

06-1708-CD

Bradley Penoyer vs W. Satterlee & Sons

2006-1708-CD

Bradley Penoyer vs William Satterlee

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

BRADLEY S. PENOYER :  
Plaintiff : No. 2006- 1708-CD  
vs. : Type of Case:  
WILLIAM G. SATTERLEE & SONS, INC., : CIVIL  
Defendant : Type of Pleading:  
: COMPLAINT  
: Filed on Behalf of:  
: PLAINTIFF  
: Counsel for This Party:  
: Peter F. Smith, Esquire  
: Supreme Court No. 34291  
: 30 South Second Street  
: P.O. Box 130  
: Clearfield, PA 16830  
: (814) 765-5595  
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JURY TRIAL REQUESTED

FILED pd \$85.00 Atty  
0/240 cm 2cc Atty Smith  
OCT 18 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

BRADLEY S. PENOYER,	:	
Plaintiff	:	No. 2006- -CD
	:	
	:	
vs.	:	
	:	
	:	
WILLIAM G. SATTERLEE & SONS, INC.,	:	
Defendant	:	

**NOTICE TO DEFEND**

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

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

COURT ADMINISTRATOR  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830  
(814) 765-2641, Ext. 5982

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

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

Clearfield County Court Administrator  
Clearfield County Courthouse  
Market and Second Streets  
Clearfield, PA 16830  
(814) 765-2641

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

BRADLEY S. PENOYER,	:	
Plaintiff	:	No. 2006-
	:	-CD
	:	
vs.	:	
	:	
	:	
WILLIAM G. SATTERLEE & SONS, INC.,	:	
Defendant	:	

**COMPLAINT**

COMES NOW, BRADLEY S. PENOYER, by his attorney Peter F. Smith, who states the following in support of this Complaint:

1. BRADLEY S. PENOYER, the Plaintiff, is an adult individual who resides at 44 Evergreen Road, Clearfield, Clearfield County, Pennsylvania 16830.
2. The Defendant is WILLIAM G. SATTERLEE & SONS, INC., and is believed to be a Pennsylvania business corporation with principal office at R.R. #1 Box 1, Rochester Mills, Indiana County, Pennsylvania 15771.
3. The Defendant sells gasoline and other petroleum products in Indiana, Clearfield and Jefferson Counties and other areas of central Pennsylvania.
4. At all times relevant to these proceedings, the Defendant has been present and doing business in Clearfield County, Pennsylvania.
5. Until August 22, 2006, MR. PENOYER was employed by the Defendant. He served Defendant's customers and supervised Defendant's employees and operations in Clearfield County.

6. MR. PENNOYER was based at the Defendant's facility located at 301 Park Avenue, Clearfield, Clearfield County, Pennsylvania 16830.

7. By Agreement dated October 14, 1993, MR. PENNOYER and the Defendant entered an "Incentive Compensation and Employment Agreement and Covenant Not to Compete." A true and correct copy of said agreement is attached hereto incorporated herein by reference as Plaintiff's Exhibit A.

8. That agreement was for an initial term of five years, and it automatically renewed for additional one-year periods unless and until either party gave 90-days prior written notice of their intent not to renew. (See Paragraph 2 of Exhibit A.)

9. That agreement was not subsequently revoked, terminated or amended by subsequent agreement of the parties.

10. That agreement was in full force and effect on August 22, 2006.

11. On or about August 22, 2006 David E. Satterlee, the President of Defendant corporation, telephoned MR. PENNOYER. During this conversation, Mr. Satterlee told MR. PENNOYER that MR. PENNOYER'S position with the Defendant corporation had been eliminated and that MR. PENNOYER'S employment was terminated.

12. Termination of MR. PENNOYER'S employment was effective immediately.

13. That termination of MR. PENNOYER'S employment with the Defendant corporation breached the parties' written agreement for the following reasons:

a. Paragraph 2 of the agreement requires 90-days notice prior to October 14th (the anniversary date of the agreement.) This year, MR. PENNOYER should have received notice of the Defendant's

intention not to renew the agreement on or before July 17, 2006. He was given no advance notice and was terminated after July 17, 2006; and,

b. The notice was delivered verbally and not in writing.

14. Paragraph 4 of the parties' agreement entitles MR. PENNOYER to severance pay in the amount of \$35,000.00 upon termination of his employment.

15. Defendant was notified of this contractual breach, and demand has been made upon the Defendant for MR. PENNOYER'S severance pay.

16. Defendant declined to tender MR. PENNOYER'S severance pay in full and to otherwise comply with the parties' agreement.

17. MR. PENNOYER is entitled to an additional one year's salary and benefits because Defendant did not give MR. PENNOYER timely notice of Defendant's intention to terminate the employment contract.

18. MR. PENNOYER'S salary was \$1,569.69 per two week pay period at the time of Defendant's breach.

19. MR. PENNOYER received health insurance coverage as part of his compensation package with Defendant.

20. MR. PENNOYER has exercised his rights under COBRA to continue his health insurance with Defendant's health insurance provider at MR. PENNOYER'S personal expense of \$455.92 per month.

21. MR. PENNOYER had a company vehicle for both his employment and personal use. Defendant paid for the vehicle, its maintenance, gas, insurance and so forth. MR. PENNOYER estimates the value of this benefit to be at least \$400.00 per month.

22. As a result of Defendant's breach of the agreement, MR. PENoyer has suffered the following damages:

a.	Severance pay	\$35,000.00
b.	One year's salary: 26 x \$1,569.69 =	\$40,811.94
c.	Health insurance: 12 x \$455.92 =	\$ 5,471.04
d.	Vehicle (use, maintenance, gas, etc.: estimated) 12 x \$400.00 =	<u>\$ 4,800.00</u>
	Total =	\$86,082.98

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment in his favor and against the Defendant in the amount of \$86,082.98 together with interest at the statutory rate and costs.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiff

Date: October 16, 2006

## VERIFICATION

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

Dated: 10-16-06

  
Bradley S. Penoyer

# INCENTIVE COMPENSATION AND EMPLOYMENT AGREEMENT AND COVENANT NOT TO COMPETE

THIS AGREEMENT, made this 14 day of OCTOBER, 1993  
between WILLIAM G. SATTERLEE & SONS, INC. (WGS) a business  
corporation organized and existing under the laws of the Commonwealth of  
Pennsylvania, with a principal office and place of business at R.D. #1, Rochester  
Mills, Indiana County, Pennsylvania, party of the first part, hereinafter referred  
to as "EMPLOYER"

AND

BRADLEY S. PENOYER, an individual, of the Borough of Clearfield, Clearfield  
County, Pennsylvania, party of the second part, hereinafter referred to as the  
"EMPLOYEE."

WHEREAS, the EMPLOYER (WGS) is engaged in the petroleum  
distribution business, with an office and place of business in Clearfield, Clearfield  
County, Pennsylvania; and

WHEREAS, EMPLOYEE (Penoyer) has been engaged and has had a great  
deal of experience in the above designated areas as owner and President of  
Clearfield Petroleum Company, Inc. (CPC); and

WHEREAS, the parties agree to enter into the within INCENTIVE  
COMPENSATION AND EMPLOYMENT AGREEMENT and also the parties have  
executed a covenant not to compete whereby Bradley S. Penoyer agrees not to  
compete with WGS or CPC for a period of five (5) years from the date of  
termination of employment; and

WHEREAS, it is the purpose of the within agreement to set forth the terms  
of employment between WGS as EMPLOYER and Bradley S. Penoyer as  
EMPLOYEE and also the incentive compensation for Penoyer to enter into the  
within agreement.

NOW, THEREFORE, KNOW ALL MEN BY THE PRESENTS that the parties  
agree as follows:

1. EMPLOYER hereby employs, engages and hires the said EMPLOYEE, who shall perform such duties as may be assigned to him from time to time hereafter by the EMPLOYER. EMPLOYEE agrees that he will at all times faithfully, industriously, and to the best of his ability, experience and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms hereof, to the reasonable satisfaction of the EMPLOYER. Such duties shall be rendered in Clearfield, Pennsylvania, and at other place or places as EMPLOYER shall in good faith require or as the interest, needs, business or opportunity that the EMPLOYER shall require.

2. The term of this **INCENTIVE COMPENSATION AND EMPLOYMENT AGREEMENT** shall be for a period of five (5) years beginning on the date of closing of the execution of the **STOCK PURCHASE AGREEMENT** and **ADDENDUM** by Bradley S. Penoyer as Seller to David E. Satterlee, W. Gary Satterlee and Lois E. Satterlee as Purchasers, to wit, October 14, 1993 and terminating on the 14 day of October, 1998. At the expiration of said agreement, this agreement shall be considered renewed for a one (1) year period and thereafter from year to year unless either party shall give the other written notice of termination at least ninety (90) days before the expiration of the then current term.

3. EMPLOYER shall pay the EMPLOYEE the following amounts:

I. In full payment for EMPLOYEE'S services hereunder, the EMPLOYER shall pay the amount of Four Hundred Dollars (\$400.00) per month for the period of sixty (60) consecutive months, in full consideration of the incentive compensation portion of this agreement, which shall be secured by the execution of a Note for Twenty Thousand Dollars (\$20,000.00). In addition, EMPLOYEE shall receive compensation for his regular assigned duties as hereinafter set forth.

II. Annual salary commencing on the 14 day of October, 1993, and for the first two (2) years of the agreement the sum of Thirty Three Thousand Dollars (\$33,000.00) per year. For the last three (3) years of the said agreement, the annual salary shall be Thirty Five Thousand Dollars (\$35,000.00) per year, except as may be affected by any termination provisions of this agreement set forth in paragraph four (4) hereafter.

III. In addition to the annual salary, the EMPLOYER agrees to pay the following:

A. To provide a later model company vehicle equal to a mid-sized automobile or better fully maintained and insured by **EMPLOYER** with all operating expenses paid by **EMPLOYER**.

B. Health insurance, life insurance and accident insurance as provided by the **EMPLOYER** to other managerial positions.

C. Two (2) weeks paid vacation during the first and second year of employment and three (3) weeks paid vacation for each of the remaining years.

4. It is further agreed between the parties that the **EMPLOYER** may at any time terminate the within agreement as to employment by giving the **EMPLOYEE** ninety (90) days written notice prior to the end of any salaried year and, by paying to the **EMPLOYER** prior to the beginning of the next salary year the **EMPLOYEE'S** full year's salary that may be applicable (either the \$33,000.00 or \$35,000.00, as the case may be) in advance in full. The said payment shall constitute severance payment in full except that the **EMPLOYER** shall continue to furnish health insurance for the **EMPLOYEE** for an additional term of six (6) months and make available the options for **EMPLOYEE** to remain under the **EMPLOYER'S** coverage upon payment by the **EMPLOYEE** of the premiums therefore as currently covered by Federal Law.

5. In the event **EMPLOYER** shall terminate the employment of **EMPLOYEE** as herein provided including severance payments and health benefits, or in the event the original five (5) year term of the within contract has expired, the **EMPLOYEE** agrees in consideration of the within agreement and the concurrent transaction between the **EMPLOYEE** as former owner of Clearfield Petroleum Company, Inc. that **EMPLOYEE** shall not within the Borough of Clearfield, Clearfield County, Pennsylvania and within a radius of fifty (50) air miles therefrom for a period of five (5) years following the termination of the **EMPLOYEE'S** employment with the **EMPLOYER**.

(a) Either directly or indirectly, divulge trade secrets or make known to any person or entity the names or address of any of **EMPLOYER'S** customers, or the names or address of customers of affiliate companies of the **EMPLOYER**, or any other information pertaining to such customers;

- (b) Canvass, solicit or accept any business similar to the business of **EMPLOYER** or its affiliates, for himself or for any other entity from any present or past customers of **EMPLOYER**;
- (c) Allow any other person, firm or corporation the right to so canvass, solicit or accept such business or to utilize the name of **EMPLOYEE** in connection with such business;
- (d) Directly or indirectly, disclose to any other person, firm or corporation the names of past, present and contemplated customers of **EMPLOYER**;
- (e) Directly or indirectly, induce or attempt to influence any employee of **EMPLOYER** to terminate his or her employment;
- (f) Directly or indirectly, engage in business similar to the business of the **EMPLOYER** either as an officer, director, employee, shareholder, proprietor, partner, representative or otherwise in any business competing directly or indirectly with the present business of, or business then being conducted by the **EMPLOYER**, or any company under the common control of the company (an affiliate) or their successors and interest in any geographic area where the **EMPLOYER**, an affiliate or their successors are now conducting business, or hereinafter conduct business.
- (g) It is agreed and understood that should the **EMPLOYER** intentionally withhold any payments due to the **EMPLOYEE** for a period in excess of six (6) months, without valid reason, then the **EMPLOYEE** shall no longer be bound by the terms of the **EMPLOYMENT AGREEMENT AND COVENANT NOT TO COMPETE** contained herein. It is agreed that if the **EMPLOYER** is depositing the monthly payment into the escrow fund permitted herein, that any such deposit shall not be considered a default in payment by the **EMPLOYER**.
- (h) The parties agree that a Note for Seventy Five Thousand Dollars (\$75,000.00) shall be executed, of which Sixty Thousand Dollars (\$60,000.00) is allocated to the proprietary interest of the **EMPLOYEE** for the customer list that he has developed over the years, and Fifteen Thousand Dollars (\$15,000.00) allocated to the covenant not to compete.

6. It is agreed that the damages in the event of violation of the foregoing covenants shall be difficult, if not impossible, to ascertain, and that **EMPLOYER** shall be entitled to an injunction against such violations in any court of appropriate jurisdiction in the Commonwealth of Pennsylvania, or otherwise, without the need of proving any monetary damages should any such breach occur, and this remedy is in addition to monetary damages or any other remedy at law.

7. **EMPLOYEE** herewith agrees to indemnify and save harmless the **EMPLOYER** from any and all losses that may result from the breach by the **EMPLOYEE** of this Agreement, and should the **EMPLOYER** or any of its affiliates, be required to expend funds in order to protect its rights hereunder, **EMPLOYEE** agrees that he will be responsible to reimburse the **EMPLOYER** for any such costs and expenses, which includes the **EMPLOYER'S** or its affiliates legal expenses, out of pocket expenses, court costs, costs of witnesses, and any other direct or indirect costs incurred therein.

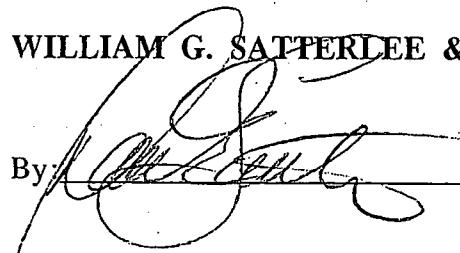
8. It is the intention of the parties to be legally bound by this Agreement, and it is agreed that this Agreement shall be construed under the laws of the Commonwealth of Pennsylvania, and shall be binding upon the parties, their heirs, executors, administrators and assigns, and it is specifically agreed that the said **EMPLOYEE** may not assign this Agreement without the expressed written consent of the **EMPLOYER**, and that the **EMPLOYER** shall have the right to assign this Agreement at any time without the consent of the **EMPLOYEE**, and notice of the same shall be given to the **EMPLOYEE** of any such assignment.

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

Attest:

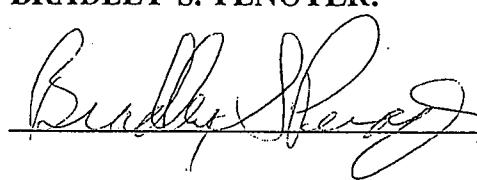
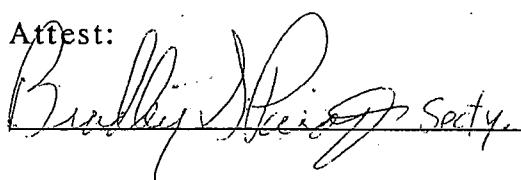


WILLIAM G. SATTERLEE & SONS, INC.:

By:  (Seal)

BRADLEY S. PENOYER:

Attest:

 (Seal)

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 2006-1708-CD  
: Type of Case:  
vs. : CIVIL  
: ACCEPTANCE OF SERVICE  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
: Filed on Behalf of:  
: PLAINTIFF  
: Counsel for Plaintiff:  
: Peter F. Smith, Esquire  
: Supreme Court No. 34291  
: 30 South Second Street  
: P.O. Box 130  
: Clearfield, PA 16830  
: (814) 765-5595  
: Counsel for Defendant:  
: Carl A. Belin, Jr., Esquire  
: Supreme Court No. 06805  
: Belin, Kubista & Ryan  
: 15 North Front Street  
: P. O. Box 1  
: Clearfield, PA 16830  
: (814) 765-8972

FILED  
01/10/14  
OCT 25 2006  
S

William A. Shaw  
Prothonotary/Clerk of Courts

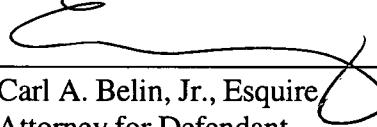
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 2006- 1708 -CD  
:  
:  
:  
vs. :  
:  
:  
:  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

**ACCEPTANCE OF SERVICE**

I accept service of a certified copy of the Complaint on behalf of William G. Satterlee & Sons, Inc., Defendant in the above-captioned matter, and certify that I am authorized to do so.

Date: 10-19-06

  
\_\_\_\_\_  
Carl A. Belin, Jr., Esquire  
Attorney for Defendant  
Belin, Kubista & Ryan  
15 North Front Street, P. O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., : ANSWER AND NEW MATTER  
Defendant :  
:

Filed on Behalf of:  
Defendant

Counsel of Record for  
This Party:

Carl A. Belin, Jr., Esquire  
PA I.D. #06805

BELIN, KUBISTA & RYAN  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972 (PHONE)  
(814) 765-9893 (FAX)

FILED  
NOV 02 2006 4CC  
Atty Belin

William A. Shaw  
Prothonotary/Clerk of Courts

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

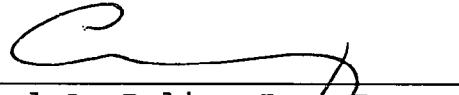
BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

NOTICE

You are hereby notified to plead to the within pleading  
within twenty (20) days of service thereof, or default judgment  
may be entered against you.

BELIN, KUBISTA & RYAN

By

  
Carl A. Belin, Jr. Esq.  
Attorney for Defendant

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

## **ANSWER AND NEW MATTER**

AND NOW comes William G. Satterlee & Sons, Inc. ("Satterlee") by and through its attorneys, Belin, Kubista & Ryan, file the following Answer and New Matter to the Complaint filed by Bradley S. Penoyer ("Penoyer"), and in support thereof aver as follows:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted that Penoyer was employed by Defendant until August 22, 2006; the remainder of the paragraph is denied as prior thereto Penoyer was not performing his job as required by the agreement that existed between the parties in that Penoyer during the years 2005 and 2006 was not servicing the Defendant's customers, nor was he supervising and

assisting Defendant's employees and as a result the operation in Clearfield Borough began to have problems which became very serious over the spring and summer of 2006; and in further answer thereto, Paragraphs 23 through 33 of the New Matter are hereby incorporated by reference and made a part hereof.

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted Penoyer and Satterlee entered into an agreement which is attached to the complaint as Exhibit "A," however, it is averred that Penoyer, during the years of 2005 and 2006 failed to "at all times faithfully, industriously, and to the best of his ability, experience and talents, perform all of the duties that may be required of and from him" to the reasonable satisfaction of Satterlee as he began to be absent from the place of employment for excessive periods of time, and he was not supervising and assisting the other employees at Clearfield nor was he servicing customers; and in further answer thereto, Paragraphs 23 through 33 of the New Matter are hereby incorporated by reference and made a part hereof.

8. Paragraph 8 is admitted but it is averred that Penoyer was advised at meetings with Satterlee management in October 2005 and May 2006 that he was not fulfilling his obligations under the contract and despite his admissions as to

his failure to meet the contract and his promises to improve his performance, he continued his course of conduct throughout that period of time; and in further answer thereto, Paragraphs 23 through 33 of the New Matter are hereby incorporated by reference and made a part hereof.

9. Paragraph 9 is admitted that the agreement was not revoked, terminated or amended by subsequent agreement of the parties but it is averred that said agreement was terminated for cause by Satterlee due to the failure of Penoyer to perform the duties required by the contract; and in further answer thereto, Paragraph 8 through 22 of the Answer and Paragraphs 23 through 33 of the New Matter are hereby incorporated by reference and made a part hereof.

10. Paragraph 10 is admitted but in further answer thereto Paragraphs 5 through 9 of the Answer and Paragraphs 23 through 33 of the New Matter are hereby incorporated by reference and made a part hereof.

11. Paragraph 11 is denied as averred. It is admitted that David E. Satterlee called Penoyer on August 22, 2006, and advised Penoyer that his employment was being terminated because of his failure to comply with the contract and because he refused reassignment, as a result of which Satterlee had no other choice but to terminate the contract for cause; and in

further answer thereto, Paragraphs 8 through 22 of the Answer and Paragraphs 23 through 33 of the New Matter are hereby incorporated by reference and made a part hereof.

12. Paragraph 12 is admitted, but Paragraph 32 of the New Matter is hereby incorporated by reference and made a part hereof.

13. Paragraph 13 is denied in that Penoyer failed to perform the duties required by the contract, rejected reassignment to another location as required by the contract, and left Satterlee with no other alternative but to terminate his employment. The provision requiring a ninety (90) day notice and notice in writing applied to those situations where Satterlee was terminating the contract without cause; in this case, the contract was being terminated with cause which was not covered by Paragraph 2 of the agreement but rather is implied in Paragraph 1 thereof; and in further answer thereto, Paragraphs 5 through 12 of the Answer and Paragraphs 23 through 33 of the New Matter are hereby incorporated by reference and made a part hereof.

14. Paragraph 14 is denied and it is averred that Penoyer was entitled to severance pay on those instances where his employment was terminated without cause; and in further answer thereto Paragraphs 5 through 13 of the Answer and Paragraphs 23

through 33 of the New Matter are hereby incorporated by reference and made a part hereof.

15. Paragraph 15 is admitted that Satterlee was notified that Penoyer considered the termination a breach but it is denied that the termination was without cause and that he would otherwise be entitled to severance pay under such circumstances; and in further answer thereto, Paragraphs 5 through 14 of the Answer and Paragraphs 23 through 33 of the New Matter are hereby incorporated by reference and made a part hereof; in any event, even in those cases involving termination without cause, the severance pay only applied to the first five (5) years of the contract rather than to extensions thereof.

16. Paragraph 16 is admitted and in further answer thereto Paragraphs 5 through 15 of the Answer and Paragraphs 23 through 33 of the New Matter are hereby incorporated by reference and made a part hereof.

17. Paragraph 17 is denied in that Penoyer's contract was terminated without cause as a result of which Penoyer was not entitled to any further benefits under the contract; and in further answer thereto, Paragraphs 5 through 16 of the Answer and Paragraphs 23 through 33 of the New Matter are hereby incorporated by reference and made a part hereof. The contract

was terminated with cause and Penoyer is not entitled to any further benefits under the contract.

18. Paragraph 18 is admitted.

19. Paragraph 19 is admitted.

20. Paragraph 20 is admitted.

21. Paragraph 21 is admitted that he had a company vehicle for his employment and personal use; as to the remainder of the Paragraph, as the knowledge and information is within the means or knowledge of Penoyer strict proof thereof is demanded at trial.

22. Paragraph 22 is denied as the contract was terminated with cause and Penoyer is not entitled to any further benefits under the contract; and in further answer thereto, Paragraphs 5 through 21 of the Answer and Paragraphs 23 through 33 of the New Matter are hereby incorporated by reference and made a part hereof.

WHEREFORE, Defendant prays Your Honorable Court to enter judgment in its favor and against the Plaintiffs.

NEW MATTER

23. Defendant hereby incorporates by reference Paragraphs 1 through 22 of the Answer and makes them a part hereof.

24. Satterlee began to receive complaints of its employees who worked at the Clearfield facility during the year 2005 that Penoyer was not present during working hours, was not dealing with Satterlee's customers, and was not supervising and aiding the employees at the Clearfield facility as required by Paragraph 1 of the contract and did not faithfully, industriously, and to the best of his ability, experience and talents, perform all the duties that were required of him which were to manage the Clearfield facility; that as a result, David Satterlee and Daniel Hauger met with Penoyer on or about October 21, 2005, and reviewed these complaints with Penoyer. At that meeting, Penoyer admitted the he had not been performing his business and admitted that he had been spending long periods of time away from the Clearfield facility during working hours and was not supervising and aiding the employees, but promised to change his actions and begin to comply with the contract. During that meeting it was suggested to Penoyer that he had been spending his time managing and operating a dog kennel business and that he was spending his time in that personal enterprise rather than performing his duties as required by the contract.

25. That Satterlee continued to receive complaints from the employees after that meeting so David Satterlee and Daniel

Hauger again met with Penoyer on or about May 11, 2006, that he had not changed his conduct which violated the contract. They also advised Penoyer that complaints as to his activities had not stopped and that unless he began to perform what was expected of him under the contract, that serious problems would exist as to his position with Satterlee; at that meeting, Penoyer admitted that he had not improved his performance but stated that he would change his ways and begin to perform his duties under the contract.

26. That as a result of his actions following that meeting during the summer, the employees of Satterlee became disgruntled and upset, and they advised Satterlee that they were considering terminating their employment due to Penoyer's actions. That on or about August 11, 2006, William G. Satterlee met with the drivers and office personnel who confirmed the serious problems that existed with regard to Penoyer and that the report that employees were considering leaving the employ of Satterlee because of Penoyer's actions.

27. That following the meeting with William G. Satterlee, David Satterlee met with Penoyer a third time on or about August 16, 2006. At that meeting Satterlee advised Penoyer of the serious problems that existed regarding the employees and advised him that he could no longer continue to manage the

Clearfield facility because of the serious problems he had created with the employees at the Clearfield facility. At that meeting, Satterlee offered to reassign Penoyer to Sykesville as a manager, similar to his position in Clearfield, but made it clear he would have to work the regular hours at Sykesville and not continue to manage his private business during the day while at Sykesville.

28. That Penoyer refused to accept the reassignment and as a result Satterlee placed Penoyer on a one (1) week vacation to consider the alternatives with regard to Penoyer.

29. After conferring with other management of Satterlee as to Penoyer's further employment with the company, a decision was reached that due to his refusal to accept a reassignment that Penoyer could no longer continue to work for Satterlee in any position and that Penoyer had to be terminated.

30. That on August 22, 2006, Satterlee called Penoyer and advised him that as a result of his actions from 2005 and 2006, as well as his refusal to be reassigned to the Sykesville facility, Penoyer's employment was terminated.

31. That the termination of the contract was the direct result of Penoyer's conduct, his refusal to provide the services required by the contract, and his refusal to accept

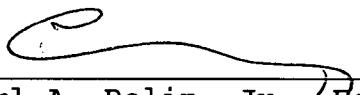
the reassignment to Sykesville, as a result of which he had breached the contract which resulted in his termination.

32. That even after Penoyer was terminated, Satterlee offered one last time an assignment of Penoyer to the main office at Rochester Mills with the same pay and benefits that he would have received under his contract at Clearfield. Penoyer rejected this offer and thereafter the offer was withdrawn.

33. That as a result of Penoyer's actions in failing to comply with the contract in 2005 and 2006, and his refusal to accept reassignment to Sykesville, and his refusal to accept an offer even after he had been terminated to be assigned to Rochester Mills, Penoyer is not entitled to any benefits under the contract.

WHEREFORE, Defendant prays Your Honorable Court enter judgment in favor of the Defendant and against the Plaintiff.

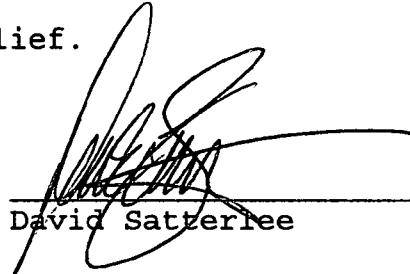
BELIN, KUBISTA & RYAN

By 

Carl A. Belin, Jr. Esq.  
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF CLEARFIELD :  
:

Before me the undersigned officer, personally appeared DAVID SATTERLEE, who deposes and says he is the President of WILLIAM G. SATTERLEE & SONS, INC., and as such President being authorized to do so, and being duly sworn according to law, deposes and says that the facts set forth in the foregoing Answer and New Matter are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
David Satterlee

Sworn and subscribed before me this 1<sup>st</sup> day of  
November, 2006.

  
\_\_\_\_\_  
Notary Public



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

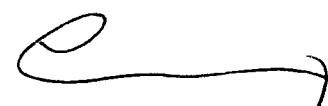
BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a certified copy of Answer and New Matter filed on behalf of the Defendant in the above-captioned matter to the following party by postage prepaid United States first class mail on the 2nd day of November, 2006:

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

BELIN, KUBISTA & RYAN

By   
Carl A. Belin, Jr., Esq.  
Attorney for Defendant

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

BRADLEY S. PENOYER

Plaintiff

: No. 2006-1708-CD

vs.

WILLIAM G. SATTERLEE & SONS, INC.,

Defendant

: Type of Case:  
**CIVIL**

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

: Filed on Behalf of:  
**PLAINTIFF**

: Counsel for This Party:  
**Peter F. Smith, Esquire**  
Supreme Court No. 34291  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

: Counsel for Defendant:  
**Carl A. Belin, Jr., Esquire**  
Supreme Court No. 06805  
Belin, Kubista & Ryan  
15 North Front Street  
P. O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

JURY TRIAL REQUESTED

**FILED**

NOV 20 2006  
0/2005

William A. Shaw  
Prothonotary/Clerk of Courts

2 copy to Party

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 2006-1708-CD  
:  
:  
vs. :  
:  
:  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

**PLAINTIFF'S ANSWER TO NEW MATTER**

COMES NOW, BRADLEY S. PENOYER, by his attorney Peter F. Smith, who answers the New Matter as follows:

23. Paragraphs 1 through 22 of the Complaint are incorporated herein by reference as though set forth in full.

24. Denied that Satterlee received complaints about Mr. Penoyer during 2005. Denied that Mr. Penoyer was not present and working the hours as required. Denied that Mr. Penoyer was not dealing with Satterlee's customers, and denied that Mr. Penoyer was not supervising and aiding the other employees at Satterlee's Clearfield facility.

The alleged meeting between David Satterlee, Daniel Hauger and Mr. Penoyer on October 21, 2005 did not take place. Therefore, none of the items alleged in the balance of this averment were discussed.

Mr. Penoyer demands strict proof of all the allegations contained in paragraph 24 of Defendant's New Matter at trial.

25. Denied that there were any employee complaints of a material nature during 2005 or 2006. The alleged meeting on or about May 11, 2006 between David Satterlee, Daniel Hauger and

Mr. Penoyer did not take place. Therefore, the statements which Mr. Satterlee and Mr. Hauger allegedly made to Mr. Penoyer at that time were not, in fact, made, and if they had been made, they would not be true because Mr. Penoyer has faithfully executed his obligations under the parties' October 14, 1993 agreement "... to the best of his ability, experience and talents..."

26. Denied. Mr. Penoyer does not have any personal knowledge that the other Clearfield employees were "disgruntled and upset." Mr. Penoyer was not present at nor does he have personal knowledge of the alleged meeting on August 11, 2006 between W. G. Satterlee and the unidentified "drivers and office personnel."

Strict proof of these allegations is demanded at trial.

27. Denied as stated. Although Mr. Penoyer and David Satterlee did meet on August 16, 2006, this meeting was not the "third" in the sequence alleged by Defendant's New Matter. Denied that Mr. Satterlee advised Mr. Penoyer of "serious problems..." and further denied that Mr. Satterlee offered to reassign Mr. Penoyer to Sykesville as the manager.

Rather, David Satterlee simply said that he was considering eliminating the manager's position at the Clearfield facility. He gave Mr. Penoyer a week's vacation while he, David Satterlee, further considered his final decision whether or not to eliminate the Clearfield manager's position.

Mr. Satterlee did say that some drivers were complaining, but he would not go into specifics, nor did Mr. Satterlee offer Mr. Penoyer suggested items for improvement or an opportunity to remedy the alleged complaints.

28. Denied for the reasons set forth in paragraph 27 above.

29. Denied. Mr. Penoyer was not offered reassignment as alleged in paragraph 28 of the New Matter.

30. While it is admitted that David Satterlee called Mr. Penoyer on August 22, 2006, the

balance of that averment is denied. Mr. Satterlee told Mr. Penoyer that his position with the company had been eliminated. Mr. Satterlee did say that the manager's position at the Satterlee facility in Sykesville **may** open in the future but that it was not available at the time of the August 22, 2006 call. Mr. Satterlee said that he would call Mr. Penoyer if the position in Sykesville did become available, and Mr. Satterlee to date has not contacted Mr. Penoyer much less offered him the manager's position in Sykesville.

Additionally, the Sykesville position would necessitate an amendment of the parties' October 14, 1993 agreement, which Mr. Penoyer was not contractually obligated to grant. It involved a pay cut, considerably more travel time and a different vehicle.

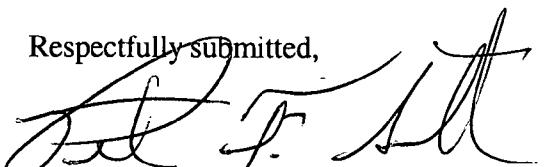
31. Denied. Defendant had no cause to terminate the parties' agreement and termination of Mr. Penoyer's employment was in direct breach of the contract.

32. Denied as stated. As Defendant conceded in paragraph 32, the parties' contract had been terminated. Therefore, Mr. Penoyer was under no obligation to return to work for Defendant. This gesture was not made until after Plaintiff's counsel had advised Defendant that it had breached the parties' agreement and requested damages. By this point, Mr. Penoyer had obtained other employment.

33. Denied for the reasons set forth in paragraphs 24 through 32 above.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment in his favor and against the Defendant in the amount of \$86,082.98 together with interest at the statutory rate and costs.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiff

Date: November 20, 2006

## VERIFICATION

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

Dated: 11-14-04

  
\_\_\_\_\_  
Bradley S. Penoyer

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

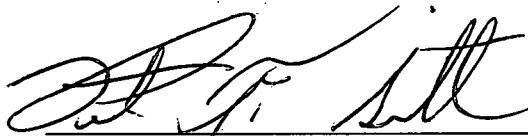
BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 2006-1708-CD  
:  
:  
vs. :  
:  
:  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct copy of **PLAINTIFF'S ANSWER TO NEW MATTER** was hand delivered to the attorney for the Defendant on November 20, 2006 at the following address:

Carl A. Belin, Jr., Esquire  
Belin, Kubista & Ryan  
15 North Front Street  
Clearfield, PA 16830

Respectfully submitted,



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

Date: 11/20/06

*2 Cents to Att*

**FILED**  
NOV 20 2006  
112-05  
William /  
Prothonotary/Court Clerk  
*2 Cents to Att*

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., : NOTICE DEPOSITION  
Defendant :  
:

Filed on Behalf of:  
Defendant

Counsel of Record for  
This Party:

Carl A. Belin, Jr., Esquire  
PA I.D. #06805

BELIN, KUBISTA & RYAN  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972 (PHONE)  
(814) 765-9893 (FAX)

FILED 2CC  
01/31/07 Atty Belin  
JAN 08 2007  
(GM)

William A. Shaw  
Prothonotary/Clerk of Courts

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

NOTICE OF DEPOSITION

TO: **BRADLEY S. PENOYER**  
C/o Peter F. Smith, Esquire  
30 south Second Street  
P.O. Box 130  
Clearfield, PA 16830

PLEASE TAKE NOTE, that on **Thursday, March 15, 2007**,  
commencing at the conclusion of the other depositions scheduled  
for that day in the above-captioned matter, before a  
representative of ASAP Court Reporting, the deposition of Bradley  
S. Penoyer, upon oral examination will be held at the offices of  
Peter F. Smith, Esquire, 30 South Second Street, Clearfield,  
Pennsylvania, for the purposes of discovery and trial.

BELIN, KUBISTA & RYAN

By

Carl A. Belin Jr., Esquire  
Attorney for Defendant

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

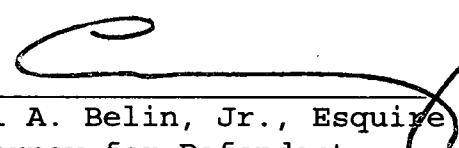
BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a Notice of Deposition of Bradley S. Penoyer in the above-captioned matter to the following party by postage prepaid First Class Mail on the 8th day of January, 2007:

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

BELIN, KUBISTA & RYAN

By   
Carl A. Belin, Jr., Esquire  
Attorney for Defendant

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 2006-1708-CD  
:  
:  
vs. :  
:  
:  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct copy of **PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS** was hand delivered to the attorney for the Defendant on January 19, 2007 at the following address:

HAND DELIVER  
Carl A. Belin, Jr., Esquire  
Belin, Kubista & Ryan  
15 North Front Street  
Clearfield, PA 16830

Date: January 9, 2007

Respectfully submitted,



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

FILED  
M 11:00 AM  
JAN 22 2007  
NO CC  
JM

William A. Shaw  
Prothonotary/Clerk of Courts

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

BRADLEY S. PENOYER

Plaintiff

No. 2006-1708-CD

vs.

WILLIAM G. SATTERLEE & SONS, INC.,  
Defendant

Type of Case:  
CIVIL

Type of Pleading:  
**PLAINTIFF'S REQUEST FOR  
PRODUCTION OF DOCUMENTS**

Filed on Behalf of:  
**PLAINTIFF**

Attorney for the Plaintiff:  
**Peter F. Smith, Esquire**  
Supreme Court No. 34291  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

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

BRADLEY S. PENOYER :  
Plaintiff : No. 2006-1708-CD  
:  
:  
vs. :  
:  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

**REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: William G. Satterlee & Sons, Inc.  
C/o Carl A. Belin, Esquire

COMES NOW, Peter F. Smith, attorney for Plaintiff Bradley S. Penoyer, who kindly requests that you produce the following documents and other tangible exhibits within thirty (30) days of the date below pursuant to Pa.R.C.P. 4009.11:

1. Complete copy of Bradley S. Penoyer's personnel file and all other records regarding him.

2. Complete copies of all letters, emails, notes or other correspondence, in whatever form recorded, from January 1, 2002 to present between the Defendant corporation, David Satterlee, William G. Satterlee, Gary Satterlee and other agents, representatives or employees of the Defendants.

3. Complete copies of all correspondence, memos or other documents complaining about or recording any complaints or grievances about or between the Plaintiff Bradley S. Penoyer and other employees of Defendant, customers of the Defendant, suppliers of the Defendant, subcontractors of the Defendant or third parties whatsoever.

4. A complete copies of Defendant's payroll records for Bradley S. Penoyer from January 1, 2004 through the date of his determination.

5. Complete copies of the daily driver reports for Defendant's Clearfield, Pennsylvania facility for 2004, 2005 and 2006.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for the Plaintiff

Date: January 19, 2007

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: CERTIFICATE OF SERVICE  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant : OF DEFENDANT'S REQUEST  
: TO PRODUCE DIRECTED TO  
: PLAINTIFF

Filed on Behalf of:  
Defendant

Counsel of Record for  
This Party:

Carl A. Belin, Jr., Esquire  
PA I.D. #06805

BELIN, KUBISTA & RYAN  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972 (PHONE)  
(814) 765-9893 (FAX)

FILED 3CC  
01/30/06 AMY  
JAN 26 2007  
Beck

William A. Shaw  
Prothonotary/Clerk of Courts

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

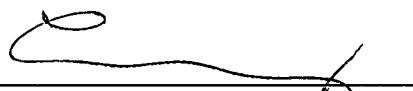
BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a true and correct copy of Defendant's Request to Produce Directed to Plaintiff filed on behalf of the Defendant in the above-captioned matter to the following party by postage prepaid United States first class mail on the 26<sup>th</sup> day of January, 2007:

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

BELIN, KUBISTA & RYAN

By   
Carl A. Belin, Jr., Esq.  
Attorney for Defendant

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

BRADLEY S. PENOYER, :  
Plaintiff : No. 06 - 1708 - CD  
:  
vs. : CERTIFICATE OF SERVICE  
: OF DEFENDANT'S ANSWERS  
WILLIAM G. SATTERLEE & SONS, INC., : TO REQUEST FOR  
Defendant : PRODUCTION OF DOCUMENTS

Filed on Behalf of:  
Defendant

Counsel of Record for  
This Party:

Carl A. Belin, Jr., Esquire  
PA I.D. #06805

BELIN, KUBISTA & RYAN  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972 (PHONE)  
(814) 765-9893 (FAX)

FILED

FEB 09 2007

o/10-30/6 JMW  
William A. Shaw  
Prothonotary/Clerk of Courts

4500-70477

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

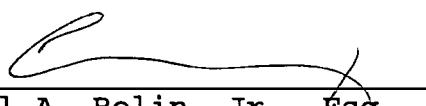
BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a true and correct copy of Defendant's Answers to Plaintiff's Request for Production of Documents filed on behalf of the Defendant in the above-captioned matter to the following party by postage prepaid United States first class mail on the 8th day of February, 2007:

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

BELIN, KUBISTA & RYAN

By   
Carl A. Belin, Jr., Esq.  
Attorney for Defendant

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

BRADLEY S. PENOYER,  
Plaintiff

: No. 2006-1708-CD

vs.

:

WILLIAM G. SATTERLEE & SONS, INC.,  
Defendant

:

FILED

070,4716N  
FEB 20 2007

William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct copy of **PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS** was hand delivered to the attorney for the Defendant on February 16, 2007 at the following address:

HAND DELIVER  
Carl A. Belin, Jr., Esquire  
Belin, Kubista & Ryan  
15 North Front Street  
Clearfield, PA 16830

Respectfully submitted,



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

Date: February 16, 2007

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 2006-1708-CD  
:  
:  
:  
vs. :  
:  
:  
:  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct copy of **PLAINTIFF'S RESPONSE TO DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS** was hand delivered to the attorney for the Defendant on February 28, 2007 at the following address:

HAND DELIVER  
Carl A. Belin, Jr., Esquire  
Belin, Kubista & Ryan  
15 North Front Street  
Clearfield, PA 16830

Respectfully submitted,



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

Date: February 27, 2007

FILED  
FEB 28 2007  
0/10:00 AM  
William A. Shaw  
Prothonotary/Clerk of Courts  
No C/C

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

BRADLEY S. PENOYER, :  
Plaintiff : No. 06 - 1708 - CD  
:  
vs. : CERTIFICATE OF SERVICE  
: OF DEFENDANT'S ANSWERS  
WILLIAM G. SATTERLEE & SONS, INC., : TO PLAINTIFF'S SECOND  
Defendant : REQUEST FOR PRODUCTION  
: OF DOCUMENTS

Filed on Behalf of:  
Defendant

Counsel of Record for  
This Party:

Carl A. Belin, Jr., Esquire  
PA I.D. #06805

BELIN, KUBISTA & RYAN  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972 (PHONE)  
(814) 765-9893 (FAX)

FILED  
P 3/11/01  
MAR 13 2001  
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William A. Shaw  
Prothonotary/Clerk of Courts

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

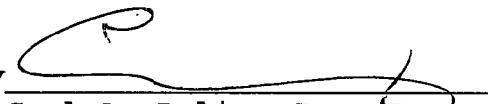
BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a true and correct copy of Defendant's Answers to Plaintiff's Second Request for Production of Documents filed on behalf of the Defendant in the above-captioned matter to the following party by postage prepaid United States first class mail on the 13th day of March, 2007:

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

BELIN, KUBISTA & RYAN

By   
Carl A. Belin, Jr., Esq.  
Attorney for Defendant

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

BRADLEY S. PENOYER,  
Plaintiff

No. 2006-1708-CD

vs.

WILLIAM G. SATTERLEE & SONS, INC.,  
Defendant

Type of Case:  
CIVIL

Type of Pleading:  
MOTION FOR SUMMARY  
JUDGMENT & RULE

Filed on Behalf of:  
PLAINTIFF

Attorney for the Plaintiff:  
Peter F. Smith, Esquire  
Supreme Court No. 34291  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel for Defendant:  
Carl A. Belin, Jr., Esquire  
Supreme Court No. 06805  
Belin, Kubista & Ryan  
15 North Front Street  
P. O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

FILED 2CC Atty  
0125/01 Smith  
Oct 11 2007  
WAS  
William A. Shaw  
Prothonotary/Clerk of Courts

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

BRADLEY S. PENOYER,  
Plaintiff

: No. 2006-1708-CD

vs.

WILLIAM G. SATTERLEE & SONS, INC.,  
Defendant

RULE

FILED  
Oct 15 2007  
William A. Shaw  
Prothonotary/Clerk of Courts  
6X

AND NOW, this 15<sup>th</sup> day of October, 2007, upon consideration  
of the following Motion for Summary Judgment, it is hereby ordered that:

1. A Rule is issued upon the Respondent WILLIAM G. SATTELEE & SONS, INC. show cause why the Movant is not entitled to the relief requested;
2. The Movant BRADLEY S. PENOYER has requested Summary Judgment in the amount of \$72,960.98 plus interest and costs of suit;
3. The Respondent shall file an answer to the Motion within twenty (20) days of service upon the Respondent;
4. The Motion shall be decided under Pa.R.C.P No. 206.7;
5. Oral argument shall be held on December 3, 2007 at 10:30 A.m. in Courtroom 1 of the Clearfield County Courthouse;
6. Notice of the entry of this Order shall be provided to all parties by the Movant.

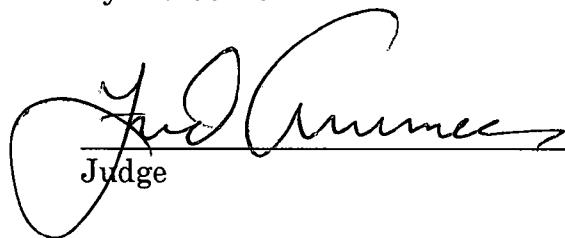
## NOTICE

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE MATTERS SET FORTH IN THE FOLLOWING MOTION, YOU MUST ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE AN ANSWER IN WRITING WITH THE PROTHONOTARY SETTING FORTH YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU AND SERVE A COPY ON THE ATTORNEY OR PERSON FILING THE MOTION. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR THE RELIEF REQUESTED BY THE PETITIONER. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

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

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second and Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 5982

By the Court:



Jud Curmer  
Judge

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

BRADLEY S. PENOYER, :  
Plaintiff : No. 2006-1708-CD

vs. :

WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :

**MOTION FOR SUMMARY JUDGMENT**

COMES NOW, the Plaintiff by his attorney Peter F. Smith, who moves this Honorable Court to enter Summary Judgment in his favor against the Defendant and in support thereof states:

1. MR. PENOYER, initiated this case on October 18, 2006 to recover damages from the Defendant for breach of a written contract entitled "Incentive Compensation and Employment Agreement and Covenant Not To Compete," dated October 14, 1993.

2. A true and correct copy of the parties' contract as attached to the complaint as Penoyer Exhibit A is also attached to this Motion for the Court's convenience.

3. MR. PENOYER was employed as supervisor of Defendant's facility in Clearfield, Pennsylvania which sold and delivered gasoline and other petroleum products at the wholesale and retail levels.

4. In paragraph 2 of the contract, Defendant promised MR. PENOYER an initial term of 5 years employment.

5. The initial 5 year term was completed on October 14, 1998.

6. Thereafter, paragraph 2 states that the employment contract would automatically renew for additional terms of 1 year unless either party gave the other 90 days written notice prior to the end of the current term of their desire to terminate the agreement.

7. The contract continued through August 22, 2006 when Defendant fired MR. PENOYER.

8. This breached the parties' contract because:

- a. Paragraph 2 of the agreement requires 90-days notice prior to October 14th (the anniversary date of the agreement.) MR. PENOYER should have received notice of the Defendant's intention not to renew the agreement on or before July 17, 2006. He was given no advance notice and was terminated after July 17, 2006 on August 22, 2006; and
- b. The notice was delivered verbally and not in writing as required by the contract.

9. The Parties written contract is comprehensive and unambiguous.

10. Both parties could lawfully terminate--with or without cause--only according to the provisions of paragraph 2 of the agreement.

11. Defendant's attempted termination on August 22, 2006 was ineffective for the reasons stated in paragraph 8 above.

12. Consequently, the parties' agreement automatically renewed for an additional term of 1 year which would end on October 13, 2007.

13. Paragraph 4 of the parties' contract promises MR. PENOYER severance pay in the amount of \$35,000.00 upon termination of his employment

and an additional 6 months of health insurance coverage.

14. The Defendant's promises of severance pay and 6 months health insurance coverage are absolute. The written contract does not condition their payment upon the concurrence or nonconcurrence of any event.

15. Specifically, the agreement does not state that MR. PENNOYER would receive severance pay only if he were terminated "without cause."

16. Defendant's breach also deprived MR. PENNOYER of health insurance and a vehicle which the company provided as additional consideration for his services during the final year of his contract as per the parties' contract.

17. As required by Pennsylvania law, MR. PENNOYER mitigated his damages by obtaining subsequent employment with Swisher Contracting Company, Inc.

18. MR. PENNOYER has been employed by Swisher Contracting since September 24, 2006.

19. MR. PENNOYER'S average monthly compensation from Swisher has been \$1,321.46.

20. MR. PENNOYER receives not other benefits through this employment.

21. As a result of Defendant's breaches of the agreement, MR. PENNOYER has suffered the following damages:

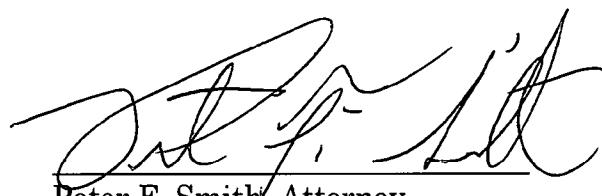
a.	One year's salary:	\$40,811.94
b.	Health insurance: 12 x \$455.92 =	\$ 5,471.04
c.	Vehicle (use, maintenance, gas, etc.: estimated) 12 x \$400.00 =	\$ 4,800.00

d.	Severance pay	\$35,000.00
e.	6 month's severance health insurance (6 months x \$455.92) =	<u>\$ 2,735.52</u>
	Total =	\$88,818.50
	Less one year's net compensation at Swisher Cont.	<u>\$15,857.52</u>
	Net Amount	\$72,960.98

WHEREFORE, Plaintiff prays this Honorable Court to enter summary judgment in his favor and against the Defendant in the amount of \$72,960.98 together with interest at the statutory rate from the date of Defendant's breach on August 22, 2006 and costs.

Respectfully Submitted,

Date: 10/9/07



Peter F. Smith, Attorney

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

BRADLEY S. PENOYER,  
Plaintiff

No. 2006-1708-CD

vs.

WILLIAM G. SATTERLEE & SONS, INC.,  
Defendant

Type of Case:  
CIVIL

PLAINTIFF'S AFFIDAVIT IN  
SUPPORT OF HIS MOTION  
FOR SUMMARY JUDGMENT

Filed on Behalf of:  
PLAINTIFF

Attorney for the Plaintiff:  
Peter F. Smith, Esquire  
Supreme Court No. 34291  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel for Defendant:  
Carl A. Belin, Jr., Esquire  
Supreme Court No. 06805  
Belin, Kubista & Ryan  
15 North Front Street  
P. O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

FILED  
01/24/08 2cc  
OCT 11 2007 Atty Smith  
GR

William A. Shaw  
Prothonotary/Clerk of Courts

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

BRADLEY S. PENOYER, :  
Plaintiff : No. 2006:1708-CD  
: :  
: :  
vs. : :  
: :  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant : :

**PLAINTIFF'S AFFIDAVIT IN SUPPORT  
OF HIS MOTION FOR SUMMARY JUDGMENT**

COMES NOW, BRADLEY S. PENOYER, Plaintiff in the above captioned matter, who being duly sworn according to law deposes and says:

1. My full name is Bradley S. Penoyer. I am the Plaintiff in the above captioned lawsuit.
2. Upon notice of termination of my employment with the Defendant, I exercised my so-called "COBRA" rights and continued my medical insurance at a cost to me of \$455.92 per month.
3. Since September 24, 2006 I have been employed by Swisher Contracting Company.
4. During this period of employment with Swisher Contracting my net monthly take home pay has been \$1,321.46.
5. Attached hereto and incorporated herein as Penoyer Exhibits B1-8 are copies of Mr. Penoyer's last 12 pay stubs from Swisher Contracting for all but 2, two week pay periods of his first year.

6. I did not receive medical insurance until September 1, 2007 through my employment with Swisher Contracting.

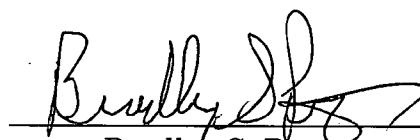
7. I do not receive the use of a company vehicle from Swisher Contracting.

8. I estimate the value of the company vehicle, fuel, insurance and maintenance for the use of the company truck which had while employment by the Defendant to be \$400.000 per month.

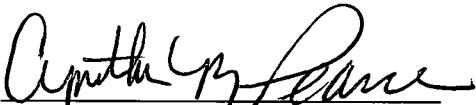
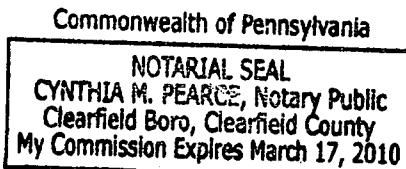
FURTHER, The Deponent saith not.

IN WITNESS WHEREOF, I have hereto set my hand.

Date: 10/9/2007

  
\_\_\_\_\_  
Bradley S. Penoyer

SWORN AND SUBSCRIBED  
Before me this 9<sup>th</sup> day of  
October 2007.

  
\_\_\_\_\_  
Notary Public

## SWISHER CONTRACTING, INC.

Employee	SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
Earnings and Hours		Pay Period: 09/24/2006 - 10/07/2006	Pay Date: 09/29/2006
REGULAR HOURS	Qty 16.00	Rate 10.00	Current 160.00 YTD Amount 160.00
Taxes	Current	YTD Amount	
LOCAL TAX	-1.60	-1.60	(58)
Federal Withholding	-6.00	-6.00	10-13
Social Security Employee	-9.92	-9.92	10-27
Medicare Employee	-2.32	-2.32	11-10
PA - Withholding	-4.91	-4.91	260
PA - Unemployment Employee	-0.14	-0.14	
	-24.89	-24.89	
Net Pay	135.11	135.11	

Total  
\$15857.50

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

## SWISHER CONTRACTING, INC.

Employee	SSN		
BRADLEY S PENOYER	***-**-3869		
Earnings and Hours		Pay Period: 11/05/2006 - 11/18/2006	Pay Date: 11/24/2006
REGULAR HOURS	Qty 16.00	Rate 10.00	Current 160.00 YTD Amount 320.00
Taxes	Current	YTD Amount	
LOCAL TAX	-1.60	-3.20	
Federal Withholding	-6.00	-12.00	
Social Security Employee	-9.92	-19.84	
Medicare Employee	-2.32	-4.64	
PA - Withholding	-4.91	-9.82	
PA - Unemployment Employee	-0.14	-0.28	
	-24.89	-49.78	
Net Pay	135.11	270.22	

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

## SWISHER CONTRACTING, INC.

Employee	SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
Earnings and Hours		Pay Period: 11/19/2006 - 12/02/2006	Pay Date: 12/08/2006
REGULAR HOURS	Qty 16.00	Rate 10.00	Current 160.00 YTD Amount 320.00
Taxes	Current	YTD Amount	
LOCAL TAX	-1.60	-3.20	
Federal Withholding	-6.00	-12.00	
Social Security Employee	-9.92	-19.84	
Medicare Employee	-2.32	-4.64	
PA - Withholding	-4.91	-9.82	
PA - Unemployment Employee	-0.15	-0.29	
	-24.90	-49.79	
Net Pay	135.10	270.21	

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

Penoyer's Exhibits  
1 thru 8

**SWISHER CONTRACTING, INC.**

18659

Employee	SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
		Pay Period: 12/31/2006 - 01/13/2007	Pay Date: 01/19/2007
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>
REGULAR HOURS	32.00	10.00	320.00
			YTD Amount
			320.00
<b>Taxes</b>	<b>Current</b>	<b>YTD Amount</b>	
LOCAL TAX	-3.20	-3.20	
Federal Withholding	-22.00	-22.00	
Social Security Employee	-19.84	-19.84	
Medicare Employee	-4.64	-4.64	
PA - Withholding	-9.82	-9.82	
PA - Unemployment Employee	-0.29	-0.29	
	-59.79	-59.79	
<b>Net Pay</b>	<b>260.21</b>	<b>260.21</b>	

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

18777

**SWISHER CONTRACTING, INC.**

Employee	SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
		Pay Period: 01/14/2007 - 01/27/2007	Pay Date: 02/02/2007
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>
REGULAR HOURS	32.00	10.00	320.00
			YTD Amount
			640.00
<b>Taxes</b>	<b>Current</b>	<b>YTD Amount</b>	
LOCAL TAX	-3.20	-6.40	
Federal Withholding	-22.00	-44.00	
Social Security Employee	-19.84	-39.68	
Medicare Employee	-4.64	-9.28	
PA - Withholding	-9.82	-19.64	
PA - Unemployment Employee	-0.29	-0.58	
	-59.79	-119.58	
<b>Net Pay</b>	<b>260.21</b>	<b>520.42</b>	

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

18809

**SWISHER CONTRACTING, INC.**

Employee	SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
		Pay Period: 01/28/2007 - 02/10/2007	Pay Date: 02/16/2007
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>
REGULAR HOURS	32.00	10.00	320.00
			YTD Amount
			960.00
<b>Taxes</b>	<b>Current</b>	<b>YTD Amount</b>	
LOCAL TAX	-3.20	-9.60	
Federal Withholding	-22.00	-66.00	
Social Security Employee	-19.84	-59.52	
Medicare Employee	-4.64	-13.92	
PA - Withholding	-9.82	-29.46	
PA - Unemployment Employee	-0.28	-0.86	
	-59.78	-179.36	
<b>Net Pay</b>	<b>260.22</b>	<b>780.64</b>	

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

2

## SWISHER CONTRACTING, INC.

Employee				SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830				***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
					Pay Period: 02/11/2007 - 02/24/2007	Pay Date: 03/02/2007
Earnings and Hours	Qty	Rate	Current	YTD Amount		
REGULAR HOURS	32.00	10.00	320.00	1,280.00		
Taxes			Current	YTD Amount		
LOCAL TAX			-3.20	-12.80		
Federal Withholding			-22.00	-88.00		
Social Security Employee			-19.84	-79.36		
Medicare Employee			-4.64	-18.56		
PA - Withholding			-9.82	-39.28		
PA - Unemployment Employee			-0.29	-1.15		
			-59.79	-239.15		
Adjustments to Net Pay			Current	YTD Amount		
OPT			-10.00	-10.00		
Net Pay			250.21	1,030.85		

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

18994

## SWISHER CONTRACTING, INC.

Employee				SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830				***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
					Pay Period: 02/25/2007 - 03/10/2007	Pay Date: 03/16/2007
Earnings and Hours	Qty	Rate	Current	YTD Amount		
REGULAR HOURS	32.00	10.00	320.00	1,600.00		
Taxes			Current	YTD Amount		
LOCAL TAX			-3.20	-16.00		
Federal Withholding			-22.00	-110.00		
Social Security Employee			-19.84	-99.20		
Medicare Employee			-4.64	-23.20		
PA - Withholding			-9.82	-49.10		
PA - Unemployment Employee			-0.29	-1.44		
			-59.79	-298.94		
Adjustments to Net Pay			Current	YTD Amount		
OPT			-10.00			
Net Pay			260.21	1,291.06		

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

19049

## SWISHER CONTRACTING, INC.

Employee				SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830				***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
					Pay Period: 03/11/2007 - 03/24/2007	Pay Date: 03/30/2007
Earnings and Hours	Qty	Rate	Current	YTD Amount		
REGULAR HOURS	32.00	10.00	320.00	1,920.00		
Taxes			Current	YTD Amount		
LOCAL TAX			-3.20	-19.20		
Federal Withholding			-22.00	-132.00		
Social Security Employee			-19.84	-119.04		
Medicare Employee			-4.64	-27.84		
PA - Withholding			-9.82	-58.92		
PA - Unemployment Employee			-0.29	-1.73		
			-59.79	-358.73		
Adjustments to Net Pay			Current	YTD Amount		
OPT			-10.00			
Net Pay			260.21	1,551.27		

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

**SWISHER CONTRACTING, INC.**

19097

Employee	SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
		Pay Period: 03/25/2007 - 04/07/2007	Pay Date: 04/13/2007
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>
REGULAR HOURS	80.00	10.00	800.00
OVERTIME HOURS	20.00	15.00	300.00
			1,100.00
			3,020.00
<b>Taxes</b>		<b>Current</b>	<b>YTD Amount</b>
LOCAL TAX		-11.00	-30.20
Federal Withholding		-135.00	-267.00
Social Security Employee		-68.20	-187.24
Medicare Employee		-15.95	-43.79
PA - Withholding		-33.77	-92.69
PA - Unemployment Employee		-0.99	-2.72
		-264.91	-623.64
<b>Adjustments to Net Pay</b>		<b>Current</b>	<b>YTD Amount</b>
OPT			-10.00
<b>Net Pay</b>		835.09	2,386.36

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

**SWISHER CONTRACTING, INC.**

19164

Employee	SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
		Pay Period: 04/08/2007 - 04/21/2007	Pay Date: 04/27/2007
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>
REGULAR HOURS	80.00	10.00	800.00
OVERTIME HOURS	28.00	15.00	420.00
			1,220.00
			4,240.00
<b>Taxes</b>		<b>Current</b>	<b>YTD Amount</b>
LOCAL TAX		-12.20	-42.40
Federal Withholding		-153.00	-420.00
Social Security Employee		-75.64	-262.88
Medicare Employee		-17.69	-61.48
PA - Withholding		-37.45	-130.14
PA - Unemployment Employee		-1.10	-3.82
		-297.08	-920.72
<b>Adjustments to Net Pay</b>		<b>Current</b>	<b>YTD Amount</b>
OPT			-10.00
<b>Net Pay</b>		922.92	3,309.28

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

**SWISHER CONTRACTING, INC.**

19218

Employee	SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
		Pay Period: 04/22/2007 - 05/05/2007	Pay Date: 05/11/2007
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>
REGULAR HOURS	80.00	10.00	800.00
OVERTIME HOURS	20.00	15.00	300.00
			1,100.00
			5,340.00
<b>Taxes</b>		<b>Current</b>	<b>YTD Amount</b>
LOCAL TAX		-11.00	-53.40
Federal Withholding		-135.00	-555.00
Social Security Employee		-68.20	-331.08
Medicare Employee		-15.95	-77.43
PA - Withholding		-33.77	-163.91
PA - Unemployment Employee		-0.99	-4.81
		-264.91	-1,185.63
<b>Adjustments to Net Pay</b>		<b>Current</b>	<b>YTD Amount</b>
OPT			-10.00
<b>Net Pay</b>		835.09	4,144.37

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

4

## SWISHER CONTRACTING, INC.

Employee	SSN	Status (Fed/State)	Allowances/Extra		
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0		
		Pay Period: 05/06/2007 - 05/19/2007	Pay Date: 05/25/2007		
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>	<b>YTD Amount</b>	
REGULAR HOURS	80.00	10.00	800.00	5,120.00	
OVERTIME HOURS	20.00	15.00	300.00	1,320.00	
			1,100.00	6,440.00	
<b>Taxes</b>			<b>Current</b>	<b>YTD Amount</b>	
LOCAL TAX			-11.00	-64.40	
Federal Withholding			-135.00	-690.00	
Social Security Employee			-68.20	-399.28	
Medicare Employee			-15.95	-93.38	
PA - Withholding			-33.77	-197.68	
PA - Unemployment Employee			-0.99	-5.80	
			-264.91	-1,450.54	
<b>Adjustments to Net Pay</b>			<b>Current</b>	<b>YTD Amount</b>	
OPT				-10.00	
<b>Net Pay</b>			835.09	4,979.46	

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

Employee	SSN	Status (Fed/State)	Allowances/Extra		
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0		
		Pay Period: 05/20/2007 - 06/02/2007	Pay Date: 06/08/2007		
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>	<b>YTD Amount</b>	
REGULAR HOURS	72.00	10.00	720.00	5,840.00	
HOLIDAY	8.00	10.00	80.00	80.00	
OVERTIME HOURS				1,320.00	
			800.00	7,240.00	
<b>Taxes</b>			<b>Current</b>	<b>YTD Amount</b>	
LOCAL TAX			-8.00	-72.40	
Federal Withholding			-90.00	-780.00	
Social Security Employee			-49.60	-448.88	
Medicare Employee			-11.60	-104.98	
PA - Withholding			-24.56	-222.24	
PA - Unemployment Employee			-0.72	-6.52	
			-184.48	-1,635.02	
<b>Adjustments to Net Pay</b>			<b>Current</b>	<b>YTD Amount</b>	
OPT				-10.00	
<b>Net Pay</b>			615.52	5,594.98	

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

Employee	SSN	Status (Fed/State)	Allowances/Extra		
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0		
		Pay Period: 06/03/2007 - 06/16/2007	Pay Date: 06/22/2007		
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>	<b>YTD Amount</b>	
REGULAR HOURS	80.00	10.00	800.00	6,640.00	
OVERTIME HOURS	6.00	15.00	90.00	1,410.00	
HOLIDAY				80.00	
			890.00	8,130.00	
<b>Taxes</b>			<b>Current</b>	<b>YTD Amount</b>	
LOCAL TAX			-8.90	-81.30	
Federal Withholding			-104.00	-884.00	
Social Security Employee			-55.18	-504.06	
Medicare Employee			-12.91	-117.89	
PA - Withholding			-27.32	-249.56	
PA - Unemployment Employee			-0.80	-7.32	
			-209.11	-1,844.13	
<b>Adjustments to Net Pay</b>			<b>Current</b>	<b>YTD Amount</b>	
OPT				-10.00	
<b>Net Pay</b>			680.89	6,275.87	

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

**SWISHER CONTRACTING, INC.**

19523

Employee	SSN	Status (Fed/State)	Allowances/Extra		
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0		
		Pay Period: 06/17/2007 - 06/30/2007	Pay Date: 07/06/2007		
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>	<b>YTD Amount</b>	
REGULAR HOURS	80.00	10.00	800.00	7,440.00	
OVERTIME-HOURS	19.50	15.00	292.50	1,702.50	
HOLIDAY				80.00	
			1,092.50	9,222.50	
<b>Taxes</b>		<b>Current</b>	<b>YTD Amount</b>		
LOCAL TAX		-10.93	-92.23		
Federal Withholding		-134.00	-1,018.00		
Social Security Employee		-67.74	-571.80		
Medicare Employee		-15.84	-133.73		
PA - Withholding		-33.54	-283.10		
PA - Unemployment Employee		-0.98	-8.30		
		-263.03	-2,107.16		
<b>Adjustments to Net Pay</b>		<b>Current</b>	<b>YTD Amount</b>		
OPT			-10.00		
<b>Net Pay</b>		829.47	7,105.34		

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

**SWISHER CONTRACTING, INC.**

19613

Employee	SSN	Status (Fed/State)	Allowances/Extra		
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0		
		Pay Period: 07/01/2007 - 07/14/2007	Pay Date: 07/20/2007		
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>	<b>YTD Amount</b>	
REGULAR HOURS	69.00	10.00	690.00	8,130.00	
OVERTIME HOURS	13.00	15.00	195.00	1,897.50	
HOLIDAY	8.00	10.00	80.00	160.00	
			965.00	10,187.50	
<b>Taxes</b>		<b>Current</b>	<b>YTD Amount</b>		
LOCAL TAX		-9.65	-101.88		
Federal Withholding		-115.00	-1,133.00		
Social Security Employee		-59.83	-631.63		
Medicare Employee		-13.99	-147.72		
PA - Withholding		-29.63	-312.73		
PA - Unemployment Employee		-0.87	-9.17		
		-228.97	-2,336.13		
<b>Adjustments to Net Pay</b>		<b>Current</b>	<b>YTD Amount</b>		
OPT			-10.00		
<b>Net Pay</b>		736.03	7,841.37		

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

**SWISHER CONTRACTING, INC.**

19688

Employee	SSN	Status (Fed/State)	Allowances/Extra		
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0		
		Pay Period: 07/15/2007 - 07/28/2007	Pay Date: 08/03/2007		
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>	<b>YTD Amount</b>	
REGULAR HOURS	79.00	10.00	790.00	8,920.00	
OVERTIME HOURS	11.50	15.00	172.50	2,070.00	
HOLIDAY				160.00	
			962.50	11,150.00	
<b>Taxes</b>		<b>Current</b>	<b>YTD Amount</b>		
LOCAL TAX		-9.63	-111.51		
Federal Withholding		-115.00	-1,248.00		
Social Security Employee		-59.67	-691.30		
Medicare Employee		-13.96	-161.68		
PA - Withholding		-29.55	-342.28		
PA - Unemployment Employee		-0.87	-10.04		
		-228.68	-2,564.81		
<b>Adjustments to Net Pay</b>		<b>Current</b>	<b>YTD Amount</b>		
OPT			-10.00		
<b>Net Pay</b>		733.82	8,575.19		

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

4

## SWISHER CONTRACTING, INC.

19746

Employee	SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
		Pay Period: 07/29/2007 - 08/11/2007	Pay Date: 08/17/2007
<b>Earnings and Hours</b>			
REGULAR HOURS	Qty 80.00	Rate 10.00	Current 800.00 YTD Amount 9,720.00
OVERTIME HOURS	13.00	15.00	195.00 2,265.00
HOLIDAY			160.00
		995.00	12,145.00
<b>Taxes</b>			
LOCAL TAX		Current -9.95	YTD Amount -121.46
Federal Withholding		-120.00	-1,368.00
Social Security Employee		-61.69	-752.99
Medicare Employee		-14.42	-176.10
PA - Withholding		-30.55	-372.83
PA - Unemployment Employee		-0.89	-10.93
		-237.50	-2,802.31
<b>Adjustments to Net Pay</b>			
OPT		Current -10.00	
<b>Net Pay</b>		757.50	9,332.69

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

## SWISHER CONTRACTING, INC.

19830

Employee	SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
		Pay Period: 08/12/2007 - 08/25/2007	Pay Date: 08/31/2007
<b>Earnings and Hours</b>			
REGULAR HOURS	Qty 80.00	Rate 10.00	Current 800.00 YTD Amount 10,520.00
OVERTIME HOURS	28.00	15.00	420.00 2,685.00
HOLIDAY			160.00
		1,220.00	13,365.00
<b>Taxes</b>			
LOCAL TAX		Current -12.20	YTD Amount -133.66
Federal Withholding		-153.00	-1,521.00
Social Security Employee		-75.64	-828.63
Medicare Employee		-17.69	-193.79
PA - Withholding		-37.45	-410.28
PA - Unemployment Employee		-1.10	-12.03
		-297.08	-3,099.39
<b>Adjustments to Net Pay</b>			
OPT		Current -10.00	
<b>Net Pay</b>		922.92	10,255.61

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

## SWISHER CONTRACTING, INC.

19888

Employee	SSN	Status (Fed/State)	Allowances/Extra
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0
		Pay Period: 08/26/2007 - 09/08/2007	Pay Date: 09/14/2007
<b>Earnings and Hours</b>			
REGULAR HOURS	Qty 80.00	Rate 10.00	Current 800.00 YTD Amount 11,320.00
OVERTIME HOURS	15.00	15.00	225.00 2,910.00
HOLIDAY	8.00	10.00	80.00 240.00
		1,105.00	14,470.00
<b>Taxes</b>			
LOCAL TAX		Current -11.05	YTD Amount -144.71
Federal Withholding		-136.00	-1,657.00
Social Security Employee		-68.51	-897.14
Medicare Employee		-16.03	-209.82
PA - Withholding		-33.92	-444.20
PA - Unemployment Employee		-0.99	-13.02
		-266.50	-3,365.89
<b>Adjustments to Net Pay</b>			
OPT		Current -10.00	
<b>Net Pay</b>		838.50	11,094.11

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

19991

## SWISHER CONTRACTING, INC.

Employee	SSN	Status (Fed/State)	Allowances/Extra		
BRADLEY S PENOYER, 44 EVERGREEN ROAD, CLEARFIELD, PA 16830	***-**-3869	Single/Withhold	Fed-0/0/PA-0/0		
		Pay Period: 09/09/2007 - 09/22/2007	Pay Date: 09/28/2007		
<b>Earnings and Hours</b>	<b>Qty</b>	<b>Rate</b>	<b>Current</b>	<b>YTD Amount</b>	
REGULAR HOURS	80.00	10.00	800.00	12,120.00	
OVERTIME HOURS	8.50	15.00	127.50	3,037.50	
VACATION	8.00	10.00	80.00	80.00	
HOLIDAY				240.00	
			1,007.50	15,477.50	
<b>Taxes</b>		<b>Current</b>		<b>YTD Amount</b>	
LOCAL TAX		-10.08		-154.79	
Federal Withholding		-121.00		-1,778.00	
Social Security Employee		-62.47		-959.61	
Medicare Employee		-14.60		-224.42	
PA - Withholding		-30.93		-475.13	
PA - Unemployment Employee		-0.91		-13.93	
		-239.99		-3,605.88	
<b>Adjustments to Net Pay</b>		<b>Current</b>		<b>YTD Amount</b>	
OPT				-10.00	
<b>Net Pay</b>		767.51		11,861.62	
<b>Paid Time Off</b>		<b>YTD Used</b>		<b>Available</b>	

Swisher Contracting, Inc., P.O. Box 1223, Neeper Road, Clearfield, PA 16830 (814) 765-6006

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

BRADLEY S. PENOYER, :  
Plaintiff : No. 2006-1708-CD

vs. :

WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :

FILED  
OCT 16 2007  
cc  
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct copy of **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WITH COMPLETED RULE RETURNABLE** entered by the Court, **PLAINTIFF'S BRIEF** and **PLAINTIFF'S AFFIDAVIT IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT** was hand delivered to the attorney for the Defendant on October 16, 2007 at the following address:

HAND DELIVER  
Carl A. Belin, Jr., Esquire  
Belin, Kubista & Ryan  
15 North Front Street  
Clearfield, PA 16830

Respectfully submitted,

  
\_\_\_\_\_  
Peter F. Smith, Esquire

Attorney for Plaintiff  
P. O. Box 130, 30 South Second St.  
Clearfield, PA 16830  
(814) 765-5595

Date: October 16, 2007

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 2006-1708-CD  
:  
:  
:  
vs. :  
:  
:  
:  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

**FILED**

OCT 18 2007  
018:50 (W) *WAM*  
William A. Shaw  
Prothonotary/Clerk of Courts  
No Court Copy

**PRAECIPE**

**TO: William A. Shaw, Sr., Prothonotary**

Dear Sir,

I submit with this letter three depositions for transmittal to the Court for its consideration when ruling upon the Plaintiff's Motion for Summary Judgment. With this Praecipe you will find:

- A. Original deposition of William Gurn Satterlee dated March 15, 2007;
- B. Original deposition of David E. Satterlee dated March 15, 2007; and,
- C. A certified copy of the deposition of Bradley S. Penoyer, Plaintiff, dated March 15, 2007.

Date: October 18, 2007

Respectfully submitted,



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

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 2006-1708-CD  
:  
:  
:  
vs. :  
:  
:  
:  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

**FILED**

OCT 18 2007

o/s. to /  
William A. Shaw  
Prothonotary/Clerk of Courts  
100 4C

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that a true and correct copy of **A PETITION TO TRANSMIT THREE DEPOSITIONS** was hand delivered to the attorney for the Defendant on October 18, 2007 at the following address:

HAND DELIVER  
Carl A. Belin, Jr., Esquire  
Belin, Kubista & Ryan  
15 North Front Street  
Clearfield, PA 16830

Respectfully submitted,



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

Date: October 18, 2007

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: CERTIFICATE OF SERVICE  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

Filed on Behalf of:  
Defendant

Counsel of Record for  
This Party:

Carl A. Belin, Jr., Esquire  
PA I.D. #06805

BELIN, KUBISTA & RYAN  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972 (PHONE)  
(814) 765-9893 (FAX)

FILED 4CC  
01/30/2007 Atty  
NOV 02 2007 Belin  
WM  
William A. Shaw  
Prothonotary/Clerk of Courts

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

BRADLEY S. PENOYER,	:	
	Plaintiff	:
		:
		No. 06 - 1708 - CD
vs.	:	
		:
WILLIAM G. SATTERLEE & SONS, INC.,	:	
	Defendant	:

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has sent a certified copy of the following documents filed on behalf of the Defendant in the above-captioned matter:

1. Praeclipe to Submit Depositions;
2. Defendant's Response to Plaintiff's Motion For Summary Judgment; and
3. Defendant's Brief in Support of Denial of Summary Judgment;

to the following party by postage prepaid United States first class mail on the 2nd day of November, 2007:

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

BELIN, KUBISTA & RYAN

By Carl A. Belin, Jr., Esq.  
Attorney for Defendant

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: NO. 06 - 1708 - CD  
vs. :  
: DEFENDANT'S RESPONSE  
WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant : TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT

Filed on Behalf of:  
Defendant

Counsel of Record for  
This Party:

Carl A. Belin, Jr., Esquire  
PA I.D. #06805

BELIN, KUBISTA & RYAN  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972 (PHONE)  
(814) 765-9893 (FAX)

FILED 3CC  
13-2670 Atty Belin  
NOV 02 2001

William A. Shaw  
Prothonotary/Clerk of Courts  
(GW)

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

BRADLEY S. PENOYER, :  
                          Plaintiff :  
                          :       No. 06 - 1708 - CD  
                          vs.        :  
                          :  
WILLIAM G. SATTERLEE & SONS, INC., :  
                          Defendant :  
                          :  
                          :

DEFENDANT'S RESPONSE TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

AND NOW comes William G. Satterlee & Sons, Inc. ("Satterlee") by and through its attorneys, Belin, Kubista & Ryan, file the following Response to Motion for Summary Judgment filed by Bradley S. Penoyer ("Penoyer"), and in support thereof aver as follows:

1. Paragraph 1 is admitted, but it is averred as Penoyer breached the contract, he is entitled to no relief under the contract. Satterlee incorporates the deposition of David E. Satterlee, William G. Satterlee, and Bradley S. Penoyer which are already of record. Satterlee also incorporates the depositions of William Gary Satterlee and Daniel R. Hauger, which are being submitted with the response to the motion. Satterlee also incorporates Paragraphs 2 through 21 of the response to the motion by reference.

2. Paragraph 2 is denied as stated. No contract was attached to Plaintiff's motion. However, if the contract is the same as Exhibit "A" to Plaintiff's Complaint, it is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted as it is averred; however, under the common law and implied in the contract as a result of paragraph 1, the contract could be terminated at any time by Satterlee for cause, notwithstanding Paragraph 2 hereof.

7. Paragraph 7 is admitted.

8. Paragraph 8 is denied for the following reasons:

(a) As testified in the depositions of David Satterlee and Daniel Hauger, at those two (2) meetings Penoyer admitted that he had been spending long periods away from the office and that he was not doing the job that he knew the Satterlees wanted and spending the time at the office that was required, as a result of which the other employees had become disgruntled and had complained to the Satterlees as to the effect on their jobs.

(b) William G. Satterlee testified that he met with the employees on August 11, 2006, and the employees told Satterlee they were considering leaving Satterlee's employment

en masse due to Penoyer's failure to be present at the office to manage the business and correct problems that were being created for them, and that they no longer wanted to work for Penoyer.

(c) David Satterlee testified that after he was advised of his father's meeting that he met with Penoyer on August 16, 2006, and told Penoyer that due to his continued poor performance that he could no longer be employed as the manager of the Clearfield site in order to prevent a mass defection from the Clearfield Terminal; he offer to relocate Penoyer to the Sykesville office he also testified that he offered to relocate Penoyer to the Sykesville office but that Penoyer rejected the proposed transfer; Satterlee then indicated he asked Penoyer if he had vacation time and suggested that Penoyer go on vacation immediately while he consulted with his father and brother to discuss what to do with Penoyer; Satterlee then called Penoyer around August 20, 2006, and told him that there was no other location that they could send Penoyer and as a result he was terminated.

(d) In Penoyer's deposition, he had no recollection of the October meeting (Penoyer Deposition, Page 7, lines 8 - 15); or the May meeting (Penoyer Deposition, Page 8, lines 7 - 9). See also Penoyer Deposition, Pages 8, line 16 to Page 10, line 5.

(e) Penoyer did admit to the August 16, 2007 meeting, in part, but had no recollection of being offered a transfer to Sykesville. Penoyer then admitted that he was terminated and that the termination was because of job performance. Penoyer then admitted he had been given an opportunity after his termination to transfer to Sykesville and Rochester Mills, both of which he turned down.

9. Paragraph 9 states a conclusion of law to which no answer is required; however, in the contract were the following conditions:

"1. **EMPLOYER** hereby employs, engages, and hires the said **EMPLOYEE**, who shall perform such duties as may be assigned to him from time to time hereafter by the **EMPLOYER**. **EMPLOYEE** agrees that he will at all times faithfully, industriously, and to the best of his ability, experience and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms hereof, to the reasonable satisfaction of the **EMPLOYER**. Such duties shall be rendered in Clearfield, Pennsylvania, and at other place or places as **EMPLOYER** shall in good faith require or as the interest, needs, business or opportunity that the **EMPLOYER** shall require.

7. **EMPLOYEE** herewith agrees to indemnify and save harmless the **EMPLOYER** from any and all losses that may result from the breach by the **EMPLOYEE** of this Agreement, and should the **EMPLOYER** or any of its affiliates, be required to expend funds in order to protect its rights hereunder,

**EMPLOYEE** agrees that he will be responsible to reimburse the **EMPLOYER** for any such costs and expenses, which includes the **EMPLOYER'S** or its affiliates legal expenses, out of pocket expenses, court costs, costs of witnesses, and any other direct or indirect costs incurred therein."

10. Paragraph 10 is denied. The parties could terminate the contract without cause in accordance with the terms of the contract, however, where the Plaintiff breached the terms of the contract, Defendant had the implied right to terminate the contract for such cause.

11. Paragraph 11 is denied and under the law and facts of this case, Defendant had the right to terminate the contract for cause.

12. Paragraph 12 is denied and in further answer thereto, Paragraphs 6 through 11 of this response are hereby incorporated by reference and made a part hereof.

13. Paragraph 13 is denied and it is averred that the contract does not provide severance pay except in the original term of five (5) years. It is further averred that Penoyer is not entitled to any benefits under the contract as it was terminated and in further answer thereto, Paragraphs 6 through 12 of this response are hereby incorporated by reference and made a part hereof.

14. Paragraph 14 is denied as the termination was the result of Penoyer's failure and refusal to comply with the

contract and in further answer thereto, Paragraphs 6 and 8 of this response are hereby incorporated by reference and made a part hereof.

15. Paragraph 15 is denied and in further answer thereto, Paragraphs 6 through 14 of this response are hereby incorporated by reference and made a part hereof.

16. Paragraph 16 is denied and in further answer thereto Paragraphs 6 through 15 of this response are hereby incorporated by reference and made a part hereof.

17. Paragraph 17 is a conclusion of law and no response is necessary to the averment.

18. Paragraph 18 is neither affirmed nor denied as the proof is within the control of Plaintiff and proof is demanded at trial.

19. Paragraph 19 is neither affirmed nor denied as the proof is within the control of Plaintiff and proof is demanded at trial.

20. Paragraph 20 is neither affirmed nor denied as the proof is within the control of Plaintiff and proof is demanded at trial.

21. Paragraph 21 is neither affirmed nor denied as the proof is within the control of Plaintiff and proof is demanded at trial. In further answer thereto, Penoyer is not entitled to any damages as a result of his breach of the contract.

ADDITIONAL RESPONSE

Summary judgment cannot be granted in this case because of the following:

22. An issue of fact exists as to whether Penoyer was terminated for just cause.

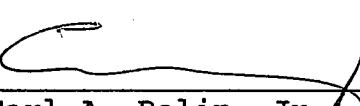
23. Summary judgment cannot be granted solely on the affidavit and depositions of Penoyer.

24. That unless the Court determines that the contract under the law clearly requires that Satterlee may not terminate the contract for cause, except during a "window period," no basis exists to enter summary judgment in this case.

WHEREFORE, Defendant prays Your Honorable Court to dismiss the motion for summary judgment requested by Penoyer.

BELIN, KUBISTA & RYAN

By

  
Carl A. Belin, Jr. Esq.  
Attorney for Defendant

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: MOTION TO RESCHEDULE  
WILLIAM G. SATTERLEE & SONS, INC., : ORAL ARGUMENT  
Defendant :  
:

Filed on Behalf of:  
Defendant

Counsel of Record for  
This Party:

Carl A. Belin, Jr., Esquire  
PA I.D. #06805

BELIN, KUBISTA & RYAN  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972 (PHONE)  
(814) 765-9893 (FAX)

FILED 2CC  
013-03301 Atty Belin  
NOV 07 2007

William A. Shaw  
Prothonotary/Clerk of Courts

6K

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

MOTION TO RESCHEDULE ORAL ARGUMENT

AND NOW comes Defendant, William G. Satterlee & Sons, Inc., by and through its attorneys, Belin, Kubista & Ryan, and files the following motion to reschedule oral argument and in support thereof avers as follows:

1. That oral argument on motion for summary judgment was scheduled in the above-captioned case for December 3, 2007, at 10:30 A.M. in accordance with Rule of Court dated October 15, 2007.

2. That Defendant's attorney, Carl A. Belin, Jr., is scheduled to have hip resurfacing surgery on November 26, 2007, and does not expect to be back in the office until sometime on or after December 10, 2007.

3. That Attorney Belin discussed the matter with Plaintiff's attorney, Peter Smith, and Mr. Smith indicated that he will be away from the office from December 11, 2007, through December 18, 2007, and would be available for argument on December 19, 2007, or anytime thereafter.

4. That it is requested that argument on the motion for summary judgment be postponed to a date on or after December 19, 2007.

RESPECTFULLY SUBMITTED,

BELIN, KUBISTA & RYAN

By   
Carl A. Belin, Jr., Esq.  
Attorney for Defendant

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

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a certified copy of the Motion to Reschedule Argument filed on behalf of the Defendant in the above-captioned matter to the following party by postage prepaid United States first class mail on the 7th day of November, 2007:

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

BELIN, KUBISTA & RYAN

By

Carl A. Belin, Jr., Esq.  
Attorney for Defendant

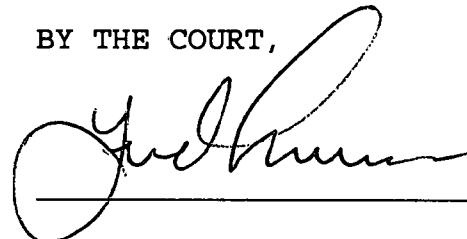
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

BRADLEY S. PENOYER, :  
Plaintiff :  
: No. 06 - 1708 - CD  
vs. :  
: WILLIAM G. SATTERLEE & SONS, INC., :  
Defendant :  
:

ORDER

AND NOW, this 8<sup>th</sup> day of November, 2007, upon  
consideration of the Motion to Reschedule Oral Argument it is  
the ORDER of this Court said motion is hereby granted and oral  
argument is scheduled for the 21<sup>st</sup> day of December,  
2007, at 9:30 o'clock A M., Courtroom No. 1,  
Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FILED  
11/22/2007 2:30 PM 2 CC  
NOV 08 2007 Atty Belin  
6C

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**NOV 08 2007**

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

DATE: 11/8/07

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:

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

BRADLEY S. PENOYER,

Plaintiff

v.

No. 2006-1708-CD

WILLIAM G. SATTERLEE  
& SONS, INC.,

Defendant

FILED

JAN 11 2008

011-401m

William A. Shaw

Prothonotary/Clerk of Courts

SENT TO ATTYS

SMITH

BROWN

CLARK

MCKEEAN

(GK)

**ORDER**

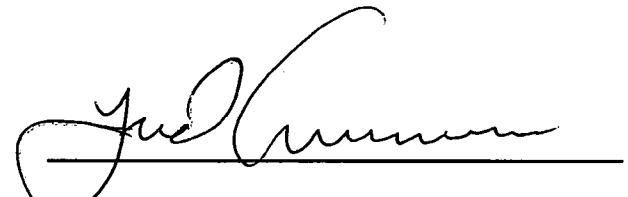
NOW, this 10<sup>th</sup> day of January, 2007, after review of the parties' briefs and the record, the Plaintiff's Motion for Summary Judgment is **HEREBY DENIED**.

The Superior Court has held "[s]ummary judgment may be granted only in those cases where the right is clear and free from doubt." *Bigansky v. Thomas Jefferson University Hospital*, 658 A.2d 423, 425 (Pa.Super. 1995) citations omitted. Further, "[t]he moving party has the burden of proving that there is no genuine issue of material fact." *Id.* citations omitted. Finally, "the record and any inferences therefrom must be viewed in the light most favorable to the nonmoving party, and any doubt as to the existence of a genuine issue of material fact must be resolved against the moving party." *Id.* citations omitted.

The Plaintiff cites case law that states "parol evidence of prior representations is inadmissible as to matters covered by the written agreement with an integration clause, unless the parties agreed that those representations would be added to the written agreement but they were omitted because of fraud, accident, or mistake." *Glassmere Fuel Service, Inc. v. Clear*, 900 A.2d 398, 402 (Pa.Super. 2006) citations omitted. However, here there is no integration clause in the written agreement between the Plaintiff and the Defendants. Courts have looked at parol evidence when there is no integration clause in a written agreement. See *Ringgold Area School*

*Dist. v. Ringgold Ed. Ass'n, PSEA/NEA*, 414 A.2d 118 (Pa. 1980) and *Appeal of Chester Upland School Dist.*, 423 A.2d 437 (Pa. Cmwlth. 1980) both of which allowed evidence of past practices where there was no integration clause. Therefore, because there is no integration clause, the Plaintiff's Motion for Summary Judgment must be denied.

**BY THE COURT:**



---

**FREDRIC J. AMMERMAN**  
President Judge

DATE: 4-11-08

You are responsible for serving all appropriate parties.

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

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

William A. Shaw  
Prothonotary/Clerk of Courts

JAN 11 2008

FILED

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

BRADLEY S. PENOYER, :  
Plaintiff : No. 2006-1708-CD  
:  
:  
:  
vs. :  
:  
:  
:  
WILLIAM G. SATTERLEE & :  
SONS, INC., :  
Defendant :  
:

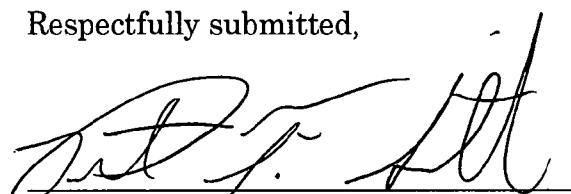
PRAECIPE to DISCONTINUE

TO: William A. Shaw, Sr., Prothonotary

Dear Sir,

I appear as counsel for Plaintiff and request that the matter be Discontinued.

Respectfully submitted,



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

Date: April 1, 2008

FILED *No CC*  
04/10/2008 12:12 Cert. of Disc.  
APR 07 2008 to Atty Smith  
William A. Shaw  
Prothonotary/Clerk of Courts *(64)*

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Bradley S. Penoyer

Vs.  
William G. Satterlee & Sons, Inc.

No. 2006-01708-CD

**CERTIFICATE OF DISCONTINUATION**

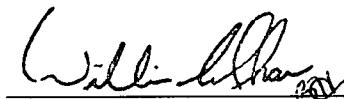
Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 7, 2008, marked:

Discontinued

Record costs in the sum of \$85.00 have been paid in full by Peter F. Smith, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 7th day of April A.D. 2008.

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