



## COMMONWEALTH OF PENNSYLVANIA

## COURT OF COMMON PLEAS

Judicial District, County Of

Clearfield

## NOTICE OF APPEAL

FROM

## DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No.

06-1726-CD

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case referenced below.

NAME OF APPELLANT Curwensville Painters-Greg Smith	MAG. DIST. NO. 46-3-04	NAME OF D.J. James L. Hawkins
ADDRESS OF APPELLANT 103 Filbert Street, Curwensville, Pa.	CITY 16833	STATE ZIP CODE
DATE OF JUDGMENT 9/29/06	IN THE CASE OF (Plaintiff) Clyde Krause	(Defendant) vs Curwensville Painters-Greg Smith
DOCKET No. CV - 0000072- 06	SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT Gregory A. Smith	

This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B.

This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.

If appellant was Claimant (see Pa. R.C.P.D.J. No. 1001(6) in action

before a District Justice, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE of APPEAL.

**FILED** \$85.00 debt  
0/2.15 cm ICC debt  
DJP  
OCT 20 2006 DJ Hawkins

## PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

William A. Shaw

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.D.J. No. 1001(7) Prothonotary/Clerk of Courts. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

## PRAECIPE: To Prothonotary

Enter rule upon Clyde Krause appellee(s), to file a complaint in this appeal

Name of appellee(s)

(Common Pleas No. 06-1726-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

Gregory A. Smith  
Signature of appellant or attorney or agent

RULE: To Clyde Krause, appellee(s)

Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date: October 20, 2006

William A. Shaw  
Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

**PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT**

(This proof of service **MUST BE FILED WITHIN TEN (10) DAYS AFTER** filing of the notice of appeal. Check applicable boxes.)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF \_\_\_\_\_; ss

**AFFIDAVIT:** I hereby (swear) (affirm) that I served

☐ a copy of the Notice of Appeal, Common Pleas No. \_\_\_\_\_, upon the District Justice designated therein on  
(date of service) \_\_\_\_\_, 20\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail,  
sender's receipt attached hereto, and upon the appellee, (name) \_\_\_\_\_, on  
\_\_\_\_\_, 20\_\_\_\_ ☐ by personal service ☐ by (certified) (registered) mail,  
sender's receipt attached hereto.

(SWORN) (AFFIRMED) AND SUBSCRIBED BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of affiant

\_\_\_\_\_  
Signature of official before whom affidavit was made

\_\_\_\_\_  
Title of official

My commission expires on \_\_\_\_\_, 20\_\_\_\_.



## COMMONWEALTH OF PENNSYLVANIA

## COURT OF COMMON PLEAS

Judicial District, County Of 46th

Clearfield

## NOTICE OF APPEAL

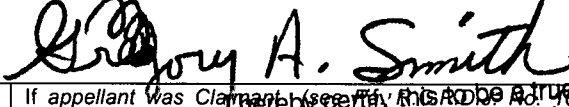
FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 06-1726-CD

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case referenced below.

NAME OF APPELLANT <b>Curwensville Painters-Greg Smith</b>	MAG. DIST. NO. <b>46-3-04</b>	NAME OF D.J. <b>James L. Hawkins</b>
ADDRESS OF APPELLANT <b>103 Filbert Street, Curwensville, Pa.</b>	CITY <b>16833</b>	STATE <b>PA</b>
DATE OF JUDGMENT <b>9/29/06</b>	IN THE CASE OF (Plaintiff) <b>Clyde Krause</b>	
DOCKET No. <b>CV - 0000072- 06</b>		(Defendant) <b>vs Curwensville Painters-Greg Smith</b>
		SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT 

This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B.

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OCT 20 2006

Signature of Prothonotary or Deputy

Attest.

Prothonotary/  
Clerk of Courts

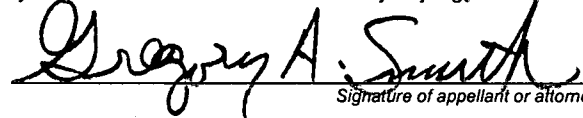
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PRAECIPE: To Prothonotary

Enter rule upon Clyde Krause appellee(s), to file a complaint in this appeal

Name of appellee(s)

(Common Pleas No. 06-1726-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

Signature of appellant or attorney or agent


RULE: To Clyde Krause, appellee(s)

Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

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Date: October 20, 2006

Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

**PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT**

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing of the notice of appeal. Check applicable boxes.)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF \_\_\_\_\_; ss

**AFFIDAVIT:** I hereby (swear) (affirm) that I served

☐ a copy of the Notice of Appeal, Common Pleas No. \_\_\_\_\_, upon the District Justice designated therein on  
(date of service) \_\_\_\_\_, 20\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail,  
sender's receipt attached hereto, and upon the appellee, (name) \_\_\_\_\_, on  
\_\_\_\_\_, 20\_\_\_\_ ☐ by personal service ☐ by (certified) (registered) mail,  
sender's receipt attached hereto.

(SWORN) (AFFIRMED) AND SUBSCRIBED BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature of affiant

\_\_\_\_\_  
Signature of official before whom affidavit was made

\_\_\_\_\_  
Title of official

My commission expires on \_\_\_\_\_, 20\_\_\_\_.

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No: **46-3-04**  
MDJ Name: Hon. **JAMES L. HAWKINS**  
Address: **251 SPRING ST**  
**PO BOX 362**  
**HOUTZDALE, PA**  
Telephone: **(814) 378-7160** **16651-0362**

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF: **KRAUSE, CLYDE**  
**611 MCATEER ST**  
**HOUTZDALE, PA 16651**  
VS.  
DEFENDANT: **CURWENSVILLE PAINTERS-GREG SMITH**  
**101 FILBERT ST**  
**CURWENSVILLE, PA 16833**

**CURWENSVILLE PAINTERS-GREG SMITH**  
**101 FILBERT ST**  
**CURWENSVILLE, PA 16833**

Docket No.: **CV-0000072-06**  
Date Filed: **7/13/06**



**THIS IS TO NOTIFY YOU THAT:**

Judgment: **FOR PLAINTIFF** (Date of Judgment) **9/29/06**

☒ Judgment was entered for: (Name) **KRAUSECLYDE**  
☒ Judgment was entered against: (Name) **CURWENSVILLE PAINTERS-GREG SMITH**  
in the amount of \$ **1,089.00**  
☐ Defendants are jointly and severally liable.  
☐ Damages will be assessed on Date & Time \_\_\_\_\_  
☐ This case dismissed without prejudice.  
☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127  
\$ \_\_\_\_\_  
☐ Portion of Judgment for physical damages arising out of  
residential lease \$ \_\_\_\_\_

Amount of Judgment	\$ <b>1,000.00</b>
Judgment Costs	\$ <b>89.00</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	<b>\$ 1,089.00</b>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
<b>Certified Judgment Total</b>	<b>\$ _____</b>

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE. UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

**9-29-06** Date **James L. Hawkins** Magisterial District Judge  
I certify that this is a true and correct copy of the record of the proceedings containing the judgment.  
\_\_\_\_ Date \_\_\_\_\_ Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

**46-3-04**

MDJ Name: Hon.

**JAMES L. HAWKINS**

Address: **251 SPRING ST  
PO BOX 362**

**HOUTZDALE, PA**

Telephone: **(814) 378-7160**

**16651-0362**

**JAMES L. HAWKINS**

**251 SPRING ST**

**PO BOX 362**

**HOUTZDALE, PA 16651-0362**

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF:

NAME and ADDRESS

**KRAUSE, CLYDE  
611 MCATEER ST  
HOUTZDALE, PA 16651**

**2006-1726-C0**

**VS.**

DEFENDANT:

NAME and ADDRESS

**CURWENSVILLE PAINTERS-GREG SMITH  
101 FILBERT ST  
CURWENSVILLE, PA 16833**

Docket No.: **CV-0000072-06**

Date Filed: **7/13/06**



**THIS IS TO NOTIFY YOU THAT:**

Judgment: **FOR PLAINTIFF**

(Date of Judgment) **9/29/06**

☒ Judgment was entered for: (Name) **KRAUSECLYDE**

☒ Judgment was entered against: (Name) **CURWENSVILLE PAINTERS-GREG SMITH**  
in the amount of \$ **1,089.00**

☐ Defendants are jointly and severally liable.

☐ Damages will be assessed on Date & Time \_\_\_\_\_

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127  
\$ \_\_\_\_\_

☐ Portion of Judgment for physical damages arising out of  
residential lease \$ \_\_\_\_\_

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<b>Total</b>	<b>\$ 1,089.00</b>
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<b>Certified Judgment Total</b>	<b>\$ _____</b>

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**FILED**

**OCT 24 2006**

*William A. Shaw*  
Prothonotary/Clerk of Courts

**9-29-06** Date *James L. Hawkins*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

**10-23-06** Date *James L. Hawkins*, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

COUNTY OF: **CLEARFIELD****CIVIL COMPLAINT**

Mag. Dist. No.:

**46-3-04**

MDJ Name: Hon.

**JAMES L. HAWKINS**Address: **251 SPRING ST  
PO BOX 362****HOUTZDALE, PA****16651-0362**Telephone: **(814) 378-7160**

PLAINTIFF:

NAME and ADDRESS

Clyde L. Krause  
Susan M. Krause  
611 McAteer St. Houtzdale PA 16651

VS.

DEFENDANT:

NAME and ADDRESS

Curwensville Painters - Greg Smith  
101 Filbert St.  
Curwensville PA. 16833

Docket No.: **CV 72-06**Date Filed: **7-13-06**

	AMOUNT	DATE PAID
FILING COSTS	\$ <u>89.00</u>	<u>7/13/06</u>
POSTAGE	\$ _____	<u>/ /</u>
SERVICE COSTS	\$ _____	<u>/ /</u>
CONSTABLE ED.	\$ _____	<u>/ /</u>
 TOTAL	 \$ _____	 <u>/ /</u>

Pa.R.C.P.D.J. No. 206 sets forth those costs recoverable by the prevailing party.

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ 4,000.00 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

*Paint has cracked and is peeling off of our home.*

I, Clyde L. Krause & Susan M Krause verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

*Clyde L. Krause Susan M Krause*  
(Signature of Plaintiff or Authorized Agent)

Plaintiff's  
Attorney:

Address:

Telephone:

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, YOU SHOULD NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within magisterial district judge jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.



FILED

NOV 09 2006

0111001w  
William A. Shaw (60)

Prothonotary/Clerk of Courts

1 Court To Room

Clyde and Susan Krause  
Plaintiff / Appellant

Distict Justice Appeal

VS.

CASE NO. 06-1726 CD

Cucwensville Painters / Greg Smith  
Defendant / Appellee

Type of Pleading:  
Complaint

### Complaint

Now, comes the Plaintiff, Clyde and Susan Krause who hereby avers as follows:

1. Clyde and Susan Krause are adult individuals whose address is 611 McAtee St, Houtzdale, Pennsylvania 16651.
2. Defendant is Cucwensville Painters / Greg Smith an adult individual, whose address is 103 Filbert St. Cucwensville, Pennsylvania 16833.
3. On October 22, 2002 Plaintiffs entered into a contract with Defendant to paint exterior of their home.
4. As per contract Defendant was to prepare exterior of the house for painting. Defendant was informed that the house had been previously painted.
5. Plaintiffs expressed concern about the weather

5) possibly being too cold. This was addressed in the contract.

6. Defendant guaranteed, in the written contract, Plaintiffs would never have to paint house again.

7. In June 2005 Plaintiffs went to wash their home (having been advised by Defendant to wait at least 2 years) and noticed paint was cracking and peeling off two sides of the house.

After several phone calls contacted Defendant. He stated "I'm not painting your house again call Sherwin-Williams."

8. Representative from Sherwin-Williams examined home. He felt that the weather was too cold and wet when house was painted that's why paint cracked.

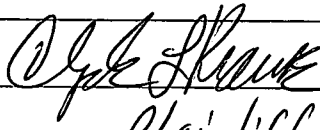
9. Defendant came and looked at house. offered to touch up problem areas. Plaintiffs asked him to wait until Summer of 2006 to avoid any cold weather. Defendant agreed to put us in his book.

10. Never heard from Defendant again until Plaintiffs filed Civil Complaint July 13, 2006.

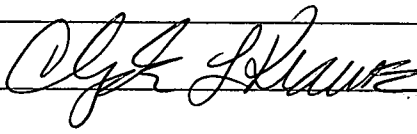
Defendant called (after receiving notice) stating he didn't know where the time had went, told to call back and speak with husband. Defendant then stated "If you lose this case I don't have to do anything."

11. Judgment was entered for Plaintiff on September 29, 2006 in the amount of \$1,089.00.

Wherefore Plaintiffs demand judgment against Defendant in the amount of \$1,089.00, plus interest, court costs and such other reasonable costs as the court may allow.

 Susan M. Krause  
Plaintiff

I verify that the statements made in this Complaint are true and correct.

 Susan M. Krause

William A. Shaw  
Prothonotary/Clerk of Courts

NOV 09 2006

FILED

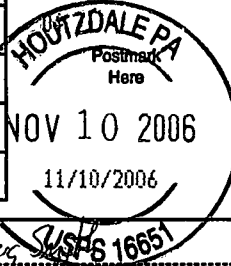
7005 1820 0004 3471 6697

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

CORWENSVILLE PA 16833  
**OFFICIAL USE**

Postage	\$	\$0.39	0651
Certified Fee		\$2.40	
Return Receipt Fee (Endorsement Required)		\$1.85	
Restricted Delivery Fee (Endorsement Required)		\$0.40	
Total Postage & Fees	\$	\$4.84	11/10/2006



Sent To  
Corwensville Painters Greg  
Street, Apt. No.;  
or PO Box No. 103 Gilbert St  
City, State, ZIP+4  
Corwensville PA 16833

### **Certified Mail Provides:**

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

### **Important Reminders:**

- Certified Mail may ONLY be combined with First-Class Mail® or Priority Mail®.
- Certified Mail is *not* available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "*Restricted Delivery*".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

**IMPORTANT:** Save this receipt and present it when making an inquiry. Internet access to delivery information is not available on mail addressed to APOs and FPOs.

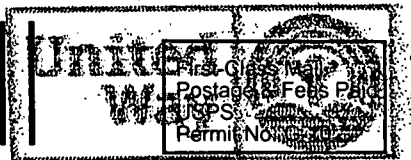
PS Form 3800, June 2002 (Reverse)

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee x <i>Wendy G. Cole</i></p> <p>B. Received by (Printed Name) C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p><i>Corwensville Painters Greg Smith 103 Albert St Corwensville PA 16833</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label) <i>11 17005 1820 10004 13471 16697 1</i></p>	

UNITED STATES POSTAL SERVICE

ALTOONA PA 16601

13 NOV 2006 PM 2 T



• Sender: Please print your name, address, and ZIP+4 in this box •

Clyde Krause  
611 McAteer St  
Holtzdale PA  
16651

001





FILED

NOV 29 2006

0/11:45/12

William A. Shaw  
Prothonotary/Clerk of Courts

NO CFAP CASE

Court of Common Pleas Clearfield County  
Pennsylvania

Clyde and Susan Krause  
Plaintiff / Appellant

District Justice Appeal  
CASE NO. 06-1726 CD

VS.

Cocwensville Painter / Greg Smith  
Defendant / Appellee

### Certificate of Service

I, Clyde and Susan Krause, Plaintiff above named, do hereby certify that on 18<sup>th</sup> day of November, 2006, I caused a certified copy of the Complaint to be mailed, first class - certified receipt, to the Defendant at his address as follows:

Cocwensville Painter / Greg Smith  
103 Hilbut St  
Cocwensville PA 16833

Clyde Krause  
Susan Krause  
Clyde Krause  
Susan Krause

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

Clyde & Sue Krause  
(Plaintiff)

611 McAHEER ST.  
(Street Address)

HOUTZDALE, Pa. 16651  
(City, State ZIP)

CIVIL ACTION

No. 06-1726 CP

Type of Case: CIVIL

Type of Pleading: ANSWER

VS.

Greg Smith/CURWENSVILLE  
(Defendant) ~~PAINTERS~~

103 FILBERT ST.  
(Street Address)

CURWENSVILLE, Pa. 16833  
(City, State ZIP)

Filed on Behalf of:

Defendant  
(~~Plaintiff~~/Defendant)

Greg Smith  
(Filed by)

103 FILBERT ST.  
(Address)

236-2244  
(Phone)

Greg Smith  
(Signature)

FILED

DEC 28 2006

0 2:55/um  
William A. Shaw  
Prothonotary/Clerk of Courts

1 CERT TO ATT



103 FILBERT STREET

CURWENSVILLE PA, 16833

Clyde and Susan Krause  
(Plaintiff/Appellee)

vs

District Justice Appeal  
case no. 06-1726 CDCurwensville Painters/ Greg Smith  
(Defendant/ Appellant)ANSWER

Now comes the Defendant, Curwensville Painters, Greg Smith who answers the complaint

1. Agree with paragraph 1.
2. Agree with paragraph 2.
3. Agree that we would paint the exterior of the Krause house, which has four main sides with eaves, window frames, shutters and an attached garage which was also painted. The house was painted over a two week period beginning around 10/22/02, and was completed around 11/10/2002.
4. Agree with paragraph 4 ... especially with the fact that the house had been previously painted, and I believe the house had been previously painted by the home owner, which may or may not be relevant. What is relevant is Curwensville Painters was "to prepare the exterior of the house for painting" which was done as follows: the entire house was pressured washed with an industrial power washer, left to dry two days, was scraped, sanded and wiped clean before any top of the line exterior paint was applied.
5. Agree that we both had concerns about the possibility of the weather dropping below 35 degrees in late October and not returning to 35 degrees or higher, which is the recommended temperature (above 35 degrees) for applying Sherwin Williams best exterior paint called Super Paint. Mr. Krause brought weather records to the first hearing which in fact showed that most of the days during this two week period were over 40 degrees, and in fact we got the "Indian Summer" we were hoping to get when 3 or 4 days were over 50 degrees, which is the time frame we painted this house. My records show I hired two extra painters for a total of 5 experienced painters. We worked 4½ days over this two week period and never painted when the temperature dropped below 35 degrees.  
Note: Mr. Krause never gives dates or even says we painted in weather below 35 degrees (because we never did). We only discussed the possibility of cold weather and that we might have to finish the house in the spring of 2003. But, the weather cooperated and we finished the house in 2002.



103 FILBERT STREET

CURWENSVILLE PA, 16833

page 2 -- Krause vs. Curwensville Painters

6. Agree to the extent that Sherwin Williams' Super Paint has an expected lifetime of up to 25 years, as long as the original owner stays in the house, which means the paint warranty isn't transferable to a new house owner. Once a house is painted with Super Paint the home owner should never need to paint their house again for up to 25 years, which is what the paint guarantee states on the can label. The paint is guaranteed not to peel but the labor to have it applied is not guaranteed and is the home owner's responsibility. Sherwin Williams has already agreed to give Mr. Krause approximately 6 gallons of paint for the back of his house, which except for a couple of flakes next to the chimney along the alley, this is the only area of the house that is peeling, which happens to be the southern exposure side of the house getting sunlight directly for almost all day long. The guarantee that was given in the contract was for the paint, and not the labor.
7. I agree that I told Mr. Krause <sup>to wait</sup> a while before taking a pressure washer to the house. I totally disagree that I said "I'm not painting your house again call Sherwin Williams." He then says in paragraph 9 that I "came and looked at the house, offered to touch up problem areas" which is true. Why the contradiction? I told him at that time I was hooked for most of the summer and would stop by when I was working in the area.
8. I just got off the phone with the manager of Sherwin Williams. I read paragraph 8 to him. His response was, and I paraphrase, "he forgot one key word ... possibly. I said cold weather was possibly to blame and offered to have the paint sent to a lab to confirm that it was possibly too cold." And here in lies the entire case for Mr. Krause: Why did a few areas on the back sunny side of the house peel and a small area next to the chimney? Why did the eaves, window frames, shutters, garage sides, the front of the house, all shady sides on the house, why did nothing peel in these areas around the house? Was it too cold to paint as Mr. Krause now contends, or was it something else perhaps beyond the control of any painting contractor?
- The paint was sent to a lab. Before I discuss the lab results, I want to first type the entire report into the response of paragraph 8. The lab shows that temperature had nothing to do with it ... there was a problem with the previous paint and the paint preparation of the area the last time the house was painted as the following lab report shows:

- more -



103 FILBERT STREET

CURWENSVILLE PA, 16833

page 3 -- Krause vs. Curwensville Painters

8. (continued response) entire report typed into the record

COMPLAINT    INVESTIGATION    REPORT

DATE: 8/29/05

TO: Christopher Thomas

FOR: 1294 - 39

STORE NO: 1294

CITY: Clearfield, Pa

PHONE NO: 814-765-3149

REX NO: B50WZ1 / A89W507

BATCH DATE: NA

Material on hand: 5 gallons

CUSTOMER: Curwensville Painters

Problem: Adhesion

See the attached Product Quality Report 1294 - 39

Quality assurance: Test results/ corrective action if applicable:

The smooth profile and dirt found on the back of the paint chips indicates that the peeling failure was caused by inadequate surface preparation. The B50WZ1 can be seen sandwiched between layers of white paint. The B50WZ1 / A89W507 coating is adhering to the previous coating tightly. The paint chips measure 8 to 9 mils in dry film thickness and are composed of 3 coats of paint.

Remove all loose poorly adhering paint. All surface contamination such as oil, grease, loose paint, mill scale, dirt, foreign matter, rust, mold, mildew, mortar efflorescence, and sealers must be removed to assure sound bonding to the old paint. Do not use hydrocarbon solvents for cleaning. Clean the surface with an industrial emulsifying detergent, rinse and allow to thoroughly dry. All glossy surfaces should be dulled by sanding or buffing prior to painting. Remove the sanding dust. All bare cleaned steel must be primed with a recommended primer. Follow with two coats of a recommended topcoat.

Refer to S-W 12 previously coated surfaces in the Sherwin-Williams Painting & Coating Systems manual for recommendation.

end of report

- more --



103 FILBERT STREET

CURWENSVILLE PA, 16833

page 4 -- Krause vs. Curwensville Painters

8. (continued response) The first paragraph of the report refers directly to the issue of this case: Was it too cold to paint or was the adhesion problem due to something else beyond the control of the contractor? The report says "dirt found on the back of the paint chips indicates that the peeling failure was caused by inadequate surface preparation" of the previously painted area the last time the house was painted by someone else. The letter and number codes B50WZ1 / A89W507 are the two types of paint that we put on the building -- Kem Kromik metal primer and 25 year Super Paint. The report says "the B50WZ1 (metal primer) can be seen sandwiched between layers of white paint" sandwiched between the first old layer and the outer layer which is the Super Paint. The old paint came loose from the building with the two new coats of paint "adhering to the previous coating tightly." Keep in mind the old and new paint lasted almost three (3) years before cracking and peeling loose. Weather, specifically cold weather had nothing to do with it otherwise if it was too cold to paint, all of the paint around the building would have peeled and flaked off -- especially on the colder shaded sides of the house. Paint did not peel off around the house -- only on the sunny side where hot summer temperatures actually expand the paint breaking it away from the exterior of the house.
- This report was introduced at the first hearing, and with this information alone, the judgement should not have been against Curwensville Painters. The house was washed, scraped, sanded and wiped clean with no apparent loose paint anywhere. Both Mr and Mrs. Krause both agreed at the first hearing that "the back of the house was not peeling, only rusting some" which I agree with, which reaffirms that not only was it warm enough to paint the house, there was no visible loose paint anywhere when we gave the house two complete coats of Sherwin Williams' paint.
- On the other hand had the report shown that only two layers of paint composed the paint chips analyzed, the two layers of paint that we applied, then we might be able to say it was probably too cold to paint, or the area wasn't cleaned well enough. But, that is not what the report says. The paint we applied is "adhering to the previous coating tightly." There is no shown negligence against Curwensville Painters and the report confirms it.
9. Agree with paragraph 9 with the following observation: I went to the Krause house in early October 2005 and saw that just a few areas were peeling on the house. I was actually very relieved thinking that paint was peeling everywhere, which I was relieved to see just a few small areas. I offered to return within a few days to correct the problem area since I was working in the area. It was not too cold in October 2005 to make these corrections. I don't know why and was surprised that once I finally found time to get to Houtzdale he refused the offer.

-- more --



103 FILBERT STREET

CURWENSVILLE PA, 16833

page 5 -- Krause vs. Curwensville Painters

9. (continued response) I agree that I said I would place their name in my scheduling book. They were penciled in for early summer when and if I had another nearby job. I have an answering machine on 24 hours a day. I did not call the Krause's to explain that all my jobs were not in their area and they never called me to ask when I planned to be there. They chose to take us to court. Yes, I did call once I got the notice and talked to her and again offered to paint the back of the house with the free Sherwin Williams paint. But, Mrs. Krause said something like that isn't going to be enough now. You will need to talk to my husband about this now. So, once again she refused to allow us the opportunity to make corrections, and I said, "Ok... you know if you go to court and lose this case I won't have to paint anything." I think the final words from both of us were "we will see you in court."
10. Agree with paragraph 10
11. Agree that the judgement was entered for the plainfiff. I have shown that an error was made with this judgement against Curwensville Painters. We want the judgement dropped and any and all fees such as my filing fees for this appeal be paid by the plaintiff.

Had the report from the lab been more carefully considered, we would not find ourselves filing this appeal.

In Summary and conclusion:

12. This is a very important case for all painting contractors. Weather has been shown not to be a factor. I am providing the weather history of the time frame when this job was completed. Please remember that if we did paint when it was too cold (which he never shows that we did) one would think the coldest sides of the house, the northern side and the shaded sides would have peeled at least a little or actually extensively. This did not occur. The peeling occurred because the original paint lifted from the exterior surface and took the new paint with it. Had this occurred within a few months or even inside a year's time, perhaps there would be some fault attributed to the contractor. I believe by previous case law, a contractor must back the labor for a period of one (1) year. We are talking about almost three (3) years in this case. The Krause's and I do agree that there was no peeling on the back of the house when we painted the house with primer and final coat paint. Once the area has been scraped, sanded and cleaned with no visible or apparent loose paint, what more can a painting contractor do? We cannot be responsible for cheap paint applied incorrectly by a previous home owner or by another contractor.

-- more --



103 FILBERT STREET

CURWENSVILLE PA, 16833

page 6 -- Krause vs Curwensville Painters

12. (conclusion continued) If a painting contractor is going to be held responsible for someone else's paint applied before him, and with no apparent or visible problems evident while applying new paint, if painting contractor's are going to be held responsible for problems with another painter's choice of cheap paint or someone else's inadequate preparation, there will be no painting contractors painting previously painted buildings because we might be held responsible for someone else's mistakes. We cannot see under old paint to see if it was properly prepared; cheaper paint may only have a life expectancy of 8 - 12 years, but at the time new paint was applied over it there appeared to be no problems. Paint shrinks in the cold weather and expands in the heat. The better paints are elastic enough to give and take this constant shrinking and expansion with the season's changing. Paint wears out like anything else especially with the sun directly hitting on southern exposed sides. Ultraviolet rays are paint's worst enemy. After a while the elasticity wears out and the paint cracks then peels off. This is what has happened to the back of the Krause house. The old paint lost its flexibility with the years passing and the direct rays from the sun.

Almost three years had passed before the old paint broke down. How many years can a paint contractor be held liable for a previous paint job? Five years? Ten years? The full 25 years of Super Paint's expected flexibility?

Contractor's are held liable for one year, the passing of all four cold and hot seasons. If the paint comes off inside a year, it might be the contractor's fault. But, he is not liable forever or for even three years if someone else's paint comes loose. That is why it is so important that this appeal be carefully considered and the correct judgement be given. Unless this judgement is over turned, it could spell the end for painters ever painting a previously painted exterior (or interior) building.

I verify that the statements made in this response to the complaint are true and more accurately give a clearer and truer interpretation of why some paint peeled from a couple of areas on the Krause house.

Greg Smith

-- end --





Use the BACK button of your browser to return to the previous page.

T = Trace

N = Not Reported by the Government

TmaxF - High Temperature (degrees Fahrenheit)

TminF - Low Temperature (degrees Fahrenheit)

TmeanF - Mean Temperature (degrees Fahrenheit)

PrecipIn - Precipitation (inches)

SnowIn - Snow (inches)

CDD - Cooling Degree Days

HDD - Heating Degree Days

GDD - Growing Degree Days

A Note about Recent Not Reported Precipitation: For more recent data (generally one to three months from the current date), a number of stations do not immediately report zero precipitation thus the report will show N for not reported. 99% of the time, the data will later be merged by the government into the station report to show a zero.

### Philipsburg 2 S, Philipsburg, PA 16866

Date	TmaxF	TminF	TmeanF	PrcpIn	SnowIn	CDD	HDD	GDD
10/18/2002	45	34	39.5	0.10	0.00	0.0	25.5	0.0
10/19/2002	52	35	43.5	0.03	0.00	0.0	21.5	0.0
10/20/2002	52	30	41.0	0.13	0.00	0.0	24.0	0.0
10/21/2002	52	31	41.5	0.00	0.00	0.0	23.5	0.0
10/22/2002	52	28	40.0	0.00	0.00	0.0	25.0	0.0
10/23/2002	60	29	44.5	0.00	0.00	0.0	20.5	0.0
10/24/2002	51	29	40.0	0.00	0.00	0.0	25.0	0.0
10/25/2002	38	30	34.0	T	N	0.0	31.0	0.0
10/26/2002	49	34	41.5	0.73	N	0.0	23.5	0.0
10/27/2002	54	44	49.0	0.01	0.00	0.0	16.0	0.0
10/28/2002	48	36	42.0	0.00	0.00	0.0	23.0	0.0
10/29/2002	47	25	36.0	0.00	0.00	0.0	29.0	0.0
10/30/2002	36	25	30.5	0.49	0.80	0.0	34.5	0.0
10/31/2002	32	27	29.5	0.29	0.70	0.0	35.5	0.0
11/1/2002	39	26	32.5	0.00	0.00	0.0	32.5	0.0
11/2/2002	38	25	31.5	0.05	0.00	0.0	33.5	0.0
11/3/2002	41	26	33.5	0.00	0.00	0.0	31.5	0.0
11/4/2002	45	28	36.5	T	T	0.0	28.5	0.0
11/5/2002	38	29	33.5	0.02	0.00	0.0	31.5	0.0
11/6/2002	40	29	34.5	0.38	0.00	0.0	30.5	0.0
11/7/2002	41	33	37.0	0.08	0.00	0.0	28.0	0.0
11/8/2002	43	33	38.0	0.00	0.00	0.0	27.0	0.0
11/9/2002	62	41	51.5	0.00	0.00	0.0	13.5	1.5
11/10/2002	62	43	52.5	T	0.00	0.0	12.5	2.5
11/11/2002	64	53	58.5	0.22	0.00	0.0	6.5	8.5
11/12/2002	60	38	49.0	0.00	0.00	0.0	16.0	0.0
11/13/2002	44	38	41.0	0.22	0.00	0.0	24.0	0.0
11/14/2002	44	35	39.5	0.00	0.00	0.0	25.5	0.0

# Domestic Return Receipt

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>		<p>A. Signature <input checked="" type="checkbox"/> <i>Susan Krause</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Susan Krause</i> C. Date of Delivery <i>12-29-06</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
1. Article Addressed to:  <i>Clyde + Susan Krause</i>		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from seal) <i>7006 0810 0001 4503 8823</i>		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

For:  
Clyde & Susan Krause

VS

Curwensville Painters  
Greg Smith

Case number:

06-1726 CD

FILED

JAN 12 2007  
07:25/unc  
William A. Shaw  
Prothonotary/Clerk of Courts  
NO COPY. ONLY

CA

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

06-1726 CD		DATE PRESENTED	
CASE NUMBER	TYPE TRIAL REQUESTED	ESTIMATED TRIAL TIME	
Date Complaint Filed: <u>7/13/06</u>	<input checked="" type="checkbox"/> Jury <input type="checkbox"/> Non-Jury <input checked="" type="checkbox"/> Arbitration	<u>1/2</u> Days	
PLAINTIFF(S) <u>Clyde and Susan Krause</u>			
DEFENDANT(S) <u>Curwensville Painters, Gregory Smith</u>			
ADDITIONAL DEFENDANT(S) _____			
		Check Block if a Minor is a Party to the Case	
JURY DEMAND FILED BY: <u>\$1,000 + Court fees</u>		DATE JURY DEMAND FILED: _____	
AMOUNT AT ISSUE	CONSOLIDATION	DATE CONSOLIDATION ORDERED	
<u>more than</u> \$ _____	<input type="checkbox"/> yes <input type="checkbox"/> no	<b>FILED</b> JAN 12 2007 01/24/07	
PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST. <small>Witness, Shaw Prothonotary/Clerk of Courts</small>			
I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.			
<u>Clyde and Susan Krause</u>		<u>378-8642</u>	
FOR THE PLAINTIFF		TELEPHONE NUMBER	
<u>Greg Smith</u>		<u>236-2244</u>	
FOR THE DEFENDANT		TELEPHONE NUMBER	
FOR ADDITIONAL DEFENDANT		TELEPHONE NUMBER	

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

CLYDE AND SUSAN KRAUSE

vs.

CURWENSVILLE PAINTERS

:  
:  
: No. 06-1726-CD  
:  
:

**ORDER**

NOW, this 3<sup>rd</sup> day of April, 2007, it is the ORDER of the Court that the above-captioned matter is scheduled for Arbitration on **Tuesday, April 24, 2007 at 1:00 P.M.** in the Conference/Hearing Room No. 3, 2<sup>nd</sup> Floor, Clearfield County Courthouse, Clearfield, PA. The following have been appointed as Arbitrators:

James A. Naddeo, Esquire, Chairman

Girard Kasubick, II, Esquire


Mark A. Falvo, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. **The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and each member of the Board of Arbitrators.** For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local Rule of Court.

FILED 6 CC  
013:0234 CA  
APR 03 2007  
(GR)

William A. Shaw  
Prothonotary/Clerk of Courts

BY THE COURT

  
FREDRIC J. AMMERMAN  
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

Clyde Krause and Susan Krause

vs.

Curwensville Painters and Greg Smith

No. 2006-01726-CD

OATH OR AFFIRMATION OF ARBITRATORS

Now, this 24th day of April, 2007, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

James A. Naddeo, Esq.

Girard Kasubick, Esq.

Mark A. Falvo, Esq.

*James A. Naddeo*  
Chairman  
*Girard Kasubick*  
*Mark A. Falvo*

Sworn to and subscribed before me this  
April 24, 2007

*William A. Shaw*  
Prothonotary

FILED Notice to  
10/2/25/07 PAF-  
APR 24 2007 611 McAtear  
Houtzdale, PA  
William A. Shaw  
Prothonotary/Clerk of Courts  
1665  
Notice to Def-  
101 Filbert St.  
Curwensville, PA  
16833

AWARD OF ARBITRATORS

Now, this 24th day of April, 2007, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

*for Plaintiffs in the amount*  
*of 1,100.00*

*James A. Naddeo* Chairman  
*Girard Kasubick*  
*Mark A. Falvo*

(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this 24th day of April, 2007, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT

*William A. Shaw*  
Prothonotary

By \_\_\_\_\_

Clyde Krause and Susan Krause

Vs.

Curwensville Painters and Greg Smith

: IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY  
: No. 2006-01726-CD  
:

COPY

NOTICE OF AWARD

TO: CLYDE KRAUSE and SUSAN KRAUSE

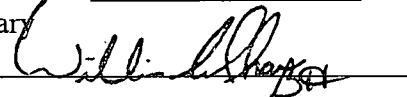
You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on April 24, 2007, and have awarded:

For Plaintiffs in the amount of \$1,100.00.

William A. Shaw

Prothonotary

By



April 24, 2007

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

Clyde Krause and Susan Krause

Vs.

Curwensville Painters and Greg Smith

: IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY  
: No. 2006-01726-CD  
:

COPY

NOTICE OF AWARD

TO: CURWENSVILLE PAINTERS and GREG SMITH

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on April 24, 2007, and have awarded:

For Plaintiffs in the amount of \$1,100.00.

William A. Shaw

Prothonotary

By 

April 24, 2007

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

In the Court of Common Pleas Clearfield County,  
Pennsylvania

Clyde and Susan Krause  
Plaintiff/Appellant

In the Court of Common Pleas  
of Clearfield County  
No. 2006-01726-CD

vs.

Cumensville Painters/Greg Smith

Praecipe for Entry of Judgment  
To the Prothonotary:

Kindly enter judgment against the Defendant  
above named in the amount of \$1,100.00 plus costs  
for the Defendant failure to answer.

I hereby certify that a Notice of Intention  
to Enter Judgment was mailed or delivered to the  
Defendant on June 18, 2007, being at least  
ten (10) days prior to the date of filing of this  
Praecipe. A true and correct copy of the Notice  
of Intention to Enter Judgment mailed or  
delivered in this case is attached to the Praecipe.

FILED

JUL 12 2007

William A. Shaw  
Prothonotary/Clerk of Courts

Piff. pd.  
\$20.00  
Statement to  
Piff

Notice of  
ICC to Def.

(60)

Clyde Krause  
Clyde Krause  
Susan Krause  
Susan Krause

July 12, 2007



6-11-07

Greg Smith  
Cucwensville Painters

We are returning your check # 5323 in the amount of \$100.<sup>00</sup>. We have been advised by our attorney to agree to 2 (two) equal payments of \$550.<sup>00</sup> (Five Hundred Fifty Dollars) each to be paid on or before June 30, 2007 and July 30, 2007. If a payment is missed or a check does not clear we will take further action such as a lien against your assets.

This is ~~also~~ a notice that we are filing for judgement to protect our interests.

We do not want this to drag out any longer than it has.

Clyde and Susan Krause  
~~Clyde Krause~~  
Susan Krause

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Conwensville Painters  
Greg Smith  
103 Filbert St  
Conwensville PA.  
16833

## 2. Article Number

(Transfer from service label)

7006 2150 0004 0384 2345

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

X

☐ Agent  
☐ Addressee

## B. Received by (Printed Name)

Wendy Emley

## C. Date of Delivery

6/18/07

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

Wendy G. Emley

## 3. Service Type

☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

## 4. Restricted Delivery? (Extra Fee)

☐ Yes

COPY

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

Clyde Krause and Susan Krause

Vs.

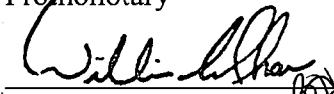
No. 2006-01726-CD

Curwensville Painters/Greg Smith

To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$1,100.00 on July 12, 2007.

William A. Shaw  
Prothonotary



William A. Shaw

COPY

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

Clyde Krause  
Susan Krause  
Plaintiff(s)

No.: 2006-01726-CD

Real Debt: \$1,100.00

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Curwensville Painters  
Greg Smith  
Defendant(s)

Entry: \$20.00

Instrument: Arbitration Judgment

Date of Entry: July 12, 2007

Expires: July 12, 2012

Certified from the record this 12th day of July, 2007.



William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

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

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

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

Clyde Krause  
Susan Krause  
Plaintiff(s)

No.: 2006-01726-CD

Real Debt: \$1,100.00

Atty's Comm: \$

Costs: \$

Int. From: \$

Entry: \$20.00

Instrument: Arbitration Judgment

Date of Entry: July 12, 2007

Expires: July 12, 2012

Vs.

Curwensville Painters  
Greg Smith  
Defendant(s)

**FILED**  
NOV 02 2007  
12:10 PM  
William A. Shaw  
Prothonotary/Clerk of Courts

Certified from the record this 12th day of July, 2007.

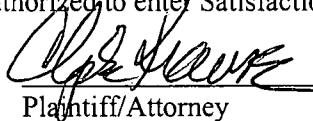
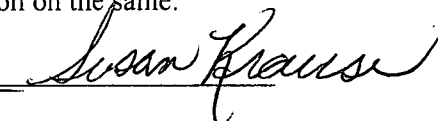


William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on October 29, 2007, of defendant full satisfaction of this Judgment,  
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

   
Plaintiff/Attorney

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

**CIVIL DIVISION**

**CERTIFICATE OF SATISFACTION OF JUDGMENT**

Clyde Krause  
Susan Krause

No.: 2006-01726-CD

Vs.

Debt: \$1,100.00

Curwensville Painters  
Greg Smith

Atty's Comm.:

Interest From:

Cost: \$7.00

NOW, Friday, November 02, 2007 , directions for satisfaction having been received, and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 2nd day of November, A.D. 2007.

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Prothonotary

For  
424-arbitration

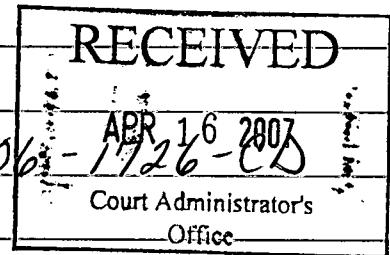
Clyde and Susan Krause

vs.

No. 06-1726-CD

Cucwensville Painters/

Greg Smith



A. On October 22, 2002 we entered into a written contract with Cucwensville Painters/Greg Smith to paint the exterior of our home. In June 2005 we went to wash the exterior of our home (having been advised by Mr. Smith to wait at least 2 years.) At that time we noticed the paint was cracking and peeling. We contacted Mr. Smith and informed him there was a problem. He stated "I'm not painting your house call Sherwin Williams." We contacted a representative of Sherwin-Williams. He came and looked at our home and said there was a definite problem. He felt that the house was not properly prepared and that it may have been too cold. We feel Mr. Smith violated our written contract in which he guaranteed "a top of the line paint job" and that we "will never need to paint our house again."

B. none

C. none

D. We will present copy of our contract, photos of our home, letter advising of problem, paint label, weather charts, paint chips, estimates to repaint house, statement of prior painter and copy of judgement.

Clyde Krause  
Susan Krause

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

CLYDE AND SUSAN KRAUSE

vs.

CURWENSVILLE PAINTERS

No. 06-1726-CD

**ORDER**

NOW, this 3<sup>rd</sup> day of April, 2007, it is the ORDER of the Court that the above-captioned matter is scheduled for Arbitration on **Tuesday, April 24, 2007 at 1:00 P.M.** in the Conference/Hearing Room No. 3, 2<sup>nd</sup> Floor, Clearfield County Courthouse, Clearfield, PA. The following have been appointed as Arbitrators:

James A. Naddeo, Esquire, Chairman

Girard Kasubick, II, Esquire

Mark A. Falvo, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. **The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and each member of the Board of Arbitrators.** For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local Rule of Court.

BY THE COURT:  
/s/ Fredric J Ammerman

FREDRIC J. AMMERMAN

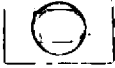
President Judge  
I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

APR 03 2007

Attest.

*William L. Brown*  
Prothonotary/  
Clerk of Courts





12  
10-11

TO: Court Administrator's Office  
From: Cawsonville Painters  
For: Pre-Trial (Arbitration)  
memorandum Statement, etc

For - Case  
NO. 06-1726-CD

Greg Smith

761-1165

"OR"

577-9449

He will stop back  
after 1:00

Pre-Trial (Arbitration) Memorandum for Clearfield County  
Civil Division

Clyde and Susan Krause

vs.

No. 06-1726 - CD

Curwensville Painters

a. Statement of the case follows this cover page

b. none

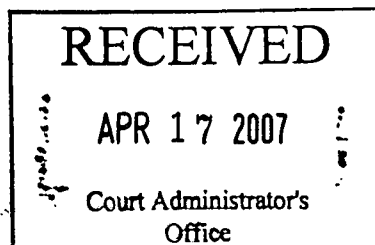
Witness list

c. Christopher Thomas -- the manager of Clearfield Sherwin Williams will explain the lab report of the peeling paint which was taken from the Krause house

Wendy Emley -- was with me when I looked at the house in the fall of 2005 and was present at the first hearing in Houtzdale

d. no bills to offer, but we have provided the weather history of that period and since I quoted the original Complaint and my Answer, it will be provided with this Memorandum

- at least one Sherwin-Williams charge invoice for the period between October 22, 2002 and November 10, 2002 will be presented at the hearing



*Greg Smith*

Pre-Trial Statement, Civil Division

Clyde and Susan Krause

vs.

No. 06-1726 - CD

Curwensville Painters

Arbitration scheduled on Tuesday, April 24, 2007 at 1:00 P.M.

The following is from Curwensville Painters, Greg Smith  
Today's Date: April 15, 2007

Copies to: James Naddeo  
Girard Kasubick  
Mark Falvo

Court Administrator's Office

Clyde and Susan Krause

What we will find in this packet includes:

1. A summary statement from Curwensville Painters
2. A copy of the original complaint from Clyde and Susan Krause
3. A copy of the "Answer" to the complaint
4. Weather records when the Krause house was painted
5. A copy of the lab report which analyzed why some paint peeled off
6. The name of our expert witness who will explain the lab report
7. A one page history/resume of Curwensville Painters

We feel the central questions to be answered in this case are:

1. Was it too cold for proper paint adhesion when this house was painted?
2. Was the house adequately cleaned and prepared for painting using standard pre-painting preparation methods?
3. Are we going to accept the painting lab's report that concludes an earlier previous coat of paint cracked and peeled taking the new paint with it which was "adhering to the previous coating tightly" ?
4. Are contractors, specifically painting contractors, going to be held responsible for previous work completed by other contractors which might not be up to traditional standards?
5. And finally, if the original magistrate's decision is not over turned, are we now going to change contractor's labor liabilities from the current standard of one year to three years or more even if it is shown the contractor in question was not shown to be negligent and that the contractor in question did in fact perform his work properly and within the painting trade's standards?

In the fall of 2002 Curwensville Painters agreed to paint the two story house of Clyde and Susan Krause. Naturally, being late in the year, we discussed the possibility that the temperature could drop below 35 degrees and stay there, which would make it too cold to apply Sherwin Williams' Super Paint. I explained to them that I was going to hire two extra painters for a total of five very experienced painters (including myself), and that we should be able to finish the house before the cold weather permanently sets in. In fact, as the weather records will show (provided later), between October 22, 2002 and November 10, 2002, (the period when the house was painted) during normal daylight working hours, the temperature was above 35 degrees 19 of the 20 days, and went as high as 60 degrees three of those days, and was 64 degrees November 11, 62 degrees November 12, and in the 40's the days to come after that. I mention these warm temperatures because they occurred after the house was painted which gave us even more assurances that the paint had adequate time to dry and that the weather had nothing to do with the paint that cracked and peeled.

Pre-painting and house preparation methods:

Between the period of October 22, 2007 and November 10, 2007 five painters worked four and ½ days between the hours of 9:00 - 3:30 properly preparing and painting the Krause house. But, first I want to mention the exterior of the house is not wood; it is a type of metal siding. Wood siding would be very risky to paint in late October as it could trap moisture behind the paint. But, this house has metal siding... After setting up scaffolding, ladders and numerous 24 foot walk on connecting stages, we power washed the entire house with controlled high pressure water. This in and by itself removes about 80 - 90 percent of the dirt build up and loose paint. The house is left to dry two days.

The morning hours are spent scraping, sanding, and wiping everything clean. The hours between 11:00 - 2:00 are when most of the painting is done. We scraped, sanded and wiped everything clean before we painted the area.

The two sides of the house that have paint peeling are the sides which receive the most sunlight. The back of the house, ironically, which has the most cracked and peeling paint, is the warmest side of the house. But, the cold shaded sides of the house do not have any peeling paint, which further reinforces the fact that cold weather did not cause this paint to peel.

So, why did it peel? Before the lab report came back we really could not understand why it cracked and peeled. We have painted over 1000 houses including 86 churches, the Rowland Theater interior restoration and we even painted the judges chambers, the court house hallways and both court rooms here at the court house. And rarely does any paint crack or peel which is why I offered to touch up the problem areas:" (quoted from the Krause Complaint, point number 9, provided with this packet).

The Krause's declined the offer at that time even though I was working in the area and the temperatures were well above 35 degrees. I said we would do the "touch ups" the following spring or when we were working in the area. (refer to my Answer response, number nine, which is provided with this packet). The spring and early summer of 2006 was a very busy and challenging time for me as I was taking care of my father who was dying of cancer, and I was taking my step grandson to Pittsburgh for a future kidney transplant. I did not inform the Krause's of my schedule, and they never called to ask. Instead, they wanted to settle it in court even though I made one more offer to try and make corrections. Since then a lab has analyzed the paint and has determined that the paint we put on is "adhering to the previous coating tightly" (from the provided lab report).

This brings us to question number three concerning the lab report. The entire report was typed into my Answer to their Complaint, as well as the original report which is a little difficult to read and understand. This is why Christopher Thomas has been called upon as our expert witness to explain the report. He is the manager of Clearfield Sherwin Williams who took paint chips from the house and had them analyzed. This report was given to the magistrate at the last hearing and in our opinion should have been enough information to show that the weather had no impact on the peeling paint, especially when the coldest sides did not peel. (Point number 12 in my Answer tries to explain how direct hot sun light expands the paint, and cold below freezing weather slightly shrinks the paint, and that cheaper brands of paint lose their elasticity over a period of time. It then cracks and begins to peel.)

The report says that (referring to the original paint applied by an earlier Painter) "... dirt found on the back of the paint chips indicates failure was caused by inadequate surface preparation." The B50WZ1 [the Sherwin Williams code for Metal primer] can be seen sandwiched between layers of white paint. The [codes for metal primer and Super Paint] is adhering to the previous coating tightly." The paint we applied to the original surface adhered to that layer of paint, but the old original paint eventually cracked away from the metal surface.

This brings us to the fourth question I felt was central to this case: Should I be held responsible for a previous painter's paint, or his poor cleaning methods, when I apply our paint to seeming sound paint applied by someone else?

We can't see under previously painted areas. We can only hope that once we power wash the house, scrape off loose paint, sand even more loose paint away, wipe it clean, put a coat of primer on the house/area (in this case metal primer), sand it again, then put the final coats of paint on the areas, in 99% houses out of a hundred, especially when using top of the line paint products, the house should not need painted for a long time; No paint can last forever. Every house will need painted again at sometime. The paint we used on this house has a 25 year warranty on the paint, but not on the labor. Sherwin Williams has offered and will give the Krause's 4-5 gallons to repaint the back of the house, but the labor to apply it is not covered under any guarantee. This brings us to the fifth and final question central to this case: how long should a contractor's labor be guaranteed?

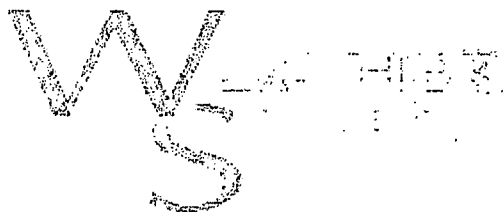
Painting contractors, and as far as I know this includes all contractors, are required to guarantee the labor for a period of one year, which allows the finished product to experience the effects of all four weather seasons, both hot and cold extremes. This is fair to both the contractor and the customer. It is not unreasonable to expect any contractor's work product for a period of one year to not fail, break or in the case of paint, to peel away. If paint isn't applied correctly, the problem will usually manifest itself immediately, and almost always inside a year after both hot and cold cycles have run its course.

Mr. Krause called me "In June 2005 ..." (Complaint, number 7) approaching 3 years after we repainted the house. This is not a problem that occurred inside the one year labor guarantee. In fact it was a problem of nearly 10 years ago when the last painter apparently did not clean the surface well enough, and with the microscopic expansion and contraction, especially on the back of this house which receives thousands of direct sunlight over the years, eventually the paint began to crack which allows water to get behind it and the paint begins to peel off.

At the first hearing Mr. Krause told the magistrate that he wanted his entire house repainted, including shaded sides, the shutters, the window frames even though these areas weren't peeling. Of course I said, "I'm not painting your entire house. It doesn't need it." And even now over 5 1/2 years later, the house looks good except for a few areas where the old paint has begun to break down.

Unless a house has just been built and has never been painted before, painters will always be painting over old paint. Once an area or a house has been power washed, scraped, sanded, wiped clean, primed, lightly sanded again, then painted with the top final coat, what more can a painter do? Are we to sandblast everything? This of course would drive the cost of painting a house beyond the financial reach of most home owners. We feel we did everything we possibly could, following all standard pre-painting scraping, sanding and cleaning methods. We were not shown to be negligent in any way. The weather charts show it was not too cold to be painting; the lab report shows our paint was adhering to the previously painted surface; and what little cracking and peeling there was took place nearly three years after it was painted, nearly two years beyond any traditional standard labor agreements. We gave the house a top of the line professional job and received immediate payment upon request when we were finished because Mr. Krause knew we had done all we could possibly do to give him a top of the line job.

*Greg Smith*



Use the BACK button of your browser to return to the previous page.

T = Trace

N = Not Reported by the Government

TmaxF - High Temperature (degrees Fahrenheit)

TminF - Low Temperature (degrees Fahrenheit)

TmeanF - Mean Temperature (degrees Fahrenheit)

PrecipIn - Precipitation (inches)

SnowIn - Snow (inches)

CDD - Cooling Degree Days

HDD - Heating Degree Days

GDD - Growing Degree Days

A Note about Recent Not Reported Precipitation: For more recent data (generally one to three months from the current date), a number of stations do not immediately report zero precipitation thus the report will show N for not reported. 99% of the time, the data will later be merged by the government into the station report to show a zero.

### Philipsburg 2 S, Philipsburg, PA 16866

Date	TmaxF	TminF	TmeanF	PrcpIn	SnowIn	CDD	HDD	GDD
10/18/2002	45	34	39.5	0.10	0.00	0.0	25.5	0.0
10/19/2002	52	35	43.5	0.03	0.00	0.0	21.5	0.0
10/20/2002	52	30	41.0	0.13	0.00	0.0	24.0	0.0
10/21/2002	52	31	41.5	0.00	0.00	0.0	23.5	0.0
10/22/2002	52	28	40.0	0.00	0.00	0.0	25.0	0.0
10/23/2002	60	29	44.5	0.00	0.00	0.0	20.5	0.0
10/24/2002	51	29	40.0	0.00	0.00	0.0	25.0	0.0
10/25/2002	38	30	34.0	T	N	0.0	31.0	0.0
10/26/2002	49	34	41.5	0.73	N	0.0	23.5	0.0
10/27/2002	54	44	49.0	0.01	0.00	0.0	16.0	0.0
10/28/2002	48	36	42.0	0.00	0.00	0.0	23.0	0.0
10/29/2002	47	25	36.0	0.00	0.00	0.0	29.0	0.0
10/30/2002	36	25	30.5	0.49	0.80	0.0	34.5	0.0
10/31/2002	32	27	29.5	0.29	0.70	0.0	35.5	0.0
11/1/2002	39	26	32.5	0.00	0.00	0.0	32.5	0.0
11/2/2002	38	25	31.5	0.05	0.00	0.0	33.5	0.0
11/3/2002	41	26	33.5	0.00	0.00	0.0	31.5	0.0
11/4/2002	45	28	36.5	T	T	0.0	28.5	0.0
11/5/2002	38	29	33.5	0.02	0.00	0.0	31.5	0.0
11/6/2002	40	29	34.5	0.38	0.00	0.0	30.5	0.0
11/7/2002	41	33	37.0	0.08	0.00	0.0	28.0	0.0
11/8/2002	43	33	38.0	0.00	0.00	0.0	27.0	0.0
11/9/2002	62	41	51.5	0.00	0.00	0.0	13.5	1.5
11/10/2002	62	43	52.5	T	0.00	0.0	12.5	2.5
11/11/2002	64	53	58.5	0.22	0.00	0.0	6.5	8.5
11/12/2002	60	38	49.0	0.00	0.00	0.0	16.0	0.0
11/13/2002	44	38	41.0	0.22	0.00	0.0	24.0	0.0
11/14/2002	44	35	39.5	0.00	0.00	0.0	25.5	0.0



COMPLAINT INVESTIGATION REPORT

DATE: 8/29/06  
TO: Christopher Thomas  
PQR 1294 - 39

STORE NO: 1294  
CITY: Clearfield, PA  
PHONE NO: 814-765-3149

REX NO: B50WZ1 / A89W507  
BATCH DATE: NA  
MATERIAL ON HAND: 5 gallons

CUSTOMER: Curwensville Painters

PROBLEM: Adhesion

See the attached Product Quality Report 1294 - 39.

QUALITY ASSURANCE TEST RESULTS/CORRECTIVE ACTION IF APPLICABLE:

The smooth profile and dirt found on the back of the paint chips indicates that the peeling failure was caused by inadequate surface preparation. The B50WZ1 can be seen sandwiched between layers of white paint. The B50WZ1/A89W507 coating is adhering to the previous coating tightly. The paint chips measure 8 to 9 mils in dry film thickness and are composed of 3 coats of paint.

Remove all the loose poorly adhering paint. All surface contamination such as oil, grease, loose paint, mill scale, dirt, foreign matter, rust, mold, mildew, mortar, efflorescence, and sealers must be removed to assure sound bonding to the old paint. Do not use hydrocarbon solvents for cleaning. Clean the surface with an industrial emulsifying detergent, rinse and allow to thoroughly dry. All glossy surfaces should be dulled by sanding or buffing prior to painting. Remove the sanding dust. All bare cleaned steel must be primed with a recommended primer. Follow with two coats of a recommended topcoat.

Refer to S-W 12 Previously Coated Surfaces in the Sherwin-Williams PAINTING & COATING SYSTEMS manual for recommendations.



103 FILBERT STREET CURWENSVILLE PA, 16833

CURWENSVILLE PAINTERS HISTORY AND REFERENCES

OWNER

Greg Smith  
Bachelor of Science, English  
Master of Arts, English  
22 years of painting experience

OWNER

Daniel Smith  
High School graduate  
Two years at Penn State  
18 years of painting experience

CREW

Two-four subcontractors  
All have more than 10 years of painting experience

WORK SUMMARY

During the past 10 years we have been involved with many types of residential, commercial and industrial painting. We have painted hundreds of homes and businesses, a leather factory, 50 foot storage tanks, and over 60 churches. During the past four years our work focus has been towards restoration of Victorian homes, multi-colored buildings, and old churches. Wood stripping, furniture restoration, and all types of varnishing and staining are our specialties. We are able to reproduce most old plaster designs and offer several wall textures and swirled ceilings. We also build decks, refinish decks, power wash buildings and perform light carpentry and home remodeling.

REFERENCES  
and  
BUILDINGS

Rowland Theatre Restoration Project  
Managers of Sherwin Williams stores, Clearfield & Dubois  
St. Francis Church of Clearfield, Father Hadberg  
Trinity Methodist Church of Philipsburg, John Whitman  
Boyle's Insurance office Buildings, Ron Boyles  
The Mosch Mansion, Dr. George Mosch  
Both Clearfield County Court Rooms, Mike Lytle, commissioner  
West Side Methodist Church of Clearfield  
Hawk Run Russian Orthodox Church  
Philipsburg First Lutheran Church  
Osceola Methodist Church  
Christ Methodist Church of Clearfield  
Lanse Lutheran Church  
St. John's Lutheran Church of Clearfield  
St. Bernard Catholic Church of Falls Creek  
Mt. Zion Methodist Church of Dubois  
St. John's Russian Orthodox Church of Chester Hill  
Howes Leather Plant in Curwensville  
Beard Oil Tanks in Philipsburg  
Colors Galore Painting Company, Jim Hile  
Hallstrom Victorian Mansion, Brockway, Stephanie & Dr. Hallstrom

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

NOV 09 2006

Clyde and Susan Krause  
Plaintiff / Appellant

Attest.

*Wm. A. B.*  
Prothonotary/  
Clerk of Courts

Distict Justice Appeal  
Case NO. 06-1726 CD

VS.

Cucwensville Painters / Greg Smith  
Defendant / Appellee

Type of Pleading:  
Complaint

### Complaint

Now, comes the Plaintiff, Clyde and Susan Krause  
who hereby avers as follows:

1. Clyde and Susan Krause are adult individuals  
whose address is 611 McAteer St, Houtzdale,  
Pennsylvania 16651.
2. Defendant is Cucwensville Painters / Greg Smith an  
adult individual, whose address is 103 Filbert St.  
Cucwensville, Pennsylvania 16833.
3. On October 22, 2002 Plaintiffs entered into a  
contract with Defendant to paint exterior of their  
home.
4. As per contract Defendant was to prepare  
exterior of the house for painting. Defendant was  
informed that the house had been previously painted.
5. Plaintiffs expressed concern about the weather

5) possibly being too cold. This was addressed in the contract.

6. Defendant guaranteed, in the written contract, Plaintiffs would never have to paint house again.

7. In June 2005 Plaintiffs went to wash their home (having been advised by Defendant to wait at least 2 years) and noticed paint was cracking and peeling off two sides of the house.

After several phone calls contacted Defendant. He stated "I'm not painting your house again call Sherwin-Williams."

not true  
8. Representative from Sherwin-Williams examined home. He felt that the weather was too cold and wet when house was painted that's why paint cracked.

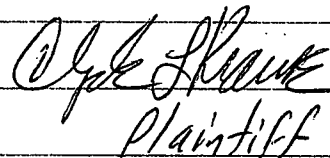
9. Defendant came and looked at house. offered to touch up problem areas. Plaintiffs asked him to wait until Summer of 2006 to avoid any cold weather. Defendant agreed to put us in his book.

10. Never heard from Defendant again until Plaintiffs filed Civil Complaint July 13, 2006.

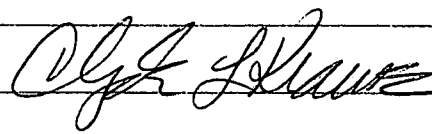
Defendant called (after receiving notice) stating he didn't know where the time had went, Told to call back and speak with husband. Defendant then stated "If you lose this case I don't have to do anything."

11. Judgment was entered for Plaintiff on September 29, 2006 in the amount of \$1089.00.

Wherefore Plaintiffs demand judgment against Defendant in the amount of \$1089.00, plus interest, court costs and such other reasonable costs as the court may allow.

 Susan M. France  
Plaintiff

I verify that the statements made in this Complaint are true and correct.

 Susan M. France



103 FILBERT STREET

CURWENSVILLE PA, 16833

Clyde and Susan Krause  
(Plaintiff/Appellee)

vs

District Justice Appeal  
case no. 06-1726 CD

Curwensville Painters/ Greg Smith  
(Defendant/ Appellant)

ANSWER

Now comes the Defendant, Curwensville Painters, Greg Smith who answers the complaint:

1. Agree with paragraph 1.
2. Agree with paragraph 2.
3. Agree that we would paint the exterior of the Krause house, which has four main sides with eaves, window frames, shutters and an attached garage which was also painted. The house was painted over a two week period beginning around 10/22/02, and was completed around 11/10/2002.
4. Agree with paragraph 4 ... especially with the fact that the house had been previously painted, and I believe the house had been previously painted by the home owner, which may or may not be relevant. What is relevant is Curwensville Painters was "to prepare the exterior of the house for painting" which was done as follows: the entire house was pressured washed with an industrial power washer, left to dry two days, was scraped, sanded and wiped clean before any top of the line exterior paint was applied.
5. Agree that we both had concerns about the possibility of the weather dropping below 35 degrees in late October and not returning to 35 degrees or higher, which is the recommended temperature (above 35 degrees) for applying Sherwin Williams best exterior paint called Super Paint. Mr. Krause brought weather records to the first hearing which in fact showed that most of the days during this two week period were over 40 degrees, and in fact we got the "Indian Summer" we were hoping to get when 3 or 4 days were over 50 degrees, which is the time frame we painted this house. My records show I hired two extra painters for a total of 5 experienced painters. We worked 4½ days over this two week period and never painted when the temperature dropped below 35 degrees.

Note: Mr. Krause never gives dates or even says we painted in weather below 35 degrees (because we never did). We only discussed the possibility of cold weather and that we might have to finish the house in the spring of 2003. But, the weather cooperated and we finished the house in 2002.



103 FILBERT STREET

CURWENSVILLE PA, 16833

page 2 -- Krause vs. Curwensville Painters

6. Agree to the extent that Sherwin Williams' Super Paint has an expected lifetime of up to 25 years, as long as the original owner stays in the house, which means the paint warranty isn't transferable to a new house owner. Once a house is painted with Super Paint the home owner should never need to paint their house again for up to 25 years, which is what the paint guarantee states on the can label. The paint is guaranteed not to peel but the labor to have it applied is not guaranteed and is the home owner's responsibility. Sherwin Williams has already agreed to give Mr. Krause approximately 6 gallons of paint for the back of his house, which except for a couple of flakes next to the chimney along the alley, this is the only area of the house that is peeling, which happens to be the southern exposure side of the house getting sunlight directly for almost all day long. The guarantee that was given in the contract was for the paint, and not the labor.
7. I agree that I told Mr. Krause <sup>to wait</sup> a while before taking a pressure washer to the house. I totally disagree that I said "I'm not painting your house again call Sherwin Williams." He then says in paragraph 9 that I "came and looked at the house, offered to touch up problem areas" which is true. Why the contradiction? I told him at that time I was booked for most of the summer and would stop by when I was working in the area.
8. I just got off the phone with the manager of Sherwin Williams. I read paragraph 8 to him. His response was, and I paraphrase, "he forgot one key word ... possibly. I said cold weather was possibly to blame and offered to have the paint sent to a lab to confirm that it was possibly too cold." And here in lies the entire case for Mr. Krause: Why did a few areas on the back sunny side of the house peel and a small area next to the chimney? Why did the eaves, window frames, shutters, garage sides, the front of the house, all shady sides on the house, why did nothing peel in these areas around the house? Was it too cold to paint as Mr. Krause now contends, or was it something else perhaps beyond the control of any painting contractor?
- The paint was sent to a lab. Before I discuss the lab results, I want to first type the entire report into the response of paragraph 8. The lab shows that temperature had nothing to do with it ... there was a problem with the previous paint and the paint preparation of the area the last time the house was painted as the following lab report shows:



103 FILBERT STREET

CURWENSVILLE PA, 16833

page 3 -- Krause vs. Curwensville Painters

8. (continued response) entire report typed into the record

COMPLAINT      INVESTIGATION      REPORT

DATE: 8/29/05  
TO: Christopher Thomas  
FOR: 1294 - 39

STORE NO: 1294  
CITY: Clearfield, Pa  
PHONE NO: 814-765-3149

REX NO: B50WZ1 / A89W507  
BATCH DATE: NA  
Material on hand: 5 gallons

CUSTOMER: Curwensville Painters  
Problem: Adhesion

See the attached Product Quality Report 1294 - 39

Quality assurance: Test results/ corrective action if applicable:

The smooth profile and dirt found on the back of the paint chips indicates that the peeling failure was caused by inadequate surface preparation. The B50WZ1 can be seen sandwiched between layers of white paint. The B50WZ1 / A89W507 coating is adhering to the previous coating tightly. The paint chips measure 8 to 9 mils in dry film thickness and are composed of 3 coats of paint.

Remove all loose poorly adhering paint. All surface contamination such as oil, grease, loose paint, mill scale, dirt, foreign matter, rust, mold, mildew, mortar efflorescence, and sealers must be removed to assure sound bonding to the old paint. Do not use hydrocarbon solvents for cleaning. Clean the surface with an industrial emulsifying detergent, rinse and allow to thoroughly dry. All glossy surfaces should be dulled by sanding or buffing prior to painting. Remove the sanding dust. All bare cleaned steel must be primed with a recommended primer. Follow with two coats of a recommended topcoat.

Refer to S-W 12 previously coated surfaces in the Sherwin-Williams Painting & Coating Systems manual for recommendation.

end of report

- more --





103 FILBERT STREET

CURWENSVILLE PA, 16833

page 4 -- Krause vs. Curwensville Painters

8. (continued response) The first paragraph of the report refers directly to the issue of this case: Was it too cold to paint or was the adhesion problem due to something else beyond the control of the contractor? The report says "dirt found on the back of the paint chips indicates that the peeling failure was caused by inadequate surface preparation" of the previously painted area the last time the house was painted by someone else. The letter and number codes B5OWZ1 / A89W507 are the two types of paint that we put on the building -- Kem Kromik metal primer and 25 year Super Paint. The report says "the B5OWZ1 (metal primer) can be seen sandwiched between layers of white paint" sandwiched between the first old layer and the outer layer which is the Super Paint. The old paint came loose from the building with the two new coats of paint "adhering to the previous coating tightly." Keep in mind the old and new paint lasted almost three (3) years before cracking and peeling loose. Weather, specifically cold weather had nothing to do with it otherwise if it was too cold to paint, all of the paint around the building would have peeled and flaked off -- especially on the colder shaded sides of the house. Paint did not peel off around the house -- only on the sunny side where hot summer temperatures actually expand the paint breaking it away from the exterior of the house.
- This report was introduced at the first hearing, and with this information alone, the judgement should not have been against Curwensville Painters. The house was washed, scraped, sanded and wiped clean with no apparent loose paint anywhere. Both Mr and Mrs. Krause both agreed at the first hearing that "the back of the house was not peeling, only rusting some" which I agree with, which reaffirms that not only was it warm enough to paint the house, there was no visible loose paint anywhere when we gave the house two complete coats of Sherwin Williams' paint.
- On the other hand had the report shown that only two layers of paint composed the paint chips analyzed, the two layers of paint that we applied, then we might be able to say it was probably too cold to paint, or the area wasn't cleaned well enough. But, that is not what the report says. The paint we applied is "adhering to the previous coating tightly." There is no shown negligence against Curwensville Painters and the report confirms it.
9. Agree with paragraph 9 with the following observation: I went to the Krause house in early October 2005 and saw that just a few areas were peeling on the house. I was actually very relieved thinking that paint was peeling everywhere, which I was relieved to see just a few small areas. I offered to return within a few days to correct the problem area since I was working in the area. It was not too cold in October 2005 to make these corrections. I don't know why and was surprised that once I finally found time to get to Houtzdale he refused the offer.

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103 FILBERT STREET

CURWENSVILLE PA, 16833

page 5 -- Krause vs. Curwensville Painters

9. (continued response) I agree that I said I would place their name in my scheduling book. They were penciled in for early summer when and if I had another nearby job. I have an answering machine on 24 hours a day. I did not call the Krause's to explain that all my jobs were not in their area and they never called me to ask when I planned to be there. They chose to take us to court. Yes, I did call once I got the notice and talked to her and again offered to paint the back of the house with the free Sherwin Williams paint. But, Mrs. Krause said something like that isn't going to be enough now. You will need to talk to my husband about this now. So, once again she refused to allow us the opportunity to make corrections, and I said, "Ok... you know if you go to court and lose this case I won't have to paint anything." I think the final words from both of us were "we will see you in court."
10. Agree with paragraph 10
11. Agree that the judgement was entered for the plainfiff. I have shown that an error was made with this judgement against Curwensville Painters. We want the judgement dropped and any and all fees such as my filing fees for this appeal be paid by the plaintiff.

Had the report from the lab been more carefully considered, we would not find ourselves filing this appeal.

In Summary and conclusion:

12. This is a very important case for all painting contractors. Weather has been shown not to be a factor. I am providing the weather history of the time frame when this job was completed. Please remember that if we did paint when it was too cold (which he never shows that we did) one would think the coldest sides of the house, the northern side and the shaded sides would have peeled at least a little or actually extensively. This did not occur. The peeling occurred because the original paint lifted from the exterior surface and took the new paint with it. Had this occurred within a few months or even inside a year's time, perhaps there would be some fault attributed to the contractor. I believe by previous case law, a contractor must back the labor for a period of one (1) year. We are talking about almost three (3) years in this case. The Krause's and I do agree that there was no peeling on the back of the house when we painted the house with primer and final coat paint. Once the area has been scraped, sanded and cleaned with no visible or apparent loose paint, what more can a painting contractor do? We cannot be responsible for cheap paint applied incorrectly by a previous home owner or by another contractor.

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103 FILBERT STREET

CURWENSVILLE PA, 16833

page 6 -- Krause vs Curwensville Painters

12. (conclusion continued) If a painting contractor is going to be held responsible for someone else's paint applied before him, and with no apparent or visible problems evident while applying new paint, if painting contractor's are going to be held responsible for problems with another painter's choice of cheap paint or someone else's inadequate preparation, there will be no painting contractors painting previously painted buildings because we might be held responsible for someone else's mistakes. We cannot see under old paint to see if it was properly prepared; cheaper paint may only have a life expectancy of 8 - 12 years, but at the time new paint was applied over it there appeared to be no problems. Paint shrinks in the cold weather and expands in the heat. The better paints are elastic enough to give and take this constant shrinking and expansion with the season's changing. Paint wears out like anything else especially with the sun directly hitting on southern exposed sides. Ultraviolet rays are paint's worst enemy. After a while the elasticity wears out and the paint cracks then peels off. This is what has happened to the back of the Krause house. The old paint lost its flexibility with the years passing and the direct rays from the sun.

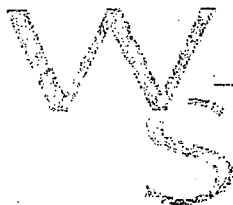
Almost three years had passed before the old paint broke down. How many years can a paint contractor be held liable for a previous paint job? Five years? Ten years? The full 25 years of Super Paint's expected flexibility?

Contractor's are held liable for one year, the passing of all four cold and hot seasons. If the paint comes off inside a year, it might be the contractor's fault. But, he is not liable forever or for even three years if someone else's paint comes loose. That is why it is so important that this appeal be carefully considered and the correct judgement be given. Unless this judgement is over turned, it could spell the end for painters ever painting a previously painted exterior (or interior) building.

I verify that the statements made in this response to the complaint are true and more accurately give a clearer and truer interpretation of why some paint peeled from a couple of areas on the Krause house.

Greg Smith

-- end --



Use the BACK button of your browser to return to the previous page.

T = Trace

N = Not Reported by the Government

TmaxF - High Temperature (degrees Fahrenheit)

TminF - Low Temperature (degrees Fahrenheit)

TmeanF - Mean Temperature (degrees Fahrenheit)

PrecipIn - Precipitation (inches)

SnowIn - Snow (inches)

CDD - Cooling Degree Days

HDD - Heating Degree Days

GDD - Growing Degree Days

A Note about Recent Not Reported Precipitation: For more recent data (generally one to three months from the current date), a number of stations do not immediately report zero precipitation thus the report will show N for not reported. 99% of the time, the data will later be merged by the government into the station report to show a zero.

### Philipsburg 2 S, Philipsburg, PA 16866

Date	TmaxF	TminF	TmeanF	PrcpIn	SnowIn	CDD	HDD	GDD
10/18/2002	45	34	39.5	0.10	0.00	0.0	25.5	0.0
10/19/2002	52	35	43.5	0.03	0.00	0.0	21.5	0.0
10/20/2002	52	30	41.0	0.13	0.00	0.0	24.0	0.0
10/21/2002	52	31	41.5	0.00	0.00	0.0	23.5	0.0
10/22/2002	52	28	40.0	0.00	0.00	0.0	25.0	0.0
10/23/2002	60	29	44.5	0.00	0.00	0.0	20.5	0.0
10/24/2002	51	29	40.0	0.00	0.00	0.0	25.0	0.0
10/25/2002	38	30	34.0	T	N	0.0	31.0	0.0
10/26/2002	49	34	41.5	0.73	N	0.0	23.5	0.0
10/27/2002	54	44	49.0	0.01	0.00	0.0	16.0	0.0
10/28/2002	48	36	42.0	0.00	0.00	0.0	23.0	0.0
10/29/2002	47	25	36.0	0.00	0.00	0.0	29.0	0.0
10/30/2002	36	25	30.5	0.49	0.80	0.0	34.5	0.0
10/31/2002	32	27	29.5	0.29	0.70	0.0	35.5	0.0
11/1/2002	39	26	32.5	0.00	0.00	0.0	32.5	0.0
11/2/2002	38	25	31.5	0.05	0.00	0.0	33.5	0.0
11/3/2002	41	26	33.5	0.00	0.00	0.0	31.5	0.0
11/4/2002	45	28	36.5	T	T	0.0	28.5	0.0
11/5/2002	38	29	33.5	0.02	0.00	0.0	31.5	0.0
11/6/2002	40	29	34.5	0.38	0.00	0.0	30.5	0.0
11/7/2002	41	33	37.0	0.08	0.00	0.0	28.0	0.0
11/8/2002	43	33	38.0	0.00	0.00	0.0	27.0	0.0
11/9/2002	62	41	51.5	0.00	0.00	0.0	13.5	1.5
11/10/2002	62	43	52.5	T	0.00	0.0	12.5	2.5
11/11/2002	64	53	58.5	0.22	0.00	0.0	6.5	8.5
11/12/2002	60	38	49.0	0.00	0.00	0.0	16.0	0.0
11/13/2002	44	38	41.0	0.22	0.00	0.0	24.0	0.0
11/14/2002	44	35	39.5	0.00	0.00	0.0	25.5	0.0