.8267 | EA | 108.43 |
| 5.00 | | 1902017 | EXEL CTD 20' #17 | 4.8106 | EA | 28.90 |
| 1.00 | | 1902025 | EXEL CTD 0' #25 | 4.8166 | EA | 4.82 |
| 2.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 14.74 |
| 6.00 | | 1 | CONNECTING WIRE | 4.7800 | LB | 28.68 |
| 1.00 | | 20 | SECURITY COMPLIA | 6.3000 | EA | 6.30 |

2% Finance Charge on all
Over 30 Day Balances

OFFICE

| | |
|----------------|--------|
| SALES AMOUNT | 321.27 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 321.27 |
| PAYMENT REC'D | .00 |
| NET AMOUNT DUE | 321.27 |

VERIFICATION

The undersigned does hereby verify under penalty of perjury, that he/she is the President of D.C. Guelich Explosive Co., Plaintiff herein, that he/she is duly authorized to make this Verification, and that the facts set forth in the foregoing COMPLAINT are true and correct to the best of his/her knowledge, information and belief.

A handwritten signature in blue ink, appearing to read "D.C. Guelich", written over a horizontal line.

(Sign in Blue Ink)



B



NO. 1 CONTRACTING CORPORATION

49 SOUTH MAIN STREET
ASHLEY, PENNSYLVANIA 18706
PHONE: 570-823-0325 FAX: 570-823-9962

June 20, 2006

D.C. Guelich Explosive Co.
1442 18 Hollow Rd.
Clearfield, Pa. 16830

Dear Mr. Guelich:

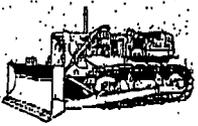
Enclosed please find an initial installment payment in the amount of \$3,154.24 to be applied to the principal amount due by No. 1 Contracting Corporation to D.C. Guelich Explosive Company for goods and services provided to No. 1 Contracting during the time period of September 2005 to March 2006. As previously mentioned, as a result of its high accounts receivable, No. 1 Contracting is making these installment payments in order to satisfy the principal amount due of \$12,616.94.

Thank you for your cooperation. Please contact me with any questions or concerns you may have.

Sincerely,

Melanie Shaak
Office Manager
No. 1 Contracting Corporation

EX B
(2 Pgs)



No. 1 Contracting Corporation
 49 SOUTH MARKET STREET
 ASHLEY, PA 18706
 PHONE: (570) 823-0325

FIRST NATIONAL COMMUNITY BANK
 DUNMORE, PA
 60-313/313

1300

6/20/2006

PAY TO THE ORDER OF D.C. GUELICH

\$ 3,154.24

Three Thousand One Hundred Fifty-Four and 24/100 DOLLARS

D.C. GUELICH EXPLOSIVE CO.
 1442 18 HOLLOW ROAD
 CLEARFIELD, PA 16830

CE

MEMO

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.
 ⑈001300⑈ ⑈031303132⑈ ⑈56 501325⑈

NO. 1 CONTRACTING CORPORATION
 ASHLEY, PA 18706

D.C. GUELICH

1300

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|------------|------|-----------|---------------|--------------|--------------------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

FNCB

3,154.24

NO. 1 CONTRACTING CORPORATION
 ASHLEY, PA 18706

D.C. GUELICH

1300

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|------------|------|-----------|---------------|--------------|--------------------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

FNCB

3,154.24



c

Charles E. Gutshall, Esquire
Attorney I.D. No. 39702
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

EX C
(Centre Answer)

D.C. GUELICH EXPLOSIVE CO.

Plaintiff

v.

NO. 1 CONTRACTING
CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

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

JUN 22 2006

Attest.

William L. Shover
Prothonotary/
Clerk of Courts

ANSWER

NOW COMES Defendant, No. 1 Contracting Corporation ("Defendant" or "No. 1 Contracting"), by and through its counsel, Rhoads & Sinon LLP, and files the within Answer to Plaintiff, D.C. Guelich Explosive Co.'s ("Plaintiff" or "Guelich") Complaint, and in support thereof avers as follows:

1. After reasonable investigation, Defendant is without knowledge or information sufficient to form a believe as to the truth of the averments contained in this paragraph. Therefore, all allegations contained in this paragraph are specifically denied.

2. Admitted.

3. Admitted in part and denied in part. It is admitted that No. 1 Contracting purchased goods and services from Plaintiff in Luzerne County, Pennsylvania. It is also admitted that No. 1 Contracting made payment to Plaintiff in Clearfield, Pennsylvania. The remaining allegations contained in this paragraph constitute a legal conclusion for which no

responsive pleading is required. To the extent any further response is required, all remaining allegations contained in this paragraph are specifically denied.

4. Admitted in part and denied in part. It is admitted that between September of 2005 and March of 2006, Guelich, at the specific request of No. 1 Contracting, sold and delivered to No. 1 Contracting various explosive goods and services which amounted to \$12,616.94. By way of further response, Exhibit 1, purporting to be Plaintiff's Statement is a document which speaks for itself. To the extent the documents attached as Exhibit 1 do not reflect the aforementioned amount, the allegations contained in this paragraph are specifically denied.

5. Admitted in part and denied in part. It is admitted that No. 1 Contracting received and accepted the aforementioned goods. By way of further response, the price agreed upon by the parties was \$12,616.94. Exhibit 2, purporting to be Guelich's invoices and shipping records, are documents which speak for themselves. To the extent the documents do not reflect the aforesaid amount, the allegations in this paragraph are specifically denied.

6. Admitted in part and denied in part. It is admitted that No. 1 Contracting has yet to make full payment for the principal sum due to Guelich. It is specifically denied that No. 1 Contracting has refused to pay Guelich the principal sum. By way of further response, No. 1 Contracting has informed Guelich that as a result of its accounts receivable building up, it could not make immediate full payment. Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary industry customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. (A copy of the check along with the June 20, 2006 letter that accompanied it is attached hereto as Exhibit "A".) Thus, Guelich is not

entitled to the amount claimed in its Complaint. To the extent any further response is required, all remaining allegations are specifically denied.

7. Denied. Exhibit 1 is a document which speaks for itself. The price agreed upon by the parties was \$12,616.94. It is specifically denied that Guelich is entitled to any finance charges. By way of further response, No. 1 Contracting has informed Guelich that as a result of its accounts receivable building up, it could not make immediate full payment. Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. (See Ex. A.) Thus, Guelich is not entitled to the amount claimed in its Complaint. To the extent any further response is required, all remaining allegations are specifically denied.

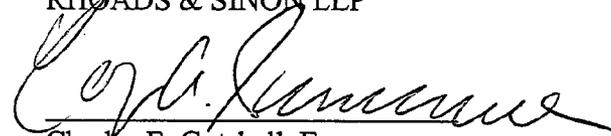
8. Admitted in part and denied in part. It is admitted that No. 1 Contracting has yet to make full payment for the principal sum due to Guelich. It is specifically denied that No. 1 Contracting has refused to pay Guelich the principal sum. By way of further response, No. 1 Contracting has informed Guelich that as a result of its accounts receivable building up, it could not make immediate full payment. Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. (See Ex. A.) Thus, Guelich is not entitled to the amount claimed in its Complaint. To the extent any further response is required, all remaining allegations are specifically denied.

WHEREFORE, No. 1 Contracting respectfully requests this Court to dismiss Plaintiff's Complaint and award No. 1 Contracting all of the relief as this Court deems equitable and just.

Respectfully submitted,

RHOADS & SINON LLP

By:



Charles E. Gutshall, Esq.

Cory A. Iannacone, Esq.

One South Market Square

P.O. Box 1146

Harrisburg, PA 17108-1146

(717) 233-5731

Attorneys for

No. 1 Contracting Corporation

EXHIBIT "A"



NO. 1 CONTRACTING CORPORATION

49 SOUTH MAIN STREET
ASHLEY, PENNSYLVANIA 18706
PHONE: 570-823-0325 FAX: 570-823-9962

June 20, 2006

D.C. Guelich Explosive Co.
1442 18 Hollow Rd.
Clearfield, Pa. 16830

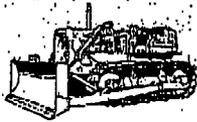
Dear Mr. Guelich:

Enclosed please find an initial installment payment in the amount of \$3,154.24 to be applied to the principal amount due by No. 1 Contracting Corporation to D.C. Guelich Explosive Company for goods and services provided to No. 1 Contracting during the time period of September 2005 to March 2006. As previously mentioned, as a result of its high accounts receivable, No. 1 Contracting is making these installment payments in order to satisfy the principal amount due of \$12,616.94.

Thank you for your cooperation. Please contact me with any questions or concerns you may have.

Sincerely,

Melanie Shaak
Office Manager
No. 1 Contracting Corporation



No. 1 Contracting Corporation
 49 SOUTH MAIN STREET
 ASHLEY, PA 18706
 PHONE: (570) 823-0325

FIRST NATIONAL COMMUNITY BANK
 DUNMORE, PA

80-313/313

1300

6/20/2006

PAY TO THE ORDER OF

D.C. GUELICH

\$ 3,154.24

Three Thousand One Hundred Fifty-Four and 24/100 ***** DOLLARS

D.C. GUELICH EXPLOSIVE CO.
 1442 18 HOLLOW ROAD
 CLEARFIELD, PA 16830

Handwritten signature

MEMO



THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

⑈001300⑈ ⑈031303132⑈ ⑈56 5011325⑈

NO. 1 CONTRACTING CORPORATION
 ASHLEY, PA 18706

D.C. GUELICH

1300

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|--------------|------|-----------|---------------|-------------|-----------------------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| Check Amount | | | | | | 3,154.24 |

FNCB

3,154.24

NO. 1 CONTRACTING CORPORATION
 ASHLEY, PA 18706

D.C. GUELICH

1300

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|--------------|------|-----------|---------------|-------------|-----------------------|----------|
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| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| Check Amount | | | | | | 3,154.24 |

FNCB

3,154.24

BF9001-1

REORDER FROM YOUR LOCAL SAFEGUARD DISTRIBUTOR, IF UNKNOWN, CALL 800-522-2422

SAFEGUARD LTH015A SPLT08 07500115

0111HZ0010000 L018F000598

VERIFICATION

Melanie Shaak, deposes and says, subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, on behalf of No. 1 Contracting Corporation, that she makes this verification by her authority and that the facts set forth in the Answer are true and correct to the best of her knowledge, information and belief.

6/20/00
Date

Melanie Shaak
Melanie Shaak

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2006, a true and correct copy of the foregoing Answer was served by means of United States mail, first class, postage prepaid, upon the following:

Charles E. Bobinis, Esq.
Bernstein Law Firm, P.C.
Suite 2200 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1900s
Attorneys for Plaintiff

Liz Sharpe



D



RECYCLED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

NO. 1 CONTRACTING CORPORATION,

Defendant.

No. 06-670-CD

PLAINTIFF'S PRAECIPE FOR JUDGMENT
BY ADMISSION AGAINST THE
DEFENDANT PURSUANT TO
PENNSYLVANIA RULE OF CIVIL
PROCEDURE 1037(b)

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. G0063332

1
EXD
0

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

**PLAINTIFF'S PRAECIPE FOR JUDGMENT BY ADMISSION AGAINST THE
DEFENDANT PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1037(b)**

AND NOW COMES Plaintiff, by counsel, to instruct the Prothonotary to enter Judgment by Admission against the Defendant pursuant to Pennsylvania Rule of Civil Procedure 1037(b) for that relief admitted to be due by the Defendant in its Answer, as follows:

1. Plaintiff D.C. Guelich Explosive Co. brought this civil action against the Defendant No. 1 Contracting Corp. in order to recover from the Defendant the principal sum of \$12,616.94, plus service charges through March 31, 2006, or total of \$13,373.96, plus additional interest at the contractual rate from April 30, 2006, plus record costs.

2. The Defendant has filed an Answer in which the Defendant has admitted that the principal sum claimed by Plaintiff, \$12,616.94, is due and owing to the Plaintiff, but Defendant denies the Plaintiff's entitlement to contractual service charges at the rate of 1½% per month as shown by true and correct copy of the Defendant's Answer of record.

3. Defendant further alleges that the Defendant has made a partial payment on the account since the institution of the suit of \$3,154.24, reducing the principal balance to \$9,462.70.

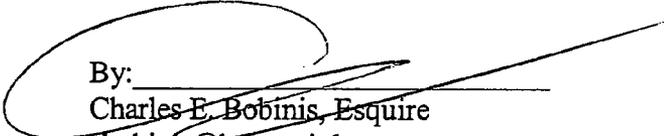
4. Regardless of Plaintiff's entitlement to service charges at the contractual rate of 1½% per month, there is no dispute that Plaintiff is entitled to legal interest at the rate of 6% per annum on the liquidated debt under the laws of the Commonwealth of Pennsylvania. *Miller v. Reading*, 369 Pa. 471, 87 A.2d 223 (Pa., 1952).

5. Legal interest on the undisputed amount through August 5, 2006, amounts to no less than \$9,973.88, as shown by the numerical calculation of said sum on the schedule attached as Exhibit "1."

Accordingly, the principal amount due and owing to Plaintiff being admitted by the Defendant, and being liquidated as a matter of law based on the admissions by the Defendant to a sum certain, the Prothonotary is hereby instructed by counsel for Plaintiff to enter Judgment by Admission against the Defendant No. 1 Contracting Corporation in the amount of \$9,973.88, plus additional legal interest from September 1, 2006, plus costs, pursuant to Pennsylvania Rule of Civil Procedure 1037(b).

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
cbobinis@bernsteinlaw.com
PA ID #30665
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

BERNSTEIN FILE NO. G0063332

| | | |
|----|--|------------|
| 1. | Latest date October 4, 2005, invoice due November 4, 2005. | |
| 2. | Legal interest on \$12,616.94 from November 4, 2005 to June 4, 2006, | \$ 416.56 |
| 3. | Legal interest on \$9,462.70 (\$12,616.94 - \$3,154.24 partial payment), from June 5, 2006 to August 4, 2006, | \$ 94.62 |
| 4. | Total legal interest of remaining balance from November 4, 2005 to August 4, 2006, | \$ 511.18 |
| 5. | \$9,462.70 (principal), plus \$511.18 (interest) equals current balance | \$9,973.88 |

EXHIBIT "1"



E

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

NOTICE OF JUDGMENT OR ORDER

TO: Plaintiff
 Defendant
 Garnishee

You are hereby notified that the following Order or Judgment was entered against you on August 7, 2006

(xx) Assumpsit Judgment in the amount of \$9,973.88 plus costs.

Trespass Judgment in the amount of \$_____ plus costs.

If not satisfied within sixty (60) days, your motor vehicle operator's license and/or registration will be suspended by the Department of Transportation, Bureau of Traffic Safety, Harrisburg, PA.

(xx) Entry of Judgment of
 Court Order
 Non-Pros
 Confession
 Default
 Verdict
 Arbitration Award

EXE

No. 1 Contracting Corporation
c/o Cory A. Iannacone, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146

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

AUG - 7 2006

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

Prothonotary

By: *William L. Shaw*
PROTHONOTARY (OR DEPUTY)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

**PLAINTIFF'S PRAECIPE FOR JUDGMENT BY ADMISSION AGAINST THE
DEFENDANT PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1037(b)**

AND NOW COMES Plaintiff, by counsel, to instruct the Prothonotary to enter Judgment by Admission against the Defendant pursuant to Pennsylvania Rule of Civil Procedure 1037(b) for that relief admitted to be due by the Defendant in its Answer, as follows:

1. Plaintiff D.C. Guelich Explosive Co. brought this civil action against the Defendant No. 1 Contracting Corp. in order to recover from the Defendant the principal sum of \$12,616.94, plus service charges through March 31, 2006, or total of \$13,373.96, plus additional interest at the contractual rate from April 30, 2006, plus record costs.

2. The Defendant has filed an Answer in which the Defendant has admitted that the principal sum claimed by Plaintiff, \$12,616.94, is due and owing to the Plaintiff, but Defendant denies the Plaintiff's entitlement to contractual service charges at the rate of 1½% per month as shown by true and correct copy of the Defendant's Answer of record.

3. Defendant further alleges that the Defendant has made a partial payment on the account since the institution of the suit of \$3,154.24, reducing the principal balance to \$9,462.70.

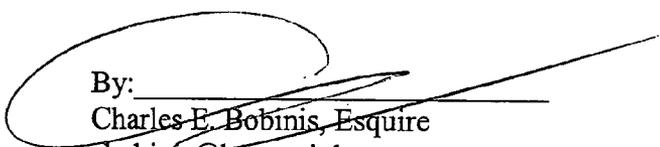
4. Regardless of Plaintiff's entitlement to service charges at the contractual rate of 1½% per month, there is no dispute that Plaintiff is entitled to legal interest at the rate of 6% per annum on the liquidated debt under the laws of the Commonwealth of Pennsylvania. *Miller v. Reading*, 369 Pa. 471, 87 A.2d 223 (Pa., 1952).

5. Legal interest on the undisputed amount through August 5, 2006, amounts to no less than \$9,973.88, as shown by the numerical calculation of said sum on the schedule attached as Exhibit "1."

Accordingly, the principal amount due and owing to Plaintiff being admitted by the Defendant, and being liquidated as a matter of law based on the admissions by the Defendant to a sum certain, the Prothonotary is hereby instructed by counsel for Plaintiff to enter Judgment by Admission against the Defendant No. 1 Contracting Corporation in the amount of \$9,973.88, plus additional legal interest from September 1, 2006, plus costs, pursuant to Pennsylvania Rule of Civil Procedure 1037(b).

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
cbobinis@bernsteinlaw.com
PA ID #30665
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

BERNSTEIN FILE NO. G0063332

| | | |
|----|--|------------|
| 1. | Latest date October 4, 2005, invoice due November 4, 2005. | |
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| 3. | Legal interest on \$9,462.70 (\$12,616.94 - \$3,154.24 partial payment), from June 5, 2006 to August 4, 2006, | \$ 94.62 |
| 4. | Total legal interest of remaining balance from November 4, 2005 to August 4, 2006, | \$ 511.18 |
| 5. | \$9,462.70 (principal), plus \$511.18 (interest) equals current balance | \$9,973.88 |

EXHIBIT "1"



F

Kenneth L. Joel, Esquire
Attorney I.D. No. 72370
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

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

SEP 15 2006

Attest.

William E. Brown
Prothonotary/
Clerk of Courts

D.C. GUELICH EXPLOSIVE CO.

Plaintiff

v.

NO. 1 CONTRACTING
CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

To: Charles E. Bobinis, Esq.
Bernstein Law Firm, P.C.
Suite 2200 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1900s
Attorneys for Plaintiff

EX. F
(no exhibits)

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed Petition to Strike, or in the Alternative, To Open Judgment within twenty (20) days from service hereof or a judgment may be entered against you.

Kenneth L. Joel, Esquire
Attorney I.D. No. 72370
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

Kenneth L. Joel, Esquire
Attorney I.D. No. 72370
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

D.C. GUELICH EXPLOSIVE CO.

Plaintiff

v.

NO. 1 CONTRACTING
CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

**PETITION TO STRIKE, OR IN THE ALTERNATIVE,
TO OPEN JUDGMENT**

NOW COMES Defendant, No. 1 Contracting Corporation (“Defendant” or “No. 1 Contracting”), by and through its counsel, Rhoads & Sinon LLP, and files the within Petition to Open Judgment, and in support thereof avers as follows:

1. On or about May 1, 2006, Plaintiff, D.C. Guelich Explosive Co. (“Plaintiff” or “Guelich”) filed a complaint against No. 1 Contracting, claiming that No. 1 Contracting had failed to make payment on various goods and services which were provided by Guelich. (A copy of the Complaint is attached hereto as Exhibit “A”.)

2. Guelich’s complaint demanded judgment in its favor and against No. 1 Contracting in the amount of \$13,373.96, plus additional interest from April 30, 2006, plus record costs.

3. On or about June 12, 2006, Guelich served a Notice of Default upon No. 1 Contracting, indicating that No. 1 Contracting had 10 days to respond to Guelich's complaint. (A copy of the Notice of Default is attached hereto as Exhibit "B".)

4. Subsequent to being served with the Notice of Default, but prior to the expiration of the 10 days available for No. 1 Contracting to respond, Cory A. Iannacone, Esquire, counsel for No. 1 Contracting, contacted Charles E. Bobinis, Esquire, counsel for Guelich, in an attempt to reach a settlement between the parties.

5. Mr. Iannacone indicated to Mr. Bobinis, that it was No. 1 Contracting's intention to make monthly installments to fulfill the debt owed by No. 1 Contracting to Guelich.

6. Because a dispute existed between the parties as to the payment terms and the total amount owed by No. 1 Contracting to Guelich, the parties were not able to reach a settlement.

7. On June 20, 2006, No. 1 Contracting mailed its first monthly installment of \$3,154.24 to Guelich. (Attached hereto as Exhibit "C" is a copy of the check made payable to Guelich, along with the cover letter which accompanied said check.)

8. Because No. 1 Contracting was not given an extension to respond to Guelich's complaint, on June 22, 2006, No. 1 Contracting filed its Answer. (A copy of the Answer is attached hereto as Exhibit "D".)

9. In its Answer, No. 1 Contracting alleged that the price agreed upon by the parties was \$12,616.94, (Answer ¶5), and denied that Guelich is entitled to any finance charges, (Answer ¶7).

10. In addition, the Answer also alleged that Guelich acquiesced to installment payments by No. 1 Contracting, which was in accordance with No. 1 Contracting's usual course of dealings and ordinary customs in the industry:

No. 1 Contracting has informed Guelich that as a result of its accounts receivable building up, it could not make immediate full payment. Guelich acquiesced to allowing No. 1 Contracting to make installment payments in order to satisfy the principal, in accordance with No. 1 Contracting's usual course of dealings and ordinary industry customs in the industry. On June 20, 2006, No. 1 Contracting mailed a payment of \$3,154.24 to Guelich. . . . Thus, Guelich is not entitled to the amount claimed in its Complaint.

(Answer ¶¶6, 7, 8.)

11. On or about August 4, 2006 Guelich filed a Praecipe for Judgment by Admission pursuant to Pa. R. Civ. P. 1037(b). (A copy of the Praecipe for Judgment by Admission is attached hereto as Exhibit "E".)

12. In its Praecipe, Guelich alleged that No. 1 Contracting admitted that the principal sum of \$12,616.94 is due and owing to Guelich. (Praecipe ¶2.)

13. The Praecipe also alleged that No. 1 Contracting had made partial payment in the amount of \$3,154.24, reducing the principal balance to \$9,462.70. (Praecipe ¶3.)

14. Lastly, the Praecipe alleged that "[r]egardless of Plaintiff's entitlement to service charges at the contractual rate of 1 1/2 % per month, there is no dispute that Plaintiff is entitled to legal interest at the rate of 6% per annum on the liquidated debt under the laws of the Commonwealth of Pennsylvania." (Praecipe ¶4.)

15. The Praecipe, however, failed to acknowledge that No. 1 Contracting plead in its Answer that a dispute existed between the parties as to the payment terms, and more specifically, that Guelich acquiesced to installment payments by No. 1 Contracting, which was in accordance

with No. 1 Contracting's usual course of dealings and ordinary customs in the industry. (See Answer ¶¶6, 7, 8.)

16. On or about August 7, 2006, a Notice or Judgment was entered by the Prothonotary against No. 1 Contracting. (A copy of the Notice or Judgment is attached hereto as Exhibit "F".)

17. It was not until August 8, 2006 when Mr. Iannacone received the Notice of Judgment or Order.

18. When irregularities and illegalities appear on the face of the record, the Pennsylvania courts have the authority to strike off judgments previously rendered. Harwood v. Bruhn, 170 A. 144 (Pa. 1934).

19. A void judgment may be stricken off where its invalidity appears upon the face of the record. Commonwealth ex rel. Howard v. Howard, 10 A.2d 779 (Pa. Super. Ct. 1940).

20. Where the judgment is entered wholly without authority, it may be stricken on the basis of facts proved by extrinsic evidence. Mullen v. Slupe, 62 A.2d 14 (Pa. 1948).

21. There is no legal basis for entering a judgment against No. 1 Contracting.

22. The Answer filed by No. 1 Contracting raised genuine issues and meritorious defenses to Guelich's Complaint.

23. Guelich has taken portions of No. 1 Contracting's Answer out of context, without reading the document as a whole, and has alleged that Guelich is entitled to \$9,973.88.

24. Guelich fails to acknowledge that the remaining averments contained in No. 1 Contracting's Answer explain that a dispute continues to exist between the parties as to the payment terms of the contract.

25. The correct procedural device under the Pennsylvania Rule of Civil Procedure which should have been utilized by Guelich would have been a Motion for Summary Judgment under Pa. R. Civ. P. 1035.2.

26. The filing of a Praecipe to Enter Judgment by Admission under Pa. R. Civ. P. 1037(b) was the improper procedural device to be utilized by Guelich, and as such, the judgment entered against No. 1 Contracting is improper under Pennsylvania law.

27. A petition to open judgment is an appeal to the equitable powers of the court. As such it is committed to the sound discretion of the hearing court and will not be disturbed absent a manifest abuse of discretion. Lincoln Bank v. C&H Agency, Inc., 456 A.2d 136 (Pa. 1982).

28. Generally speaking, a default judgment may be opened if the moving party has (1) promptly filed a petition to open the default judgment, (2) pleaded a meritorious defense to the allegations contained in the complaint, and (3) provided a reasonable excuse or explanation for failing to file a responsive pleading. Seeger v. First Union National Bank, 836 A.2d 163, 165 (Pa. Super. Ct. 2003).

29. Pa. R. Civ. P. 1037 governs both Judgment Upon Default and Admission, and as such, there is a single rule of law under Pa. R. Civ. P. 1037 for opening judgments.

30. No. 1 Contracting has filed the instant Petition thirty-eight (38) days after the Judgment or Order was entered and thirty-nine (39) days after receiving the Notice or Judgment or Order.

31. The Superior Court has held similar periods of delay comport with the promptness prong of the analysis. See, e.g., Reid v. Boohar, 856 A.2d 156, 162 (one month); Pennys v. Richard Kastner Co., Inc., 443 A.2d 353 (Pa. Super. Ct. 1982) (33 days); but see DiNardo v.

Cent. Penn Air Servs., Inc., 516 A.2d 1187 (Pa. Super. Ct. 1986) (88 days after judgment too long).

32. No. 1 Contracting's Petition comports with the promptness prong for opening a judgment.

33. The requirement of a meritorious defense requires only that a defense be plead that if proven at trial would justify relief. Seeger v. First Union Nat'l Bank, 836 A.2d 163 (Pa. Super. Ct. 2003).

34. The defense does not have to prove every element of its defense; however, it must set forth the defense in precise, specific and clear terms. Id.

35. If any one of the alleged defenses can provide relief from liability, the moving party successfully pleads a meritorious defense satisfies the third requirement to open the default judgment. Id.

36. In its Answer, No. 1 Contracting specifically alleged that there is a dispute as to the amount that is owed.

37. In addition, No. 1 Contracting alleges that Guelich acquiesced to installment payments by No. 1 Contracting, which was in accordance with No. 1 Contracting's usual course of dealings and ordinary customs in the industry.

38. Based upon the pleadings alone, there is clearly a dispute as to, at a minimum, the payment terms of the agreement between the parties.

39. No. 1 Contracting has plead the aforementioned meritorious defenses in its Answer which entitle it to submit these issues to a jury.

40. Opening judgment would result in no prejudice to Plaintiff. Opening the judgment, rather, would allow the genuine issues of material fact, raised in No. 1 Contracting's Answer, to be decided on their merits.

WHEREFORE, No. 1 Contracting Corp. respectfully requests that the judgment entered in favor of D.C. Guelich Explosive Co. and against No. 1 Contracting Corp. be stricken, or in the alternative, that said judgment be opened.

Respectfully submitted,

RHOADS & SINON LLP

By:


Kenneth L. Joel

Cory A. Iannacone

One South Market Square

P. O. Box 1146

Harrisburg, PA 17108-1146

(717) 233-5731

Attorneys for No. 1 Contracting



G



D.C. GUELICH EXPLOSIVE CO.

Plaintiff

v.

NO. 1 CONTRACTING CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

ORDER

AND NOW, this 18 day of September, 2006,

upon consideration of Defendant, No. 1 Contracting Corp.'s Petition to Strike or in the Alternative to Open Judgment, it is hereby ordered that:

(1) a rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested;

(2) the respondent shall file an answer to the petition within 20 days of this date;

(3) the petition shall be decided under Pa. R. Civ. P. 206.7;

(4) deposition shall be completed within _____ days of this date;

(5) argument shall be held on October 31, 2006 in Courtroom 1 of the Clearfield County Courthouse; and @ 9:30 A.M.

(6) notice of the entry of this order shall be provided to all parties by the petitioner.

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

/s/ Fredric J. Ammerman

J.

SEP 19 2006

Attest.

William A. [Signature]
Prothonotary/
Clerk of Courts

EX E



H



06 CV 4171

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

CIVIL DIVISION

Plaintiff,

No. 06-670-CD

vs.

NO. 1 CONTRACTING CORPORATION,

INTERROGATORIES IN ATTACHMENT

Defendant.

FIRST NATIONAL COMMUNITY BANK,

Garnishee.

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA ID. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. G0063332

EX H

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

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,
49 South Main Street
Ashley, PA 18706

Defendant.

FIRST NATIONAL COMMUNITY BANK,

Garnishee

TO: First National Community Bank
102 East Drinker Street
Dunmore, PA 18512

IMPORTANT NOTICES TO GARNISHEE!

- A. You are required to file answers to the following interrogatories within twenty (20) days after service upon you. Failure to do so may result in Judgment against you.
- B. Herein, the word "defendant" means any one or more of the defendants against whom the Writ of Execution is issued.
- C. While service of Writ upon the Garnishee attaches all property of the Defendant subject to attachment which is then in the hands of the garnishee, it also attaches all property of the defendant which comes into the Garnishee's possession thereafter, until Judgment is entered against the Garnishee. For example, the resultant liability of a Garnishee-Bank would not be measured by the balance in the debtor's account, either at the time of service of the Writ or at the time of Judgment against the Garnishee, but rather by the amounts deposited and withdrawn during the intervening period.
- D. If any Defendant above named is an individual, and if Social Security funds are directly deposited into an account of the Defendant, the levy and attachment shall not include any funds that may be traced to Social Security direct deposits.

E. In your answers to these Interrogatories in Attachment, please state whether the account includes Social Security direct deposits or that you have identified the funds in the account as being from sources other than Social Security direct deposits.

1. At the time you were served or at any subsequent time did you owe the defendant any money or were you liable to him on any negotiable or other written instrument, or did he claim that you owed him any money or were liable to him for any reason?

2. If the answer to Interrogatory 1 is in the affirmative, state the following: the amount of money you owe or owed to defendant, and, if such money is in the form of a fund, the present location thereof; the terms, face amount and amount you owe or owed to defendant on each of such negotiable or other written instruments and the present location of each of such instruments; the amount or amounts that defendant claims or claimed that you owe or owed to him; and the nature and amount of each of such liabilities.

3. At the time you were served or at any subsequent time was there in your possession, custody or control of yourself and one or more other persons any property of any nature owned solely or in part by the defendant.

4. If the answer to Interrogatory 3 is in the affirmative, describe the nature, fair market value, and present location of each of such properties.

5. At the time you were served or at any subsequent time did you hold legal title to any property of any nature owned solely or part by the defendant or in which defendant held or claimed any interest?

6. If the answer to Interrogatory 5 is in the affirmative, describe the nature, fair market value, and present location of each of said properties.

7. At the time you were served or at any subsequent time did you hold as fiduciary any property in which the defendant had an interest?

8. If the answer to Interrogatory 7 is in the affirmative, describe the nature, fair market value, and present location of each of such properties.

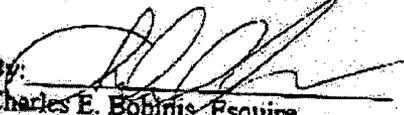
9. At any time before or after you were served, did the defendant transfer or deliver any property to you or to any person or place pursuant to your directions or consent and if so what was the consideration thereof?

10. If the answer to Interrogatory 9 is in the affirmative, describe the nature, fair market value, and present location of each of such properties.

11. At any time after you were served did you pay, transfer, or deliver any money or property to the defendant or to any person or place pursuant to his direction or otherwise discharge any claim of the defendant against you?

12. If the answer to Interrogatory 11 is in the affirmative, describe the amount or nature, fair market value and present location of each of such payments and properties.

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8100
BERNSTEIN FILE NO. G0063332

VERIFICATION

The undersigned does hereby verify under penalty of perjury, that he/she is the legal representative of _____, Garnishee herein, that he/she is duly authorized to make this Verification and that the facts set forth in the foregoing INTERROGATORIES are true and correct to the best of his/her knowledge, information and belief.

06 LV4171

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

D. C. GUELICH EXPLOSIVE CO.,
Plaintiff

vs.

NO. 1 CONTRACTING CORPORATION,
Defendant

Civil Action No. 06-670-CD

WRIT OF EXECUTION

NOTICE

This paper is a "Writ of Execution". It has been issued because there is a judgment against you. It may cause your property to be held or taken to pay the judgment. You may have legal rights to prevent your property from being taken. A lawyer can advise you more specifically of these rights. If you wish to exercise your rights, you must act promptly.

The law provides that certain property cannot be taken and sold by the Sheriff to satisfy your debts. **SUCH PROPERTY IS SAID TO BE EXEMPT.** No matter what you may owe, there is a **DEBTOR'S EXEMPTION** established by law. This means that no matter what happens, the Sheriff must give you from the sale at least \$300.00 in cash or property. There are also other exemptions which may be applicable to you. Listed below is a summary of some of the major exemptions. You may have other exemptions or other rights. If you have exemption, you should do the following promptly:

- (1) Complete the claim form on the back and demand a prompt hearing.
- (2) Deliver the form or mail it to the Sheriff's Office at the address noted.

You should come to court when and where you are told to appear ready to explain your exemption. **IF YOU DO NOT COME TO COURT AND PROVE YOUR EXEMPTION, YOU MAY LOSE SOME OF YOUR PROPERTY.**

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 TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service
PA Bar Association
PO Box 186
Harrisburg, PA 17108
1-800-692-7375

MAJOR EXEMPTIONS UNDER PENNSYLVANIA AND FEDERAL LAW

- 1. \$300.00 exemptions set by law.
- 2. All wearing apparel used by yourself and family members.
- 3. Bibles, school books, sewing machines, uniforms and equipment.
- 4. Tools of your trade such as carpenter's tools.
- 5. Most wages and unemployment benefits.
- 6. Social Security benefits, certain retirement funds and accounts.
- 7. Certain veteran and armed forces benefits.
- 8. Certain insurance proceeds.
- 9. Such other exemptions as may be provided by law.

06 CV 4171

WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION - LAW

D. C. Guelich Explosive Co.

Vs.

No. 1 Contracting Corporation

NO.: 2006-00670-CD

First National Community Bank
Garnishee

TO THE SHERIFF OF LACKAWANNA COUNTY:

To satisfy the debt, interest and costs due D. C. GUELICH EXPLOSIVE CO., Plaintiff(s) from NO. 1 CONTRACTING CORPORATION, Defendant(s):

- (1) You are directed to levy upon the property of the defendant(s) and to sell interest(s) therein:
Personal Property
- (2) You are also directed to attach the property of the defendant(s) not levied upon in the possession of:
First National Community Bank
Garnishee(s) as follows:
and to notify the garnishee(s) that: (a) an attachment has been issued; (b) the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof;
- (3) If property of the defendant(s) not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify him/her that he/she has been added as a garnishee and is enjoined as above stated.
- (4) If Social Security or Supplemental Income funds are directly deposited into an account of the defendant, the levy and attachment shall not include any funds that may be traced to Social Security direct deposits. In addition, the levy and attachment shall not include \$300.00 in the account of the defendant.

AMOUNT DUE/PRINCIPAL: \$9,973.88

INTEREST from 8/5/06--8/31/06: \$43.16

CITY'S COMM: \$

DATE: 08/16/2006

AUG 21 2006

PROTHONOTARY'S COSTS PAID: \$125.00
 SHERIFF: \$
 OTHER COSTS: \$
 POUNDAGE: \$200.34

William A. Shaw
 William A. Shaw
 Prothonotary/Clerk Civil Division

Received this writ this _____ day

A.D.

AM/P.M.

Requesting Party: Charles E. Bobinis, Esq.
 Ste. 2200 Gulf Tower
 Pittsburgh, PA 15219
 (412) 456-8100

Mary F.

sent



1



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

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

D.C. GUELICH EXPLOSIVE CO. :

-VS-

No. 06-670-CD

OCT 17 2006

NO. 1 CONTRACTING
CORPORATION

Attest.

William A. [Signature]
Prothonotary/
Clerk of Courts

O R D E R

NOW, this 17th day of October, 2006, the Court
having reviewed the file in the above-captioned matter and
the court notes as follows:

1. Plaintiff commenced the action with the filing of a Complaint on May 1, 2006;
2. Defendant filed an Answer to the Complaint on June 22, 2006;
3. For reasons unknown to the Court, Plaintiff filed on August 7, 2006, a Praecipe for Judgment "by admission" allegedly pursuant to Rule of Civil Procedure 1037(b). The Court notes that Rule 1037(b) authorizes the Prothonotary to enter judgment against a defendant upon a defendant's failure to file a pleading to a complaint;
4. The provisions of Rule 1037(b) are clearly inapplicable to the above-captioned matter as the Defendant did file an Answer to the Complaint;
5. The Prothonotary of Clearfield County acted

on the Plaintiff's Praecipe for Judgment and entered judgment in favor of the Plaintiff and against the Defendant on August 7, 2006;

6. Entry of the judgment was clearly inappropriate, and the Court will vacate the same. It would appear to the Court, upon review of the case file, that a Motion for Judgment on the Pleadings may be more appropriate from a procedural standpoint;

7. It is the ORDER of this Court that the judgment entered on August 7, 2007, is hereby vacated, and the Prothonotary shall so mark the judgment index. Any costs associated with the entry of the judgment or the vacation of the same shall be borne by the Plaintiff;

8. All execution proceedings are vacated and dismissed, including, but not limited to, any garnishment by Plaintiff of any bank account(s) belonging to the Defendant;

9. The issuance of this Order by the Court renders the Defendant's Petition to Strike or Open Judgment filed September 15, 2006, moot. Argument on the same scheduled for October 31, 2006, at 9:30 a.m. is hereby cancelled.

BY THE COURT,

/s/ Fredric J. Ammerman

President Judge



2

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

NO. 1 CONTRACTING CORPORATION,

Defendant.

CIVIL DIVISION

No. 06-670-CD

MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF PLAINTIFF D.C.
GUELICH EXPLOSIVE CO. PURSUANT
TO PENNSYLVANIA RULE OF CIVIL
PROCEDURE 1035

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. G0063332

clean copy
EX J

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

**MOTION FOR SUMMARY JUDGMENT ON BEHALF OF
PLAINTIFF D.C. GUELICH EXPLOSIVE CO. PURSUANT
TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1035**

1. AND NOW COMES Plaintiff D.C. Guelich Explosive Co. ("Guelich"), by counsel, to move for Summary Judgment against Defendant No. 1 Contracting Corporation, based upon the following:

2. Guelich filed its Complaint for explosive goods and services sold and delivered to the Defendant, in the principal amount of \$12,616.94, together with finance charges through April 30, 2006, bringing the total amount prayed for in the Complaint to \$13,373.96 as per the Statement of Account attached as Exhibit "1" of Guelich's Complaint, with supporting invoices, drilling records and shipping records, attached collectively as Exhibit "2" of the Complaint, all attached hereto for the convenience of the Court and collectively marked Exhibit "A."

3. The Defendant No. 1 Contracting Corporation ("No. 1") filed an Answer claiming to be without knowledge of the public fact that Guelich is a registered Pennsylvania corporation as alleged in the Verified Complaint, and admitting the sale and delivery of the goods and the debt in the principal amount of \$12,616.94. Defendant did allege that Guelich "acquiesced" the Defendant making installment payments in order to satisfy the principal "in accordance with No. 1's usual course of dealings and

ordinary industry customs in the industry,” pursuant to a copy of No. 1’s check and cover letter to Guelich attached as Exhibit “A” to the Answer, attached hereto for the convenience of the Court as Exhibit “B.”

4. The letter of June 20, 2006 at Exhibit “B” clearly constitutes an unqualified admission by No. 1 of its indebtedness to Guelich in the principal amount of \$12,616.94. No. 1 expressly admits in the letter “No. 1 Contracting is making these installment payments in order to satisfy the principal amount due of \$12,616.94.” The installment payment attached the amount of \$3,154.24, exactly coincides mathematically with one-quarter of the principal amount due.

5. In Paragraph 5 of the Defendant’s Petition Open or Strike Judgment, the Defendant states that it offered to make to Guelich monthly installments.

6. As per the attached Affidavit of Thomas C. Neff, Comptroller of Guelich, attached as Exhibit “C.” Guelich has received only the initial \$3,154.24 installment by the check at Exhibit “B.”

7. As per the attached Affidavits of Guelich’s representatives, Tomas C. Neff, Comptroller, and Duwayne Guelich, President (Exhibit “C” & “D” hereto). Guelich never agree to accept the sum of only \$12,616.94 in full settlement, but at all times understood that Defendant had executed the Stipulation prepared by Guelich’s counsel which allowed for retirement of the entire debt, including finance charges and costs, secured by a provision for the Entry of Judgment upon default, as more fully set forth in the e-mail and Stipulation prepared by Plaintiff’s counsel attached marked as Exhibit “D.”

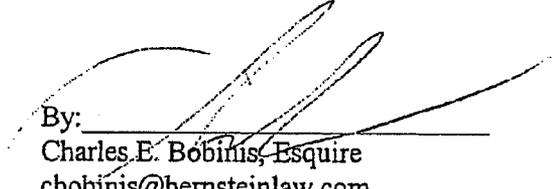
8. Regardless, more than four months have passed, yet the pretext advanced by the Defendant, i.e., an “acquiescence” to accept four monthly installment payments, with the exception of the first payment. Plaintiff is entitled as a matter of law to the entry of Summary Judgment for the remaining principal balance of \$9,460.77 admitted by the Defendant to be due, together with the legal interest at the

rate of 6% per annum, which through November 4, 2006, amounts to \$653.12 per Exhibit "E," based upon the legal precedent more fully set forth in the attached Brief which is incorporated hereto in reference thereto.

WHEREFORE, Guelich prays that this Honorable Court will enter Summary Judgment against the Defendant, in the amount due as a matter of law \$10,115.80, plus costs, and additional legal interest from November 5, 2006.

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
cbobinis@bernsteinlaw.com
PA ID #30665
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

BERNSTEIN FILE NO. G0063332

D.C. GUELICH EXPLOSIVE CO.
 1442 18 HOLLOW ROAD
 CLEARFIELD PA 16830

STATEMENT

PAGE NO
 1

STATEMENT DATE
 4/30/2006

ACCOUNT NUMBER
 30NO1C

NO 1 CONTRACTING
 49 SOUTH MAIN STREET
 ASHLEY, PA 18706

| REFERENCE | DATE | CODE | DESCRIPTION | AMOUNT | BALANCE |
|-----------|------------|------|-------------------------|-----------|-----------|
| 7763 | 9/7/2005 | I | Po: Our Ord: 7763 | 321.27 | 321.27 |
| 7770 | 9/9/2005 | I | Po: Our Ord: 7770 | 153.20 | 474.47 |
| 7782 | 10/4/2005 | I | Po: Our Ord: 7782 | 12,071.99 | 12,546.46 |
| 7805 | 10/31/2005 | I | Po: Our Ord: 7805 | 70.48 | 12,616.94 |
| 20060131 | 1/31/2006 | F | Cus:30NO1C Fch:20060131 | 252.34 | 12,869.28 |
| 20060228 | 2/28/2006 | F | Cus:30NO1C Fch:20060228 | 252.34 | 13,121.62 |
| 20060331 | 3/31/2006 | F | Cus:30NO1C Fch:20060331 | 252.34 | 13,373.96 |

Codes:
 I = Invoice
 C = CR Memo
 D = DR Memo
 P = Payment
 A = Discount Allowed
 F = Finance Charge

Please Pay This Amount

13,373.96

Aged Total:

CURRENT
 252.34

OVER 30
 0.00

OVER 45
 0.00

OVER 60
 13,121.62

EXHIBIT.A

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE DATE: 10/31/05
 INVOICE NO: 00007605
 PAGE: 1

invoice

OLD TO: 7001 INTERACTING
 181 HOLLOW MAIN STREET
 WHELEYS, PA 16700

SHIP TO: CLEARFIELD

ORDER NO. 7001 ORDER DATE 10/31/05 CUSTOMER NO. 000010 TERMS NET 30 DAYS PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|--------------------|------------|----------|--------|
| 4.00 | | 150 | ROCKUL ULTRA 1 1/4 | 3.2398 | LB | 12.94 |
| 4.00 | | 1402400 | ROCKET. 24' 25/5 | 6.1774 | EA | 24.71 |
| 5.00 | | 1902042 | DEL. CTD 20' #42 | 4.8116 | EA | 24.08 |
| 1.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 7.37 |
| 1.00 | | 20 | SECURITY COMPLIA | 1.3800 | EA | 1.38 |

2% Finance charge on all
 Over 30 Day Balances

OFFICE

SALES AMOUNT 70.48
 MISC. CHARGES .00
 FREIGHT .00
 SALES TAX .00
 TOTAL 70.48
 PAYMENT REC'D .00
 BALANCE DUE 70.48

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE DATE: 10/04/05
 INVOICE NO: 00007782
 PAGE: 1

invoice

ORDER NO: 7782
 ORDER DATE: 10/04/05
 CUSTOMER NO: 300010
 TERMS: NET 30 DAYS

SHIP TO: HANNOVER

ASHELY, PA 16706

ORDER NO. 7782 ORDER DATE 10/04/05 CUSTOMER NO. 300010 TERMS NET 30 DAYS PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|---------------------|------------|----------|----------|
| 198.00 | | 101 | #1 SUPER PRIME 800S | 3.8000 | EA | 764.28 |
| 218.00 | | 300 | RED-D-PRIME 1 1/4 X | 1.4490 | LB | 312.98 |
| 3330.00 | | 351 | APPEX PLUS 88AP 5 X | .7008 | LB | 2,333.66 |
| 220.00 | | 312 | APPEX ULTRA 3 X 16 | .7437 | EA | 163.61 |
| 350.00 | | 407 | POWER PAK 48 5 X 25 | .5409 | LB | 189.32 |
| 17500.00 | | 12 | BULK ANFO | .3126 | LB | 5,470.50 |
| 31.00 | | 1408000 | HANDIDET 30' 25/5 | 13.4600 | EA | 417.26 |
| 59.00 | | 1408000 | HANDIDET 60' 25/5 | 11.1711 | EA | 770.91 |
| 42.00 | | 1403000 | HANDIDET 30' 25/5 | 7.3739 | EA | 309.70 |
| 56.00 | | 1402400 | HANDIDET 24' 25/5 | 6.1774 | EA | 345.93 |
| 29.00 | | 1902017 | LEVEL CTD 20' #17 | 4.8166 | EA | 134.86 |
| 10.00 | | 1902025 | LEVEL CTD 20' #25 | 4.8166 | EA | 48.17 |
| 1.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 7.37 |
| 945.00 | | 4 | HOLES LINED | .4219 | EA | 398.70 |
| 310.00 | | 4 | HOLES LINED | .4219 | EA | 130.79 |
| 20.00 | | 39008 | PIPE | .4329 | EA | 8.66 |
| 6.00 | | 1 | CONNECTING WIRE | 4.7800 | LB | 28.68 |
| 1.00 | | 20 | SECURITY COMPLIA | 236.7100 | EA | 236.71 |

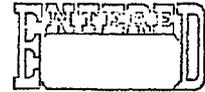
2% Finance Charge on all
 Over 30 Day Balances

SALES AMOUNT 12,071.99
 MISC. CHARGES .00
 FREIGHT .00
 SALES TAX .00
 TOTAL 12,071.99
 PAYMENT REC'D .00
 BALANCE DUE 12,071.99

OFFICE

D.C. GUELICH EXPLOSIVE CO.

P.O. BOX 29, BLOOMSBURG, PA 17815
570-784-4759 • 570-784-4378 • FAX 570-784-4958



SHIPPING RECORD

DATE: 10-4-05

OPC/DEALER ORDER NO.

LICENSE/PERMIT NO.

ORDER/DEL TICKET NO. 7782

SIGNATURE: *[Handwritten Signature]*

CUSTOMER/MAG/DISTRIB: *401 Contracting / Jonesville Pa*

| ITEM DESCRIPTION | | | | | NUMBER OF CASES | DATE CODE | TOTAL QUANTITY SHIPPED |
|------------------|-------------------------|---------------------|-----------------------------|--|-----------------|-----------|------------------------|
| CL | GRADE POWDER/TYPER CAPS | SIZE | STYLE POWDER/NUMBER OF CAPS | | | | |
| HE | Trojan Boosters | 1 ^{1/2} | | | | | 198 |
| HE | Austin Red D-Prime | 1 ^{1/4} x8 | | | | | 216 |
| BO | Apex Plus | 5x30 | | | | | 3330 |
| BO | Apex Ultra | 3x16 | | | | | 220 |
| BO | Power Pak 48 | 5x25 | | | | | 350 |
| BO | NCN Bulk | Bulk | | | | | 17,500 |
| HE | Handidet 25/500 | 80' | 31-ra | | | | |
| HE | Handidet 25/500 | 60' | 69-ra | | | | |
| HE | Handidet 25/500 | 30' | 42-ra | | | | |
| HE | Handidet 25/500 | 24' | 56-ra | | | | |
| HE | CTD # 17ms | 20' | 28-ra | | | | |
| HE | CTD # 25ms | 30' | 10-ra | | | | |
| HE | EBC #0 Instant | 12' | 1-ra | | | | |
| | Bore Hole Liner | 6 ^{1/2} " | 945' | | | | |
| | Bore Hole Liner | 4" | 310' | | | | |
| | Plastic Pipe | 3" | 20' | | | | |
| | Cora Wire | 20'ce | 6 ^{1/2} " | | | | |

I am should be 7782 not 7781

@ \$1,4490

[Handwritten Signature]

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE DATE: 09/09/05
 INVOICE NO: 00007770
 PAGE: 1

invoice

ORDER NO: 7770
 ORDER DATE: 09/09/05
 CUSTOMER NO: 130010
 TERMS: NET 30 DAYS
 PURCHASE ORDER NO:
 SHIP DATE:
 SHIP VIA: OUR TRUCK

SHIP TO: [REDACTED]

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|---------------------|------------|----------|--------|
| 11.00 | | 147 | POWEREX PLUS 2 X 8 | 3.2318 | LB | 35.57 |
| 25.00 | | 13 | EMERSON ANFO | .2913 | LB | 7.28 |
| 11.00 | | 1401800 | EMERSON 16' 25/8 | 4.9397 | EA | 54.22 |
| 4.00 | | 1902017 | EMERSON CTD 20' H17 | 4.8166 | EA | 19.27 |
| 2.00 | | 101200 | ELECTRIC MS 12' 40 | 7.3700 | EA | 14.74 |
| 4.00 | | 1 | CONNECTING WIRE | 4.7800 | LB | 19.12 |
| 1.00 | | 20 | SECURITY COMPLIA | 3.0000 | EA | 3.00 |

2% Finance Charge on all
 Over 30 Day Balances

| | |
|---------------|--------|
| SALES AMOUNT | 153.20 |
| MISC. CHARGES | .00 |
| FREIGHT | .00 |
| SALES TAX | .00 |
| TOTAL | 153.20 |
| PAYMENT REC'D | .00 |
| BAI ANCF DUH | 153.20 |

OFFICE

D.C. GUELICH EXPLOSIVE CO.

1442 18 Hollow Road
 Clearfield, PA 16830
 PH: (814) 765-1558

INVOICE DATE: 09/07/05
 INVOICE NO.: 00007763
 PAGE: 1

invoice

LD TO: BUD CONTRACTING
 40 SOUTH MAIN STREET
 ABERDEEN, PA 15706

SHIP TO:

ORDER NO. 7763 ORDER DATE 09/07/05 CUSTOMER NO. 130001C TERMS NET 30 DAYS PURCHASE ORDER NO. SHIP DATE SHIP VIA OUR TRUCK

| QUANTITY ORDERED | QUANTITY SHIPPED | ITEM NUMBER | ITEM DESCRIPTION | UNIT PRICE | PER UNIT | AMOUNT |
|------------------|------------------|-------------|---------------------|------------|----------|--------|
| 22.00 | | 147 | POWEREX PLUS 2 X 8 | 3.2538 | LB | 71.14 |
| 200.00 | | 13 | BAGGED ANFO | .2913 | LB | 58.26 |
| 22.00 | | 1401800 | SHANIDDET 16' 2 1/2 | 4.8297 | EA | 106.43 |
| 6.00 | | 1902017 | ROPEL CTD 20' #17 | 4.8105 | EA | 28.90 |
| 1.00 | | 1902025 | ROPEL CTD 0' #25 | 4.8166 | EA | 4.82 |
| 2.00 | | 101200 | ELECTRIC MS 12' #0 | 7.3700 | EA | 14.74 |
| 6.00 | | 1 | CONNECTING WIRE | 4.7800 | LB | 28.68 |
| 1.00 | | 20 | OS SECURITY COMPLIA | 6.3000 | EA | 6.30 |

2% Finance Charge on all Over 30 Day Balances

SALES AMOUNT 321.27
 MISC CHARGES .00
 FREIGHT .00
 SALES TAX .00
 TOTAL 321.27
 PAYMENT RECD .00
 BALANCE DUE 321.27

OFFICE



NO. 1 CONTRACTING CORPORATION

49 SOUTH MAIN STREET
ASHLEY, PENNSYLVANIA 18706
PHONE: 570-823-0325 FAX: 570-823-9962

June 20, 2006

D.C. Guelich Explosive Co.
1442 18 Hollow Rd.
Clearfield, Pa. 16830

Dear Mr. Guelich:

Enclosed please find an initial installment payment in the amount of \$3,154.24 to be applied to the principal amount due by No. 1 Contracting Corporation to D.C. Guelich Explosive Company for goods and services provided to No. 1 Contracting during the time period of September 2005 to March 2006. As previously mentioned, as a result of its high accounts receivable, No. 1 Contracting is making these installment payments in order to satisfy the principal amount due of \$12,616.94.

Thank you for your cooperation. Please contact me with any questions or concerns you may have.

Sincerely,

Melanie Shaak
Office Manager
No. 1 Contracting Corporation

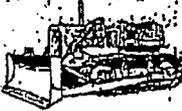
EXHIBIT. P. .

06/21/06 WED 09:59 FAX 231 6637+

RHOADS SINON LLI

FIRST NATIONAL COMMUNITY BANK
DUNMORE, PA

1300



No. 1 Contracting Corporation
49 SOUTH MAIN STREET
ASHLEY, PA 18706
PHONE: (570) 823-0325

60-313/313

6/20/2006

PAY TO THE
ORDER OF

D.C. GUELICH

\$ **3,154.24

Three Thousand One Hundred Fifty-Four and 24/100 ***** DOLLAR

D.C. GUELICH EXPLOSIVE CO.
1442 18 HOLLOW ROAD
CLEARFIELD, PA 16830

MEMO

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - PEO IMAGE DISAPPEARS WITH HEAT.

NO. 1 CONTRACTING CORPORATION
ASHLEY, PA 18706

D.C. GUELICH

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|------------|------|-----------|---------------|--------------|-----------------------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

1300

FNCB

3,154.24

NO. 1 CONTRACTING CORPORATION
ASHLEY, PA 18706

D.C. GUELICH

| Date | Type | Reference | Original Amt. | Balance Due | 6/20/2006 Discount | Payment |
|------------|------|-----------|---------------|--------------|-----------------------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7782 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

1300

FNCB

3,154.24

8P3201-1

REORDER FROM YOUR LOCAL SAFEGUARD DISTRIBUTOR. IF UNKNOWN, CALL 800-423-2424

011712070000 1015200298

SAFEGUARD

COMMONWEALTH OF *Pennsylvania*)
COUNTY OF *Clearfield*) SS:

**AFFIDAVIT IN SUPPORT OF D.C. GUELICH EXPLOSIVE CO.'S
MOTION FOR SUMMARY JUDGMENT**

Before me, the undersigned authority, personally appeared Thomas C. Neff, who deposes and says that he is the Controller of D.C. Guelich Explosive Co. ("Guelich"), that he authored the letter of June 26, 2006 attached hereto as Exhibit "A" to set forth Guelich's understanding as to the receipt of a partial payment of June 21, 2006 in the amount of \$3,154.24 which Guelich believed was pursuant to the written Stipulation proposed by Guelich's counsel, and that Guelich has received no additional payments from the Defendant, and that according to Guelich's books and records, maintained at or about the time of the transactions, under the supervision of Affiant, and relied upon in the normal course of business, there remains due and owing to Guelich by No. 1 Contracting Corporation, the principal sum of \$9,462.70, as shown by a true and correct copy of Guelich's Statement of Account, attached hereto as Exhibit "B," and further your Affiant sayeth not.

Thomas C. Neff

Thomas C. Neff

Sworn to and subscribed
before me this *30th* day
of *October*, 2006

Pamela E. Davis

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Pamela E. Davis, Notary Public
Lawrence Twp., Clearfield County
My Commission Expires May 22, 2008
Member, Pennsylvania Association Of Notaries

EXHIBIT. C.



Guelich

D.C. Guelich Explosive Co.
1442-18 Hollow Road
Clearfield, PA 16830
Phone: (814)765-1558
Fax: (814)765-2962

June 26, 2006

Mr. Al Roman
NO 1 Contracting
49 South Main St.
Ashley, PA 18706

VIA: Certified Mail

Dear Mr. Roman:

We are in receipt of your partial payment check number 1300 for \$3,154.24 dated 06/20/2006. The total judgment against No. 1 Contracting is for \$14,000.00 and was to be paid in four installments of \$3,500.00 each with the first payment due by July 1, 2006. Please be aware there remains an unpaid balance on the first payment of \$345.76 which must be received in our office by the due date of July 1, 2006 to avoid additional collection efforts.

Very Truly Yours,
D.C. Guelich Explosive Co.

Thomas C. Neff
Controller

CC: Ms. Melanie Shaak, No. 1 Contracting
Mr. Charles Bobinis, Bernstein Law Firm

EXHIBIT.A..

Oct 25, 2006 - 3:05pm

D.C. GUELICH EXPLOSIVE CO.

Page

ACCOUNTS RECEIVABLE AGING REPORT

Aged As Of 10/25/2006

Printed In Customer Number, Apply-To Number Order, Detail

Minimum Balance Due: All

In Aging Period Or Older: All

Balance Forward Totals to Current Period Only

Document Types I = Invoice P = Payment C = Cr Memo D = Dr Memo B = Balance Forward F = Finance Charge

Notes: Types I, B And F Are Aged By Their Doc Date. Types P, C And D Are Aged By Doc Date Of The Document To Which They Apply.

On Types I, B, C And D Amount-1 Is Sale Amt. On Type P Amount-1 Is Cash Receipt Amt. On Type F Amount-1 Is Fin Charge Amt

On Types I, C, and D Amount-2 Is Other Charges. On Type P Amount-2 Is Discount And Allowance. (No Amount-2 For Types F & B

| Cust-No | Name | Bal-Mthd | Contact | Phone-No | Terms | Slsman | Collectr | Terr | Loc | Crdt-Lmt | ***** Aged Customer Balance ***** | | | |
|---------|------|----------|---------|----------|-------|--------|----------|------|-----|----------|-----------------------------------|---------|---------|---------|
| | | | | | | | | | | | CURRENT | OVER 30 | OVER 45 | OVER 60 |

30NO1C NO 1 CONTRACTING

Opn-Itm

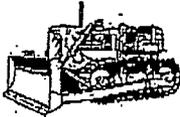
576-023-0325 NET 30 DAYS 99 30 1,000,000

| Doc-No | Doc-Date | Trp | Apply-To | Due-Date | Amount-1 | Amount-2 | | |
|------------------------------|------------|-----|----------|----------|-----------|----------|----------|-----------|
| 7782 | 10/04/2005 | I | 7782 | 11/03/05 | 12,071.99 | .00 | | |
| 1300 | 06/21/2006 | P | 7782 | 06/21/06 | 2,609.29 | .00 | 9,462.70 | |
| 20060131 | 01/31/2006 | F | 20060131 | 01/31/06 | 252.34 | .00 | 252.34 | |
| 20060228 | 02/28/2006 | F | 20060228 | 02/28/06 | 252.34 | .00 | 252.34 | |
| 20060331 | 03/31/2006 | F | 20060331 | 03/31/06 | 252.34 | .00 | 252.34 | |
| Customer Total: | | | | | 10,219.72 | .00 | .00 | 10,219.72 |
| 1 Cust Printed Grand Totals: | | | | | 10,219.72 | .00 | .00 | 10,219.72 |
| 3 Of Balance: | | | | | | .00 | .00 | 100.00 |
| Outstand B,D,I | | | | | 9,462.70 | .00 | .00 | 9,462.70 |
| Unapplied C,P | | | | | .00 | .00 | .00 | .00 |
| Finance Charges | | | | | 757.02 | .00 | .00 | 757.02 |

CK # 1300 for \$3,154.24

6-20-06

| Trp # | Amount |
|-------|----------------|
| 7763- | 321.27 |
| 7770- | 153.20 |
| 7805- | 70.48 |
| 7782- | 2609.29 |
| | <u>3154.24</u> |



No. 1 Contracting Corporation
49 SOUTH MAIN STREET
ASHLEY, PA. 18705
PHONE: (570) 823-0325

FIRST NATIONAL COMMUNITY BANK
DUNMORE, PA

60-313/313

1300

6/20/2006

PAY TO THE ORDER OF

D.C. GUELICH

\$ 3,154.24

Three Thousand One Hundred Fifty-Four and 24/100

DOLLA

D.C. GUELICH EXPLOSIVE CO.
1442 18 HOLLOW ROAD
CLEARFIELD, PA 16830

MEMO

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS TO VOID. ANY IMAGE DISAPPEARS WITH HEAT.
⑈001300⑈ ⑆031303132⑆ ⑈56 5011325⑈

NO. 1 CONTRACTING CORPORATION
ASHLEY, PA 18705

1300

D.C. GUELICH

6/20/2006

| Date | Type | Reference | Original Amt. | Balance Due | Discount | Payment |
|------------|------|-----------|---------------|--------------|----------|----------|
| 9/7/2005 | Bill | 00007763 | 321.27 | 321.27 | | 321.27 |
| 9/9/2005 | Bill | 7770 | 153.20 | 153.20 | | 153.20 |
| 10/4/2005 | Bill | 7762 | 12,071.99 | 12,071.99 | | 2,609.29 |
| 10/31/2005 | Bill | 7805 | 70.48 | 70.48 | | 70.48 |
| | | | | Check Amount | | 3,154.24 |

FNCB

3,154.24

Tom,
This check was sent after I had a verbal conversation with Melorie on 6-20-06. He was to take the amount of judgement \div by 4 and send monthly installments. I guess she only decided to pay principle here my letter to her. This should keep you in the loop.
A. Murawski

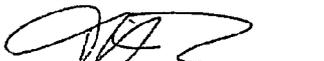
COMMONWEALTH OF)
) SS:
COUNTY OF)

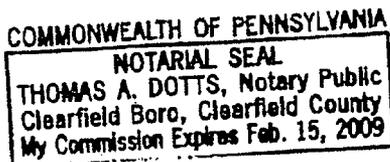
AFFIDAVIT IN SUPPORT OF D.C. GUELICH EXPLOSIVE CO.'S
MOTION FOR SUMMARY JUDGMENT

Before me, the undersigned authority, personally appeared Duwayne C. Guelich, who, being duly sworn according to law deposes and says that he is President of Plaintiff D.C. Guelich Explosive Co., a Pennsylvania corporation, that he authored the attached letter of June 22, 2006 to the Defendant in the belief that the Defendant had entered into the Stipulation prepared by Guelich's counsel, and that the omission from the payment of Court costs and finance charges was an error or oversight by the Defendant, that the Defendant has not made any payments on the amount admitted to be due since the partial payment of June 21, 2006 of \$3,154.24, leaving an unpaid principal balance due and owing of \$9,462.70, and further your Affiant sayeth not.


Duwayne C. Guelich

Sworn to and subscribed
before me this 30 day
of October, 2006


Notary Public



June 22, 2006

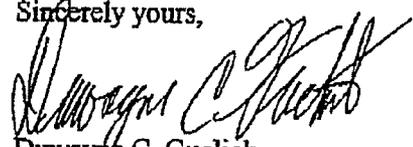
Ms. Melanie Shaak
Office Manager
No. 1 Contracting Corp.
49 South Main Street
Ashley, PA 18706

Dear Ms. Shaak:

Thank you for sending the D. C. Guelich Explosive Company the first monthly installment towards the debt No. 1 Contracting Corporation is in arrears to us. Please keep in mind that there will be costs and finance charges that will need to be paid before we will release our judgment on No. 1 Contracting Corporation.

Please contact Tom Neff or myself if you have any further questions.

Sincerely yours,



Duwayne C. Guelich
President

EXHIBIT. 3.

| | | |
|----|--|-------------|
| 1. | Latest date October 4, 2005, invoice due November 4, 2005. | |
| 2. | Legal interest on \$12,616.94 from November 4, 2005 to June 4, 2006, | \$ 416.56 |
| 3. | Legal interest on \$9,462.70 (\$12,616.94 - \$3,154.24 partial payment), from June 5, 2006 to August 4, 2006, | \$ 94.62 |
| 4. | Total legal interest of remaining balance from November 4, 2005 to November 4, 2006, | \$ 141.94 |
| 5. | \$9,462.70 (principal), plus \$511.18 (interest) equals current balance | \$10,115.80 |

EXHIBIT "E"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

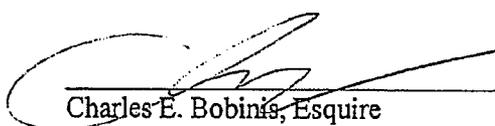
NO. 1 CONTRACTING CORPORATION,

Defendant.

CERTIFICATE OF SERVICE

I, Charles E. Bobinis, Esquire, hereby certify that a true and correct copy of the MOTION FOR SUMMARY JUDGMENT ON BEHALF OF PLAINTIFF D.C. GUELICH EXPLOSIVE CO. PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1035 was served on the following parties by regular U.S. Mail, postage prepaid, this 1st day of November, 2006, addressed as follows:

Cory A. Iannacone, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146


Charles E. Bobinis, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2006, upon consideration of the record, and it appearing to the Court that the Defendant has admitted that the remaining principal balance of \$9,460.77 is due and owing to Plaintiff Guelich, and it further appearing to the Court that there is no sufficient defense thereto, as a matter of law, and it further appearing to the Court that Plaintiff is entitled to the assessment of legal interest on the declining principal balance at the rate of 6% per annum from November 4, 2005, to November 4, 2006, of \$653.12, it is hereby ORDERED, ADJUDGED AND DECREED that Summary Judgment is entered in favor of D.C. Guelich Explosive Co. and against Defendant No. 1 Contracting Corporation in the amount of the \$10,115.80, plus appropriate additional interest from the date of Judgment, plus costs.

BY THE COURT:

U.S. Bankruptcy Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2006, a true and correct copy of the foregoing Answer to Plaintiff's Motion for Summary Judgment along with Brief in Opposition to Plaintiff's Motion for Summary Judgment were served by means of United States mail, first class, postage prepaid, upon the following:

Charles E. Bobinis, Esq.
Bernstein Law Firm, P.C.
Suite 2200 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1900s
Attorneys for Plaintiff

Ly. Sharpe

FILED

NOV 22 2006

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

CA

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

D.C. GUELICH EXPLOSIVE CO.,
Plaintiff

vs.

NO. 1 CONTRACTING CORPORATION,
Defendant

*
*
*
*
*

NO. 06-670-CD

ORDER

NOW, this 19th day of December, 2006, following argument on the Plaintiff's Motion for Summary Judgment it is the ORDER of this Court that the said Motion for Summary Judgment be and is hereby GRANTED. The Prothonotary is directed to enter Judgment in favor of the Plaintiff and against the Defendant for the amount of \$9,462.70, plus legal interest and costs.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED 10:59 AM
DEC 20 2006
C. Bobinis
C. Iannacore

William A. Shaw
Prothonotary/Clerk of Courts

GR

DATE: 12/20/06

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: (None to Babinski) - Please Submit \$30.00 filing fee with a Receipt to enter judgment.

FILED

DEC 20 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

No. 06-670-CD

vs.

NO. 1 CONTRACTING CORPORATION,

PRAECIPE FOR JUDGMENT ON AWARD

Defendant.

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. C0063332

FILED
DEC 27 2006
M/g...
William A. Shaw
Prothonotary/Clerk of Courts
NO CERT COPY
NOTICES TO DEFT.
AT TWO ADDRESS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

PRAECIPE FOR JUDGMENT ON AWARD

TO THE PROTHONOTARY:

Enter Judgment against Defendant, on the Award of Court for Motion for Summary Judgment, in the amount of \$9,901.56.

| | |
|--|------------|
| Amount claimed in Order dated 12/19/06 | \$9,462.70 |
| Interest from 11/6/06 – 12/31/06 | \$ 88.48 |
| Costs | \$ 370.38 |
| TOTAL | \$9,921.56 |

BERNSTEIN LAW FIRM, P.C.

By: 

Charles E. Bobinis, Esquire
Christopher M. Boback, Esquire
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

I certify that the address of the Plaintiff and the Defendant are as follows:

Plaintiff: c/o Bernstein Law Firm, P.C., Suite 2200 Gulf Tower, Pittsburgh, PA 15219

Defendant: c/o Cory A. Iannacone, Esquire, Rhoads & Sinon, LLP, P.O. Box 1146, Harrisburg, PA 17108-1146

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

D.C. GUElich EXPLOSIVE CO.,
Plaintiff

vs.

NO. 1 CONTRACTING CORPORATION,
Defendant

*
*
*
*
*

NO. 06-670-CD

ORDER

NOW, this 19th day of December, 2006, following argument on the Plaintiff's Motion for Summary Judgment it is the ORDER of this Court that the said Motion for Summary Judgment be and is hereby GRANTED. The Prothonotary is directed to enter Judgment in favor of the Plaintiff and against the Defendant for the amount of \$9,462.70, plus legal interest and costs.

BY THE COURT,

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

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

DEC 20 2006

Attest:

William A. [Signature]
Prothonotary/
Clerk of Courts

FILED

DEC 27 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

NOTICE OF JUDGMENT OR ORDER

TO: Plaintiff
 Defendant
 Garnishee

You are hereby notified that the following Order or Judgment was entered against you on Dec 27, 2006

(xx) Assumpsit Judgment in the amount of \$9,921.56 plus costs.

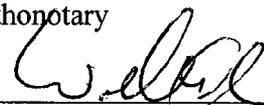
Trespass Judgment in the amount of \$_____ plus costs.

If not satisfied within sixty (60) days, your motor vehicle operator's license and/or registration will be suspended by the Department of Transportation, Bureau of Traffic Safety, Harrisburg, PA.

(xx) Entry of Judgment of
 Court Order
 Non-Pros
 Confession
 Default
 Verdict
 Arbitration Award

No. 1 Contracting Corporation
c/o Cory A. Iannacone, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146

Prothonotary

By: 
PROTHONOTARY (OR DEPUTY)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

NOTICE OF JUDGMENT OR ORDER

TO: Plaintiff
 Defendant
 Garnishee

Your are hereby notified that the following Order or Judgment was entered against you on DEC. 27, 2006.

(xx) Assumpsit Judgment in the amount of \$9,921.56 plus costs.

Trespass Judgment in the amount of \$_____ plus costs.

If not satisfied within sixty (60) days, your motor vehicle operator's license and/or registration will be suspended by the Department of Transportation, Bureau of Traffic Safety, Harrisburg, PA.

(xx) Entry of Judgment of
 Court Order
 Non-Pros
 Confession
 Default
 Verdict
 Arbitration Award

No. 1 Contracting Corporation
49 South Main Street
Ashley, PA 18706

Prothonotary

By: 
PROTHONOTARY (OR DEPUTY)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

No. 06-670-CD

vs.

NO. 1 CONTRACTING CORPORATION,

PRAECIPE FOR WRIT OF EXECUTION

Defendant.

FIRST NATIONAL COMMUNITY BANK,
FIRST HERITAGE BANK, and
OLD FORGE BANK,

Garnishees.

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. G0063332

FILED No CC
M/3:25/07 Atty pd. 20.00
FEB 12 2007
3 writs to
William A. Shaw Atty (to forward
Prothonotary/Clerk of Courts to Luzerne Co.)
(GR)

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

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

FIRST NATIONAL COMMUNITY BANK,
FIRST HERITAGE BANK and
OLD FORGE BANK,

Garnishees.

PRAECIPE FOR WRIT OF EXECUTION

To the Prothonotary:

Kindly issue a Writ of Execution in the above matter...

1. directed to the Sheriff of Luzerne County:

2. against Defendant: No. 1 Contracting Corporation
 49 South Main Street
 Ashley, PA 18706

3. against Garnishee: First National Community Bank
 340 West Broad Street
 Hazelton, PA 18201

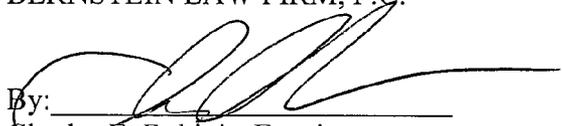
First Heritage Bank
142 Airport Road
P.O. Box 219
Hazelton, PA 18201

Old Forge Bank
304 Main Street
Duryea, PA 18642

| | |
|--------------------------------------|-------------------------------------|
| 4. JUDGMENT | \$9,462.70 |
| Interest from 12/31/06 – 2/9/07 | \$ 63.20 |
| Poundage | \$ 190.52 |
| SUBTOTAL: | \$9,716.42 |
| Costs (to be added by Prothonotary): | \$ 165.00 Prothonotary costs |
| TOTAL | \$ |

Date: February 9, 2007

BERNSTEIN LAW FIRM, P.C.

By: 
Charles E. Bobinis, Esquire
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8102

BERNSTEIN FILE NO. G0063332

FILED

FEB 12 2007

William A. Shaw
Prothonotary/Clerk of Courts

**WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION - LAW**

D. C. Guelich Explosive Co.
Plaintiff

Vs.

NO.: 2006-00670-CD

COPY

No. 1 Contracting Corporation
Defendant

First National Community Bank,
First Heritage Bank, and Old Forge Bank
Garnishees

TO THE SHERIFF OF LUZERNE COUNTY:

To satisfy the debt, interest and costs due D. C. GUELICH EXPLOSIVE CO., Plaintiff(s) from NO. 1 CONTRACTING CORPORATION, Defendant(s):

- (1) You are directed to levy upon the property of the defendant(s) and to sell interest(s) therein:
Personal Property
- (2) You are also directed to attach the property of the defendant(s) not levied upon in the possession of: First National Community Bank, First Heritage Bank, and Old Forge Bank, Garnishees as follows: and to notify the garnishee(s) that: (a) an attachment has been issued; (b) the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof;
- (3) If property of the defendant(s) not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify him/her that he/she has been added as a garnishee and is enjoined as above stated.
- (4) **If Social Security or Supplemental Income funds are directly deposited into an account of the defendant, the levy and attachment shall not include any funds that may be traced to Social Security direct deposits. In addition, the levy and attachment shall not include \$300.00 in the account of the defendant.**

AMOUNT DUE/PRINCIPAL:.....\$9,462.70
INTEREST from 12/31/06-2/9/07:.....\$63.20
ATTY'S COMM: \$
POUNDAGE:.....\$190.52
DATE: 02/12/2007

PROTHONOTARY'S COSTS PAID:..\$165.00
SHERIFF: \$
OTHER COSTS: \$



William A. Shaw
Prothonotary/Clerk Civil Division

Received this writ this _____ day
of _____ A.D. _____
At _____ A.M./P.M.

Requesting Party: Charles E. Bobinis, Esq.
Ste. 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

Sheriff

CM

D.C. GUELICH EXPLOSIVE CO.

Plaintiff

v.

NO. 1 CONTRACTING CORPORATION

Defendant

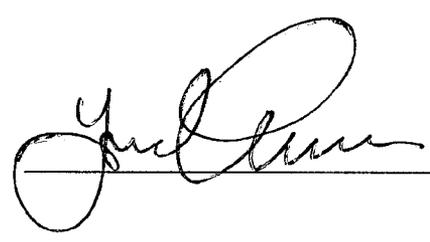
IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

RULE TO SHOW CAUSE

AND NOW, this 12 day of Feb., 2007, a Rule to Show Cause is issued upon Defendants as to why Plaintiff's Petition to Withdraw as Counsel should not be granted.

Rule returnable in 20 days.


_____ J.

FILED ^{icc}
014:00/51
FEB 13 2007
Atty Tannacore

William A. Shaw
Prothonotary/Clerk of Courts

(610)

DATE: 2/13/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

William A. Shaw
Prothonotary/Clerk of Courts

FEB 13 2007

FILED

Kenneth L. Joel, Esquire
Attorney I.D. No. 72370
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

D.C. GUELICH EXPLOSIVE CO.

Plaintiff

v.

NO. 1 CONTRACTING CORPORATION

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

PETITION TO WITHDRAW AS COUNSEL

NOW COME, Kenneth L. Joel, Esquire, Cory A. Iannacone, Esquire, and Rhoads & Sinon LLP (collectively the "Petitioners"), who respectfully request that they be permitted to withdraw as counsel of record for No. 1 Contracting Corporation in the above-captioned matter, and in support thereof state the following:

1. No. 1 Contracting Corporation ("No. 1 Contracting") became a client of Rhoads & Sinon LLP through one of its former partners, Charles E. Gutshall.
2. Mr. Gutshall left Rhoads & Sinon LLP effective December 31, 2006 and informed Rhoads & Sinon LLP that he began working with the law firm of Elliott, Greenleaf, Siedzikowski & Balaban, P.C., in Harrisburg, Pennsylvania.

FILED ^{icc}
m ha:4960/ AHY
FEB 08 2007
(6)

William A. Shaw
Prothonotary/Clerk of Courts

3. In transferring firms, Mr. Gutshall also informed Rhoads & Sinon LLP of the clients which he would continue to represent. No. 1 Contracting was included in this list. (A copy of this list provided by Mr. Gutshall is attached hereto as Exhibit "A").¹

4. In addition, No. 1 Contracting specifically directed Rhoads & Sinon LLP to forward No. 1 Contracting's files to Elliott, Greenleaf, Siedzikowski & Balaban, P.C., and those files have in fact been transferred. (A copy of No. 1 Contracting's request to have its files transferred is attached hereto as Exhibit "B".)

5. No. 1 Contracting also discharged Rhoads & Sinon LLP from further representation. (See Exhibit B, whereby No. 1 Contracting discharged Rhoads & Sinon from further representation.)

6. Mr. Gutshall requested that Rhoads & Sinon LLP draft Praecipes to have Rhoads & Sinon LLP's appearance withdrawn and his appearance entered for those matters in active litigation. (See Exhibit A) Rhoads & Sinon LLP has in fact drafted these Praecipes and forwarded them to Mr. Gutshall for his signature; however, Rhoads & Sinon LLP has yet to receive a response.

7. Without these documents, Rhoads & Sinon LLP is forced to file a formal Petition to Withdraw its appearance in all actions where No. 1 Contracting is a named party and Rhoads & Sinon LLP's appearance is entered on No. 1 Contracting's behalf, including, but not limited to, the above-captioned action. See Pa. R. Civ. P. 1012(b) (requiring leave of court for an attorney to withdraw his appearance when another attorney has not yet entered his appearance).

8. Pennsylvania Rule of Professional Conduct 1.16(b) provides in pertinent part:

¹ Information that is not relevant to the present Petition, or that is protected by the attorney-client privilege, has been redacted. An unredacted copy of Exhibit A can be provided, in camera, to this Court, if required.

... a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interest of the client, or if:

...

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) other good cause for withdrawal exists.

9. Under the Pennsylvania Rules of Professional Conduct, a lawyer "shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law." Pa. R. Prof'l Cond. 1.16(a).

10. Notwithstanding the fact that No. 1 Contracting has discharged Rhoads & Sinon LLP from its representation of No. 1 Contracting, Petitioners also seek to withdraw as counsel in this matter because they believe that grounds exists pursuant to Rule of Professional Conduct 1.16(a), (b)(4), (b)(5) and/or (b)(6) to do so.

11. In an abundance of caution, in light of the confidentiality requirements of Rule of Professional Conduct 1.6, Petitioners will, if necessary, provide the factual basis for withdrawal pursuant to Pa. R. Civ. P. 1.16 to the Court in camera or upon Court Order. As stated in the Comment to Rule 1.6:

the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having a need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

12. Petitioners have informed No. 1 Contracting of their intent to file the within Petition. (A copy of a letter dated January 26, 2006, giving No. 1 Contracting notice of Petitioners' intent to file the within Petition is attached hereto as Exhibit "C".)

13. A judgment has already been entered against No. 1 Contracting in this case. Thus, Rhoads & Sinon withdrawing as counsel will not unduly delay the trial and it will not prejudice No. 1 Contracting and/or Guelich.

14. As No.1 Contracting discharged Rhoads & Sinon and directed the transfer of files to another law firm, Rhoads & Sinon believes that No. 1 Contracting consents to this Petition, but is serving a copy of this Petition on No. 1 Contracting so that it can object if it so desires.

15. Petitioner contacted counsel for Defendant and left a message as to the filing of the Petition. Counsel for Defendants has not yet responded.

WHEREFORE, Kenneth L. Joel, Esquire, Cory A. Iannacone, Esquire, and Rhoads & Sinon LLP respectfully request that this Court grant the within Petition and permit Petitioners to withdraw as counsel for No. 1 Contracting Corporation in this action.

Respectfully submitted,

RHOADS & SINON LLP

By:



Kenneth L. Joel
Cory A. Iannacone
One South Market Square
P. O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting

VERIFICATION

I, Cory A. Iannacone, Esquire, am authorized to make this Petition on behalf of Rhoads & Simon LLP and I do hereby verify that the statements contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

02/02/2009
Date


Cory A. Iannacone

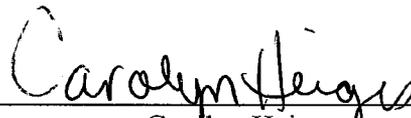
CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2007, a true and correct copy of the within Petition to Withdraw as Counsel was served by means of United States mail, first class, postage prepaid, upon the following:

Charles E. Bobinis, Esq.
Bernstein Law Firm, P.C.
Suite 2200 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1900
(Counsel for Plaintiff D.C. Guelich Explosive Co.)

Charles E. Gutshall, Esquire
Elliott Greenleaf Siedzikowski & Balaban, P.C.
27 North Front Street
Harrisburg, PA 17108
(Counsel for Defendant No. 1 Contracting Corporation)

Alvin Roman
No. 1 Contracting Corp.
49 S. Main Street
Ashley PA 18706
(Representative of Plaintiff No. 1 Contracting Corporation)



Carolyn Heiges

EXHIBIT A



ceg1159@comcast.net
01/02/2007 03:00 PM

To cferry@rhoads-sinon.com
cc
Subject ceg transition

chuck -- -- this email is to address pending matters resulting from my resignation from Rhoads & Sinon effective December 31, 2006. based on our conversations on friday and my inability to get you on saturday, i think it is best to email you rather than call you or meet you today. this is designed provide a seamless transition to your firm resulting from my departure.

i intend to announce my new firm no later than friday. i have rejected all but two offers. i have conflict clearance and the formality of partnership admission votes which should be resolved this week. i know you would have preferred me to have had all this set up earlier. however, i hope that when you consider the importance of this decision for me and the relatively short time i have had to handle all of this you will understand.

i propose the following with respect to my clients. the following will leave for my new firm:

Contracting, Inc.

and No. 1

i would appreciate it if you could arrange for entry/withdrawals of appearance for the
aforementioned clients because you have the files and it can be done by your firm more promptly.
if that is not acceptable please let me know. i am, of course, happy to assist with this. we will
also have to deal with actual transfer of the physical files. [

thank you for you anticipated cooperation and attention to these matters. i am out of town today
but it is best to contact me at this email address. i am hopeful that i can continue to have a good
and cordial relationship with you and others in your firm going forward.....charlie

Notice: This email transmission, including any attachments, may contain confidential information protected by the attorney-client or other legal privilege. Unauthorized use, distribution or copying is prohibited. If you received this email in error, please notify the sender by replying to this email or by calling Rhoads & Sinon LLP at 717.233.5731 and deleting the erroneous transmission from your system without copying it. Thank You.

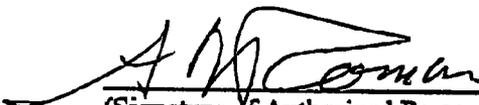
" The United States Treasury Regulations and Circular 230 require all tax professionals to advise their clients that any U.S. federal tax advice contained in any written communications (including emails and attachments thereto) is not intended to be used, and cannot be used, by any recipient for the purpose of avoiding penalties that may be imposed under federal tax laws. Furthermore, no statement contained herein should be used to promote, market or recommend any federal tax transactions to third parties.

Any person reviewing this information, other than the intended recipient, is expressly advised to consult with their own independent tax advisor with respect to any tax advice contained herein."

EXHIBIT B

**Notification to Rhoads & Sinon LLP
of Client Request to Transfer File to
Elliot Greenleaf Siedzikowski & Balaban**

Pleased be advised that No. 1 Contracting ("Client"),
having been duly notified of the resignation of Charles E. Gutshall, requests that all client
records relating to Client No. 6783, Matters 1,2,3,4,5,6 and 7 be
released and transferred to Elliot Greenleaf Siedzikowski & Balaban
and hereby discharges Rhoads & Sinon from all obligations to provide further
representation to Client.



(Signature of Authorized Person)

A.J. Roman

(Printed Name of Authorized Person)

1/12/07

(Date)

**PLEASE FAX THIS NOTIFICATION TO THE ATTENTION OF
WILLIAM WALSH
717-231-6669**

**IF YOU HAVE ANY QUESTIONS ABOUT THIS FORM, PLEASE CONTACT
MR. WALSH AT 717-231-6638**

EXHIBIT C



Cory A. Iannacone
ph (717) 237-6778
fx (717) 231-6698
ciannacone@rhoads-sinon.com

FILE NO:

January 26, 2007

Re: Rhoads & Sinon LLP's Withdrawal as Counsel

Sent by Regular, First Class Mail and Facsimile Transmission to: (570) 823-9962

Al Roman
Melanie Shaak
No. 1 Contracting Corporation
49 S. Main St.
Ashley, PA 18706

Dear Mr. Roman and Ms. Shaak:

This letter shall serve as Rhoads & Sinon LLP's formal notice of its intent to withdraw as legal counsel for No. 1 Contracting. Rhoads & Sinon LLP intends to file a formal Petition to Withdraw as Counsel in all pending matters where No. 1 Contracting is a named party and Rhoads & Sinon LLP has entered its appearance on No. 1 Contracting's behalf.

As you are aware, No. 1 Contracting became a client of Rhoads & Sinon LLP through one of its former partners, Charles E. Gutshall. Mr. Gutshall left Rhoads & Sinon LLP effective December 31, 2006 and informed Rhoads & Sinon LLP that he began working with the law firm of Elliott, Greenleaf, Siedzikowski & Balaban, P.C., in Harrisburg, Pennsylvania. In transferring firms, Mr. Gutshall also informed Rhoads & Sinon LLP of the clients which he would continue to represent. No. 1 Contracting was included in this list. In addition, No. 1 Contracting specifically directed Rhoads & Sinon LLP to forward No. 1 Contracting's files to Elliott, Greenleaf, Siedzikowski & Balaban, P.C., and those files have in fact been transferred. No. 1 Contracting also discharged Rhoads & Sinon LLP from further representation.

Mr. Gutshall requested that Rhoads & Sinon LLP draft Praecipes to have Rhoads & Sinon LLP's appearance withdrawn and his appearance entered for those matters in active litigation. Rhoads & Sinon LLP has in fact drafted these Praecipes and forwarded them to Mr. Gutshall for his signature; however, Rhoads & Sinon LLP has yet to receive a response.

Without these documents, Rhoads & Sinon LLP is forced to file a formal Petition to Withdraw its appearance in all actions where No. 1 Contracting is a named party and Rhoads & Sinon LLP's appearance is entered on No. 1 Contracting's behalf. To the best of our knowledge, those actions include:

- (1) Richland Partners (Leffler Energy) v. No. 1 Contracting, No. CI-06-05035 (C.P. Lancaster Cty.);

January 26, 2007

Page 2

- (2) D.C. Guelich v. No. 1 Contracting, No. 06-670-CD (C.P. Clearfield Cty.);
- (3) No. 1 Contracting v. Pace Construction Managers, No. 7769-CV-06 (C.P. Monroe Cty.);
- (4) No. 1 Contracting v. Freya Land Company, No. 9575-2006 (C.P. Luzerne Cty.);
- (5) No. 1 Contracting v. Dickinson Development Partnership, et al., No. 11168-2006 (C.P. Luzerne Cty.); and
- (6) United Steelworkers of America v. No. 1 Contracting, 3:06-cv-0698 (U.S. Dist. Ct. M.D. Pa.)

Please be advised that the withdrawal of our representation of No. 1 Contracting is not limited to the matters listed above. Rather, it extends to all other matters where Rhoads & Sinon LLP has not formally entered its appearance and those matters not in active litigation, including, but not limited to, the matters of United Rentals v. No. 1 Contracting and United Mercantile Agencies, Inc., where Rhoads & Sinon LLP has been negotiating on No. 1 Contracting's behalf.

It is our understanding, based on the direction you provided to us in writing, that you concur with this course of action.

Thank you for your attention to this matter.

Very truly yours,

RHOADS & SINON LLP

By:



Cory A. Iannacone

cc: Charles J. Ferry, Esq.
William Walsh
Kenneth L. Joel, Esq.
David C. Sirolly, Esq.
Kelly H. Decker, Esq.
Charles E. Gutshall, Esq.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 3318
CONNECTION TEL 915708239962
SUBADDRESS
CONNECTION ID
ST. TIME 01/26 16:54
USAGE T 01'04
PGS. 3
RESULT OK

FAX COVER SHEET

RHOADS & SINON LLP
One South Market Square, P.O. BOX 1146, Harrisburg, PA 17108-1146
Tele: (717)237-6778, Fax: (717) 231-6698

CONFIDENTIAL / ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS

FILE: _____ DATE: January 26, 2007 4:46 PM

RE: Rhoads & Sinon LLP's Withdrawal as Counsel

TO: Alvin Roman Fax # 1-570-823-9962
Melanie Shaak

FROM: Cory A. Iannacone, Esquire

Total number of pages, including this cover sheet: 3

Original will be sent by mail (if checked) Document will be sent by e-mail (if checked)

Additional Comments/Notes/Instructions:

If you do not receive all pages or have any problems with reception, please call us for retransmission at the above number.

CONFIDENTIALITY/NOTICE: This facsimile contains confidential information which may also be legally privileged and which is intended only for the use of the Addressee(s) named above. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile, or the taking of any action in reliance on the contents of this telecopied information may be strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the entire facsimile to us at the above address at our cost via the U.S. Postal Service. Thank You!

FILED

FEB 08 2007

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

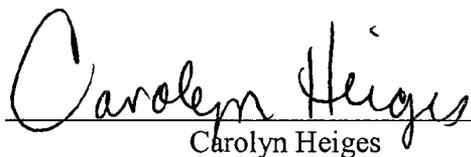
I hereby certify that on March 6, 2007, a true and correct copy of the within Praeipie for Substitution of Counsel was served by means of United States mail, first class, postage prepaid, upon the following:

Charles E. Bobinis, Esq.
Bernstein Law Firm, P.C.
Suite 2200 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1900
(Counsel for Plaintiff D.C. Guelich Explosive Co.)

Charles E. Gutshall, Esquire
215 Northgate Drive
Camp Hill, PA 17011
(Counsel for Defendant No. 1 Contracting Corporation)

Charles E. Gutshall, Esquire
49 South Main Street
Ashley, PA 18706

Alvin Roman
No. 1 Contracting Corp.
49 S. Main Street
Ashley PA 18706
(Representative of Plaintiff No. 1 Contracting Corporation)


Carolyn Heiges

FILED

MAR 07 2007

William A. Shaw
Prothonotary/Clerk of Courts

Kenneth L. Joel, Esquire
Attorney I.D. No. 72370
Cory A. Iannacone, Esquire
Attorney I.D. No. 200530
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for No. 1 Contracting Corporation

D.C. GUELICH EXPLOSIVE CO.
Plaintiff

v.

NO. 1 CONTRACTING
CORPORATION

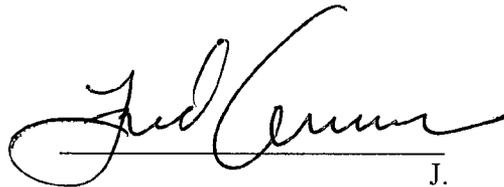
Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 06-670-CD

ORDER

AND NOW, for good cause shown, it is hereby ORDERED that Kenneth L. Joel, Esquire, Cory A. Iannacone, Esquire, and Rhoads & Sinon LLP (collectively the "Petitioners") are WITHDRAWN as counsel of record for No. 1 Contracting Corporation in the above-captioned matter, and that Charles E. Gutshall, Esquire is now ENTERED as counsel of record in the above-captioned matter.



J.

FILED ^{icc}
09:52 AM
MAR 09 2007
Iannacone
CER

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAR 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 3/9/07

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:

D.C. Guelich Explosive Company
Plaintiff

vs

No. One Contracting Company
Defendant

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WRIT OF EXECUTION and/or
ATTACHMENT

COMMONWEALTH OF
PENNSYLVANIA

COUNTY OF CLEARFIELD

CIVIL ACTION - LAW

No. 2006-00670-CD

FILED

APR 16 2007

m/ 11:55/6

William A. Shaw

Prothonotary/Clerk of Courts

ANSWERS TO INTERROGATORIES AND ATTACHMENTS

AND NOW COMES, Myles R. Wren, Esquire, of Nogi, Appleton, Weinberger & Wren, P.C., who states that he represents First National Community Bank, (hereinafter the "Bank") and responds to the interrogatories served on First National Community Bank.

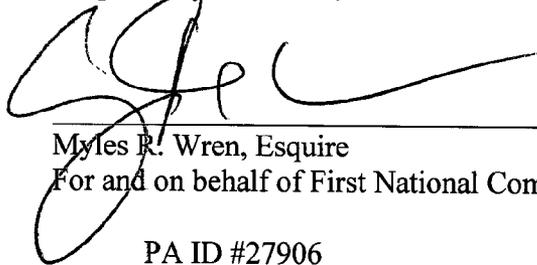
1. The Defendant is indebted to First National Community Bank (the "Bank") in sums far in excess of any account balance which have existed at the Bank, but, in particular, which existed on the date of service of Interrogatories. Indeed, generally, at or about the time of service of the Interrogatories the account balance was over-drafted and no monies were available. The Bank continues its right to setoff and claim against any funds in the account as a superior right to any garnishment rights of Plaintiff herein.

2. The Defendant is indebted to the Bank in sums far in excess of any account balance which have existed at the Bank, but, in particular, which existed on the date of service of Interrogatories. Indeed, generally, at or about the time of service of the Interrogatories the account balance was over-drafted and no monies were available. The Bank continues its right to setoff and claim against any funds in the account as a superior right to any garnishment rights of Plaintiff herein.

3. The Defendant is indebted to the Bank in sums far in excess of any account balance which has existed at the Bank, but, in particular, which have existed on the date of service of Interrogatories. Indeed, generally, at or about the time of service of the Interrogatories the account balance was over-drafted and no monies were available. The Bank continues its right to setoff and claim against any funds in the account as a superior right to any garnishment rights of Plaintiff herein.

4. No.
5. No, see above, which is incorporated herein.
6. No, see above, which is incorporated herein.

Respectfully submitted,



Myles R. Wren, Esquire
For and on behalf of First National Community Bank

PA ID #27906
Nogi, Appleton, Weinberger & Wren, P.C.
415 Wyoming Avenue
Scranton, Pennsylvania, 18503
(570) 963-8880
(570) 963-9372 facsimile

FILED

②

D.C. Guelich Explosive Company
Plaintiff

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WRIT OF EXECUTION and/or
ATTACHMENT

APR 16 2007

m/r: rle
William A. Shaw
Prothonotary/Clerk of Courts

COMMONWEALTH OF
PENNSYLVANIA

2 copy to

vs

COUNTY OF CLEARFIELD

att

CIVIL ACTION - LAW

No. One Contracting Company
Defendant

No. 2006-00670-CD

CERTIFICATE OF SERVICE

I, Myles R. Wren, Esquire, of the Law Firm of Nogi, Appleton, Weinberger & Wren, P.C. do hereby state that I have served a true and correct copy of an **ANSWERS TO INTERROGATORIES AND ATTACHMENTS** regarding the above captioned matter, via U.S. First Class Mail on the following:

No.1 Contracting Corp
49 South Main Street
Ashley, Pennsylvania, 18706

Charles E. Bobins, Esquire
Suite 2200 Gulf Tower
Pittsburgh, Pa, 15219

DATE: _____

4/11/07

BY: _____



MYLES R. WREN, ESQUIRE
NOGI, APPLETON, WEINBERGER & WREN, P.C.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

No. 06-670-CD

vs.

NO. 1 CONTRACTING CORPORATION,

PRAECIPE FOR WRIT OF EXECUTION

Defendant.

NORTHEASTERN POWER CO.,
NEPCO SERVICES CO.,

FILED ON BEHALF OF
Plaintiff

Garnishees.

COUNSEL OF RECORD OF THIS PARTY:

CHARLES E. BOBINIS, ESQUIRE
PA I.D. #30665
Bernstein Law Firm, P.C.
Firm #718
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100

DIRECT DIAL: (412) 456-8102

BERNSTEIN FILE NO. C0063332

FILED *Any pd. 20.00*

m 11:37 AM
MAR 26 2006 *No CC*

William A. Shaw
Prothonotary/Clerk of Courts

2 writs to Atty

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

D. C. GUELICH EXPLOSIVE CO.,

Plaintiff,

vs.

Civil Action No. 06-670-CD

NO. 1 CONTRACTING CORPORATION,

Defendant.

NORTHEASTERN POWER CO.,
NEPCO SERVICES CO.,

Garnishees.

PRAECIPE FOR WRIT OF EXECUTION

To the Prothonotary:

Kindly issue a Writ of Execution in the above matter...

1. directed to the Sheriff of Schuylkill County:
2. against Defendant: No. 1 Contracting Corporation
 49 South Main Street
 Ashley, PA 18706
3. against Garnishee: Northeastern Power Co.
 Route 309
 McAdoo, PA 18237

 NEPCO Services Co.
 Route 309
 McAdoo, PA 18237

| | | |
|--------------------------------------|-------------|---------------------------|
| 4. JUDGMENT | \$ 9,716.42 | |
| Interest from 2/10/07 – 3/24/07 | \$ 660.96 | |
| Poundage | \$ 207.55 | |
| SUBTOTAL: | \$10,584.93 | |
| Costs (to be added by Prothonotary): | \$ 185.00 | Prothonotary costs |
| TOTAL | \$ | |

BERNSTEIN LAW FIRM, P.C.

Date: March 19, 2007

By: 
Charles E. Bobinis, Esquire
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8102

BERNSTEIN FILE NO. C0063332

FILED

MAR 26 2008

William A. Shaw
Prothonotary/Clerk of Courts

Prothonotary/Clerk of Courts

**WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION - LAW**

COPY

D. C. Guelich Explosive Co.

Vs.

NO.: 2006-00670-CD

No. 1 Contracting Corporation

Northeastern Power Co. and NEPCO Services Co.
Garnishees

TO THE SHERIFF OF SCHUYLKILL COUNTY:

To satisfy the judgment, interest and costs against D. C. GUELICH EXPLOSIVE CO., Plaintiff(s) from NO. 1 CONTRACTING CORPORATION, Defendant(s):

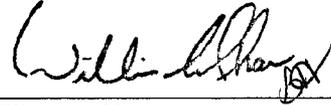
- (1) You are directed to levy upon the property of the defendant(s) and to sell defendant's interest(s) therein:
Personal Property

You are also directed to attach the property of the defendant(s) not levied upon in the possession of: Northeastern Power Co. and NEPCO Services Co. as garnishee(s): and to notify the garnishee(s) that: (a) an attachment has been issued; (b) except as provided in paragraph (c), the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof; (c) the attachment shall not include any funds in an account of the defendant with a bank or other financial institution (i) in which funds are deposited electronically on a recurring basis and are identified as being funds that upon deposit are exempt from execution, levy or attachment under Pennsylvania or federal law, or (ii) that total \$300 or less. If multiple accounts are attached, a total of \$300 in all accounts shall not be subject to levy and attachment as determined by the executing officer. The funds shall be set aside pursuant to the defendant's general exemption provided in 42 Pa.C.S. § 8123.

- (2) If property of the defendant(s) not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify such other person that he or she has been added as a garnishee and is enjoined as above stated.
- (3) **If Social Security or Supplemental Income funds are directly deposited into an account of the defendant, the levy and attachment shall not include any funds that may be traced to Social Security direct deposits. In addition, the levy and attachment shall not include \$300.00 in the account of the defendant.**

AMOUNT DUE/PRINCIPAL:.....\$9,716.42
INTEREST FROM 2/10/07-3/24/07:.....\$660.96
ATTY'S COMM: \$
DATE: 3/26/2008

PROTH. COSTS PAID:.....\$185.00
SHERIFF: \$
OTHER COSTS: \$
POUNDAGE:.....\$207.55



William A. Shaw
Prothonotary/Clerk Civil Division

Received this writ this _____ day
of _____ A.D. _____
At _____ A.M./P.M.

Requesting Party: Charles E. Bobinis, Esq.
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8102

Sheriff