

06-1901-CD
Utica Mutual Ins. Vs Gurosik Coal Co al

Utica Mutual vs Gurosik Coal et al
2006-1901-CD

Phone: 765-4000

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Date: 10/22/2009

Clearfield County Court of Common Pleas

User: LMILLER

Time: 12:03 PM

ROA Report

Page 4 of 4

Case: 2006-01901-CD

Current Judge: Fredric Joseph Ammerman

Utica Mutual Insurance Company vs. Gurosik Coal Co. Inc., et al

Civil Other-COUNT

Date	Judge
9/22/2009	Fredric Joseph Ammerman
9/28/2009	Fredric Joseph Ammerman
10/9/2009	Fredric Joseph Ammerman
10/13/2009	Fredric Joseph Ammerman
10/15/2009	Fredric Joseph Ammerman

Order, this 21st day of Sept., 2009, a Rule is issued upon Respondent. The Respondent shall file an answer to the Motion within 20 days of this date. The Motion shall be decided under Pa. R.C.P. 206.7; and Argument shall be held on Oct. 26 @ 11:00 a.m. in Courtroom 1. Notice of entry of this order shall be provided to all parties by the moving party. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC Atty. Gorton

Affidavit of Service filed. That service of a true and correct copy of the Motion for Summary Judgment, identical to that served on the parties on September 15, 2009 and September 21, 2009 Order were made upon Thomas G. Wagner Esq. and Laurance B. Seaman Esq. on the 24th day of September 2009 by certified mail, return receipt requested and postage paid, filed by s/ Jennifer E. Drust Esq. No CC.

Answer to Motion For summary Judgment, filed by s/ Laurance B. Seaman, Esquire. No CC

Response to Motion for Summary Judgment on Behalf of Defendants Gurosik, filed by s/ Thomas G. Wagner Esq. No CC.

Certificate of Service, filed. That on October 9, 2009 mailed a true and correct copy of the Response to Motion for Summary Judgment on behalf of defendants, Gurosik by first class mail to Laurance B. Seaman Esq., Jennifer Drust Esq and Peter F. Smith Esq., filed by s/ Thomas G. Wagner Esq. No CC.

Response to Motion For Summary Judgment on Behalf of Defendants Gurosik, filed by s/Thomas G. Wagner, Esquire. No CC

10-22-09 / Motion for Continuance
10-23-09 / Order 10-23-09
10-29-09 / Affidavit of Service
12-2-09 / Motion for Continuance
12-7-09 / Order 12-7-09
12-9-09 / Affidavit of Service
1-20-10 / Motion for Continuance

Civil Other-COUNT

Date		Judge
10/19/2007	✓/X Notice of Service of Answers of Defendants, Hepburna Coal Coop., Darrell Spencer, Estate of Dalney F. Spencer, Estate of Ray L. Spencer, Mildred W. Spencer, Spencer Land Co., Robert G. Spencer and Delores B. Spencer to Plaintiff's First Set of Interrogatories, Request for Admissinos and Request for Production of Documents to Defendants on the 19th day of October a true and correct copy of the above referenced Answers were served by hand delivery to Peter F. Smith Esq. and by first class mail to Thomas G. Wagner Esq., filed by s/ Laurance B. Seaman Esq. No CC.	No Judge
2/8/2008	✓/X Notice of Substitution of Exhibit, filed by s/ William T. Gorton, III, Esquire. No CC	No Judge
3/5/2008	✓/X Certificate of Service, filed. A true and correct copy of a Supoenas for attendance of Timothy N. Morgan and Darrel G. Spencer scheduled for March 20, 2008 was sent by first class mail to Laurance B. Seaman Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge
	✓/X Certificate of Service, filed. A true and correct copy of a Subpoena for attendance of his client of John O. Gurosik scheduled for March 20, 2008 was served by first class mail to Thomas G. Wagner Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge
3/6/2008	✓/X Certificate of Service, filed. A true and correct copy of a Notice of Depositions for attendance to Timothy N. Morgan and Darrel G. Spencer scheduled for March 20, 2008 at Attorney Peter F. Smith's office was sent first class mail to Laurance B. Seaman Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge
	✓/X Certificate of Service, filed. A true and correct copy of a Notice of Depositions for attendance of his client of John O. Gurosik scheduled for March 20, 2008 at Attorney Perer F. Smith's office was sent first class mail to Thomas G. Wagner Esq. No CC.	No Judge
3/11/2008	✓/X Affidavit of Service filed. That Service of a true and correct copy of the Notice of Deposition, was made on the 10th day of March 2008 by regular first class mail to Thomas G. Wagner Esq., and Laurance B. Seaman Esq., filed by s/ Peter F. Smith Esq. NO CC.	No Judge
5/12/2009	✓/X Affidavit of Service, Notice of Deposition upon Thomas G. Wagner, Esq. and Laurance B. Seaman, Esq., filed by s/Peter F. Smith, Esq. No CC	No Judge
	✓/X Affidavit of Service, Notice of Deposition upon Thomas G. Wagner, Esq. and Laurance B. Seaman, Esq., filed by s/Peter F. Smith, Esq. No CC	No Judge
	✓/X Affidavit of Service, Notice of Deposition upon Thomas G. Wagner, Esq. and Laurance B. Seaman, Esq., filed by s/Peter F. Smith, Esq. No CC	No Judge
	✓/X Certificate of Service, Subpoena and Notice of Depositions upon Thomas G. Wagner, Esq., filed by s/Peter F. Smith, Esq. No CC	No Judge
	✓/X Certificate of Service, Subpoena and Notice of Depositions upon Laurance B. Seaman, Esq., filed by s/Peter F. Smith, Esq. No CC	No Judge
9/17/2009	✓/X Motion for Summary Judgment, filed by s/ William T. Gorton III Esq. No CC.	No Judge
	✓/X Praecipe for Entry of Appearance on behalf of Plaintiff along with William T. Gorton, Esq. and Peter F. Smith, Esq., filed by s/Jennifer E. Drust, Esq. No CC	No Judge

Phone: 765-4000

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Civil Other-COUNT

Date		Judge
7/11/2007	✓ X Certificate of Service, filed. That service of a true and correct copy of the Reply to New Matter of Defendants Hepburnia Coal Corp., Darrel G. Spence President, individually, partner and as Administrator of the Estate of Dalney F. Spencer, Estate of Dalney F. Spencer, Estate of Ray L. Spencer, Partner and Individually, Mildred W. Spencer, individually and as Administratrix of the Estate of Ray L. Spencer, Spencer Land Co. Robert G. Spencer, partner and individually, and Deloris B. Spencer was made upon Thomas G. Wagne Esq. and Laurance B. Seaman Esq., filed by s/ Peter F. Smith Esq. 3CC Atty Smith.	No Judge
7/26/2007	✓ X Reply to New Matter and Answer to Cross Claim of Defendant Hepburnia Coal Corporation et al, filed by s/ Thomas G. Wagner Esq. No CC.	No Judge
	✓ X Certificate of Service, filed. That on July __, 2007 mailed a true and correct copy of the Reply to New Matter and Answer to Cross Claim of Defendants Hepaburnia Coal Corporation et al on Laurance B. Seaman Esq., William T. Gorton III Esq., and Peter F. Smith Esq., filed by s/ Thomas G. Wagner Esq No CC.	No Judge
7/27/2007	✓ X Reply to Cross Claim of Defendants, Gurosik Coal Co., Inc., John O. Gurosi and Sharon Gurosik and New Matter, filed by s/ Laurance B. Seaman, Esquire. 1CC Atty. Seaman	No Judge
8/13/2007	✓ X Reply of Defendants Gurosik to New Matter Filed by Defendants Hepburnia Coal Corporation Et Al, filed by s/ Thomas G. Wagner, Esquire. No CC	No Judge
8/14/2007	✓ X Sheriff Return, May 31, 2007 Served the within Complaint on Hepburnia Coal Co; Darrell G. Spencer; Delores B. Spencer; Spencer Land Company; Estate of Ray L. Spencer; Estate of Dalney F. Spencer; and Robert G. Spencer, defendants by Acceptance of Service of Laurance B. Seaman Esq April 11, 2007, Sheriff of Elk County was deputized. April 16, 2007 at 10:28 am Served the within Complaint on Gurosik Coal Co Inc. April 16, 2007 at 10:28 am Served the within Complaint on John O. Gurosik. April 16, 2007 at 10:28 am Served the within Complaint on Sharon Gurosik. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Stites \$168.00 Elk Co. costs pd by Stites \$42.70	No Judge
10/17/2007	✓ X Certificate of Service, filed. On October 16, 2007, Mailed a true and correct copy: Answers of Defendant Sharon Gurosik to Plaintiff's First Set of Request for Admissions; Answers of Defendant Gurosik Coal Company Inc. to Plaintiff's First Set of Requests for Admissions; Answers of Defendant John O. Gurosik to Plaintiff's First Set of Requests for Admission, by first class mail to William T. Gorton III Esq., filed by s/ Thomas G. Wagner Esq. No CC.	No Judge
	✓ X Answers of Defendant Sharon Gurosik to Plaintiff's First Set of Requests Fo Admissions, filed by s/ Thomas G. Wagner, Esquire. No CC	No Judge
	✓ X Answers of Defendant Gurosik Company, Inc., to Plaintiff's First Set of Requests For Admissions, filed by s/ Thomas G. Wagner, Esquire. No CC	No Judge
	✓ X Answers of Defendant John O. Gurosik to Plaintiff's First Set of Requests Fo Admissions, filed by s/ Thomas G. Wagner, Esquire. No CC	No Judge

Civil Other-COUNT

Date		Judge
11/15/2006	New Case Filed.	No Judge
	✓ X Filing: Writ of Summons Paid by: Stites & Harbison, PLLC Receipt number: 1916466 Dated: 11/15/2006 Amount: \$85.00 (Check) No Cert. copies. Issued 11 writs to Atty.	No Judge
3/29/2007	✓ X Complaint, filed by Atty. Smith ✓ X 12 Cert. to Atty. Smith.	No Judge
5/31/2007	✓ X Praecipe For Entry of Appearance, filed on behalf of Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G SPENCER, Partner and Individually, and DELORES B. SPENCER. Filed by s/ Laurance B. Seaman, Esquire. No CC	No Judge
6/5/2007	✓ X Acceptance of Service, filed. I, Laurance B. Seaman Esquire, attorney for defendants, hereby accept service of a Complaint filed on March 29, 2007 on behalf of Hepburnia Coal Corporation, Darrell G. Spencer, President, individually, partner, and as Administrator of the Estate of Dalney F. Spencer, Estate of Ray L. Spencer, partner and individually, Mildred W. Spencer, individually and as Administratrix of the Estate of Ray L. Spencer, Spencer Land Company, Robert G. Spencer, Partner and individually, and Deloris B. Spencer, and certified that I am authorized to do so in the above-captioned matter, filed by s/ Laurance B. Seaman Esq. No CC.	No Judge
6/12/2007	✓ X Praecipe For Entry of Appearance, filed on behalf of the Defendants, Gurosik Coal Co., Inc., John O. Gurosik and Sharon Gurosik. Enter appearance of Thomas G. Wagner, Esquire. Filed by s/ Thomas G. Wagner Esquire. No CC	No Judge
6/20/2007	✓ X Answer, New Matter and Cross-Claim, filed by s/ Laurance B. Seaman, Esquire. No CC	No Judge
6/25/2007	✓ X Certificate of Service, filed. That on June 21, 2007 a true and correct copy of the Answer, New Matter and Cross-Claim to Laurance B. Seaman Esq., William T. Gorton II Esq., and Peter F. Smith Esq., filed by s/ Thomas G. Wagner Esq. No CC.	No Judge
	✓ X Answer, New Matter, and Cross Claim, filed by s/ Thomas G. Wagner, Esquire. No CC	No Judge
7/11/2007	✓ X Answer and New Matter filed on defendants Gurosik Coal Company et al, filed by s/ Peter F. Smith Esq. 3CC Atty Smith.	No Judge
	✓ X Certificate of Service, filed. That service of a true and correct copy of the Reply to the New Matter of Defendants Gurosik Coal Company Inc., John O Gurosik, president and individually, and Sharon Gurosik was made upon Thomas G. Wagner Esq. and Laurance B. Seaman Esq., on the 11th day of July 2007, filed by s/ Peter F. Smith Esq. 3CC Atty Smith	No Judge
	✓ X Answer and New Matter filed on Defendants Hepburnia Coal Corp. and Spencer et al, filed by s/ Peter F. Smith Esq. 3CC Atty Smith.	No Judge

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

No. 2006-1901-CD

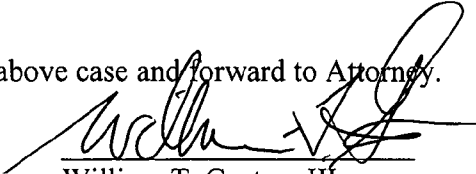
GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, and Partner,
DALNEY F. SPENCER, RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,
Defendants

PRAECIPE FOR WRIT OF SUMMONS

TO THE OFFICE OF THE PROTHONOTARY:

Please issue summons in the civil action in the above case and forward to Attorney.

11/13/06
Date


William T. Gorton, III
Counsel for Plaintiff
Stites & Harbison PLLC
250 West Main Street, Suite 2300
Lexington, KY 40503
(859) 226-2241 (T)
(859) 425-7940 (F)
PA ID# 53009

FILED
NOV 15 2006
11/21/06
William A. Shaw
Prothonotary/Clerk of Courts
No. 1901-CD
Issued to
Wm. T. Gorton
ATTY

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION - LAW**

UTICA MUTUAL INSURANCE COMPANY,)
Plaintiff)

v.)

GUROSIK COAL CO., INC.,)
JOHN O. GUROSIK, President and Individually,)
SHARON GUROSIK, HEPBURNIA COAL CORP.,)
DARRELL G. SPENCER, President, Individually, and Partner,)
DALNEY F. SPENCER, RAY L. SPENCER, Partner and)
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,)
ROBERT G. SPENCER, Partner and Individually, AND)
DELORIS B. SPENCER,)

Defendants)

No. 2006-1901-CD

WRIT OF SUMMONS

To: Gurosik Coal Co., Inc., R.D. #2, Box 42A, Kersey, Pennsylvania, 15846

You are hereby notified that Utica Mutual Insurance Company has commenced an action
against you.

Nov. 11, 2006

Date



Mr. William A. Shaw
Clearfield County Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION - LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, and Partner,
DALNEY F. SPENCER, RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants

No. 2006-1901-CJ

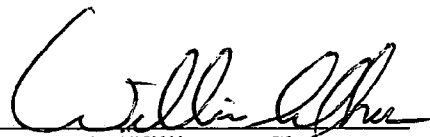
WRIT OF SUMMONS

To: John O. Gurosik, as President of Gurosik Coal Co., Inc. and Individually, R.D. #2,
Box 42A, Kersey, Pennsylvania, 15846

You are hereby notified that Utica Mutual Insurance Company has commenced an action
against you.

Nov. 15, 2006

Date


Mr. William A. Shaw
Clearfield County Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION - LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, and Partner,
DALNEY F. SPENCER, RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants

No. 2006-1901-CD

WRIT OF SUMMONS

To: Sharon Gurosik, Individually, R.D. #2, Box 42A, Kersey, Pennsylvania, 15846

You are hereby notified that Utica Mutual Insurance Company has commenced an action
against you.

Nov. 15, 2006

Date



Mr. William A. Shaw
Clearfield County Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION - LAW

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, and Partner,
DALNEY F. SPENCER, RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants

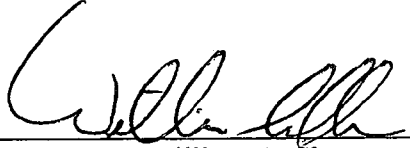
No. 2006-1901-CD

WRIT OF SUMMONS

To: Hepburnia Coal Corp, R.D. #1, Grampian, Pennsylvania, 16838

You are hereby notified that Utica Mutual Insurance Company has commenced an action
against you.

Nov. 15, 2006
Date


Mr. William A. Shaw
Clearfield County Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION - LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, and Partner,
DALNEY F. SPENCER, RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants

No. 2006-1901-CD

WRIT OF SUMMONS

To: Darrell G. Spencer, as President of Hepburnia Coal Corp., Partner of Spencer Land Co., and Individually, P.O. Box 89, Grampian, Pennsylvania, 16838

You are hereby notified that Utica Mutual Insurance Company has commenced an action against you.

Nov. 15, 2006

Date



Mr. William A. Shaw

Clearfield County Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION - LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, and Partner,
DALNEY F. SPENCER, RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants

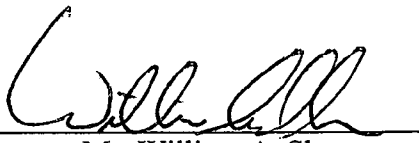
No. 2006-1901-C0

WRIT OF SUMMONS

To: Dalney F. Spencer, Individually, P.O. Box 89, Grampian, Pennsylvania, 16838

You are hereby notified that Utica Mutual Insurance Company has commenced an action
against you.

Nov. 15, 2006
Date


Mr. William A. Shaw
Clearfield County Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
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Clearfield Co., Clearfield, PA

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION - LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, and Partner,
DALNEY F. SPENCER, RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants

No. 2006-1901-CP


WRIT OF SUMMONS

To: Mildred W. Spencer, Individually, R.D. #1, Grampian, Pennsylvania, 16838

You are hereby notified that Utica Mutual Insurance Company has commenced an action
against you.

Nov. 15, 2006

Date


Mr. William A. Shaw
Clearfield County Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION - LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, and Partner,
DALNEY F. SPENCER, RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,
Defendants

No. 2006-1901-CO

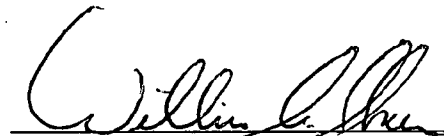
WRIT OF SUMMONS

To: Spencer Land Co., Co-Partnership, P.O. Box 49, Grampian, Pennsylvania, 16838

You are hereby notified that Utica Mutual Insurance Company has commenced an action
against you.

Nov. 15, 2006

Date



Mr. William A. Shaw
Clearfield County Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION - LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, and Partner,
DALNEY F. SPENCER, RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,


Defendants

No. 2006-1901-CV

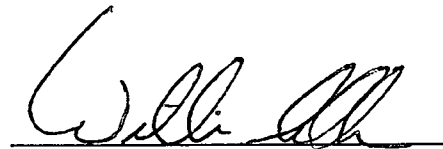
WRIT OF SUMMONS

To: Ray L. Spencer, as Partner of Spencer Land Co. and Individually, R.D. #1,
Grampian, Pennsylvania, 16838

You are hereby notified that Utica Mutual Insurance Company has commenced an action
against you.

 Nov. 15, 2006

Date



Mr. William A. Shaw
Clearfield County Prothonotary

WILLIAM A. SHAW
Prothonotary
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Clearfield Co., Clearfield, PA

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION - LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, and Partner,
DALNEY F. SPENCER, RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants

No. 2006-1901-CD

WRIT OF SUMMONS

To: Robert G. Spencer, as Partner of Spencer Land Co. and Individually, P.O. Box 49,
Grampian, Pennsylvania, 16838

You are hereby notified that Utica Mutual Insurance Company has commenced an action
against you.

Nov. 15, 2006

Date



Mr. William A. Shaw
Clearfield County Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION - LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, and Partner,
DALNEY F. SPENCER, RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants

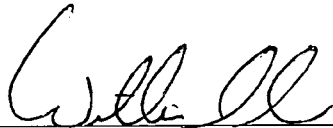
No. 2006-1961 - CD

WRIT OF SUMMONS

To: Deloris B. Spencer, Individually, P.O. Box 49, Grampian, Pennsylvania, 16838

You are hereby notified that Utica Mutual Insurance Company has commenced an action
against you.

Nov. 15, 2006
Date


Mr. William A. Shaw
Clearfield County Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, Partner,
and as Administrator of the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY
L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,
Defendants.

CIVIL ACTION – LAW
No. 2006-1901-CD
Civil Indemnity Action
Complaint
Filed on behalf of Plaintiff,
Utica Mutual Insurance Company

FILED

MAR 29 2007

01/12/07/

William A. Shaw

Prothonotary/Clerk of Courts

12 CEM TO ATT
Shaw

Counsel of Record for this Party:
Peter F. Smith
Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595

William T. Gorton III
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507
(859) 226-2241

Dated: March 8, 2007

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

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets,
Clearfield, PA 16830
(814) 765-2641 (ext. 5982)

AMERICANS WITH DISABILITIES ACT OF 1990

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

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

*

*

*

*

Comes the Plaintiff, Utica Mutual Insurance Company ("Utica"), by and through counsel, and for its cause of action state as follows:

1. Utica is a New York corporation having its principal place of business in New Hartford, New York.

2. Defendant Gurosik Coal Company, Inc. is a Pennsylvania corporation having its principal place of business in Kersey, Elk County, Pennsylvania, and may be served with process at 800 Brandy Camp Road, Kersey, Pennsylvania, 15846.

3. Defendants John O. Gurosik and Sharon Gurosik, residents of Kersey, Elk County, Pennsylvania may be served with process at 800 Brandy Camp Road, Kersey, Pennsylvania, 15846.

4. Defendant Hepburnia Coal Company is a Pennsylvania corporation having its principal place of business in Grampian, Clearfield County, Pennsylvania, and may be served with process at 1127 Haytown Road, Grampian, Pennsylvania 16838.

5. Defendant Darrell G. Spencer is a resident of Grampian, Clearfield County, Pennsylvania and may be served with process at 103339 Mahaffey-Grampian Road, Grampian, Pennsylvania 16838.

6. Defendant Delores B. Spencer is a resident of Curwensville, Clearfield County, Pennsylvania and may be served with process at 1645 Watts Road, Curwensville, Pennsylvania 16838.

7. Defendant Robert G. Spencer is a resident of Grampian, Clearfield County, Pennsylvania. By Order entered July 18, 2002, he may be served by process directed to his co-

guardians, Timothy N. Morgan, 361 Pine Top Road, Bigler, Pennsylvania 16825 and/or Shad B. Spencer, 1340 Hoyt Road, Curwensville, Pennsylvania 16833.

8. Defendant Ray L. Spencer is deceased (December 12, 2005). His estate is identified as Clearfield County Estate No. 1705-0738. Letters Testamentary were issued to his wife, Defendant Mildred W. Spencer, resident of Grampian, Clearfield County, Pennsylvania. Service may be made on Mildred W. Spencer individually and in her capacity as Administratrix of the Estate of Ray L. Spencer at 214 West Hepburnia Road, Grampian, Pennsylvania 16838.

9. Defendant Dalney F. Spencer is deceased (February 21, 2003). His estate is identified as Estate No. 1703-108, with Defendant Darrell G. Spencer named as Administrator of the Estate of Dalney F. Spencer. Service may be made on the Estate of Dalney F. Spencer c/o Darrell G. Spencer, 10339 Mahaffey-Grampian Road, Grampian, Pennsylvania 16838.

10. Defendant Spencer Land Company is a Pennsylvania partnership with its principal place of business in Grampian, Clearfield County, Pennsylvania and may be served with process c/o Timothy N. Morgan, 1127 Haytown Road, Grampian, Pennsylvania 16838.

11. Venue is properly placed in Clearfield County pursuant to Pa.R.C.P. 1006(c)(1) against all Defendants as this is an action to enforce a joint and several liability against two or more defendants, as venue may lie in any county in which any one defendant may be served as a resident under Pa.R.C.P. 1006(a)(1), 402, 423 and 424.

12. On or about July 12, 1985, Defendants, as indemnitors, entered into a written contract of indemnity ("General Agreement of Indemnity") with Utica. Defendants, pursuant to paragraph 2, agreed to reimburse Utica for all claims, demands, liabilities, charges, costs and

expenses, including attorneys' fees, that Utica may incur as a result of issuing surety bonds for coal mining activities undertaken by Defendant Gurosik Coal Company, Inc. A copy of said contract is attached hereto as Exhibit A.

13. All Defendants are signatories to the indemnity agreement.

14. On or about September 3, 1985, Defendant Gurosik Coal Company, Inc. was issued a surface coal mining permit from the Pennsylvania Department of Environmental Resources, Bureau of Mining and Reclamation (Permit No. 101933-33830117-01). Utica, on behalf of Gurosik Coal Company, Inc., posted surety bond number SU 38514 in the amount of \$71,700.00. A copy of said surety bond is attached hereto as Exhibit B.

15. On or about July 26, 2004, the Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation (DEP) notified Defendant Gurosik Coal Company, Inc. and Utica that DEP was declaring forfeit bonds posted by Gurosik Coal Company, Inc. and demanding payment for the full amount of bond SU 38514. A copy of said notice letters are attached hereto as Exhibit C.

16. On or about August 19, 2004, Utica filed a protective appeal with the Pennsylvania Environmental Hearing Board, contesting DEP's forfeiture of the bond SU 38514 in order to preserve the rights to either defend or otherwise mitigate exposure on the bond.

17. On or about November 10, 2004, counsel for Utica requested a recommendation from Defendant Hepburnia Coal Company on how to proceed in the action against the DEP.

18. On or about November 11, 2004, counsel for Utica requested a recommendation from Defendants John O. Gurosik and Sharon Gurosik on how to proceed against the DEP.

19. On or about June 23, 2005, DEP informed Utica that interest assessed on the bond at a rate of 6% increased the amount owing on bond SU 38514 to \$71,934.46.

20. On or about August 30, 2005, Utica informed all Defendants that under the indemnity agreement, they were jointly and severally liable for the bond value of \$71,934.46 as well as \$1,639.60 Utica incurred as defense costs against the forfeiture claim.

21. Defendants did not provide compensation for the value of the surety bond to Utica or DEP. Defendants did not provide Utica compensation for its defense costs.

22. On or about September 26, 2006, Utica paid \$71,700.00 to DEP. Attached hereto as Exhibit D is a copy of the check.

23. On or about October 2, 2006, DEP acknowledged receipt of payment of \$71,700.00.

24. Pursuant to Paragraph 2 of the General Agreement of Indemnity, Utica is entitled to recover the cost of the bond remitted to DEP and recover attorneys' fees and costs in both this action and the preceding appeal to the Environmental Hearing Board.

WHEREFORE, the Plaintiff, Utica Mutual Insurance Company, prays for relief as follows:

1. Judgment against the Defendants in the amount of seventy-one thousand seven hundred dollars (\$71,700.00), plus pre-judgment interest at the rate of 8% accruing from September 26, 2006, until the date of judgment herein;
2. Its costs, including attorneys' fees;
3. Trial before the bench; and
4. Any and all other relief to which they may appear entitled.

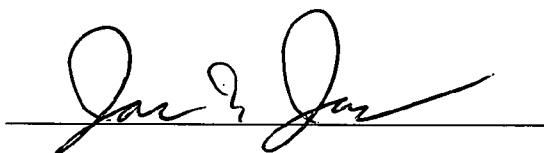
Respectfully submitted, 

Peter F. Smith
Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595

William T. Gorton III
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241
Attorneys for Plaintiff

VERIFICATION

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

A handwritten signature in black ink, appearing to read "Jason Jaskolka", is written over a horizontal line.

Jason Jaskolka, Esq. of Utica Mutual Insurance Company

March 5, 2007

date

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

GENERAL AGREEMENT OF INDEMNITY

This Agreement entered into by and between the undersigned, herein called the Indemnitors, and the Utica Mutual Insurance Company of New Hartford, New York, herein called the Company, witnesseth

WHEREAS, in the transaction of business certain bonds, undertakings and other writings obligatory in the nature of a bond have heretofore been, and may hereafter be, required by, for, or on behalf of the Indemnitors or any one or more of the parties included in the designation Indemnitors, and application has been made and will hereafter be made to the Company to execute such bonds, and as a prerequisite to the execution of such bond or bonds, the Company requires complete indemnification

NOW, THEREFORE, in consideration of the premises, and the payment by the Company of the sum of One (\$1 00) Dollar to each of the Indemnitors, receipt whereof is hereby acknowledged, and for other good and valuable considerations, the Indemnitors do, for themselves, their heirs, executors, administrators and assigns, jointly and severally, agree with the Company as follows

1 The Indemnitors will pay to the Company, at its Home Office in the Town of New Hartford, New York, premiums and charges at the rates, and at the times specified in respect to each such bond in the Company's schedule of rates, which, with any additions or amendments thereto, is by reference made a part hereof, and will continue to pay the same where such premium or charge is annual, until the Company shall be discharged and released from any and all liability and responsibility upon and from each such bond or matters arising therefrom, and until the Indemnitors shall deliver to the Company at its Home Office in New Hartford, New York, competent written evidence satisfactory to the Company of its discharge from all liability on such bond or bonds

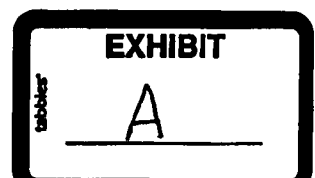
2 The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of, such bonds, or any renewals or continuations thereof or substitutes therefor, including fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. In the event of payments by the Company, the Indemnitors agree to accept the voucher or other evidence of such payments as prima facie evidence of the propriety thereof, and of the Indemnitors' liability therefor to the Company

3 If the Company shall set up a reserve to cover any claim, suit or judgment under any such bond, the Indemnitors will, immediately upon demand, deposit with the Company a sum of money equal to such reserve, such sum to be held by the Company as collateral security on such bond, and such sum and any other money or property which shall have been, or shall hereafter be, pledged as collateral security on any such bond shall, unless otherwise agreed in writing by the Company, be available, in the discretion of the Company, as collateral security on any other or all bonds coming within the scope of this Agreement

4 The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability with which the Company may be subsequently charged under any such bond, shall notify the Company thereof in writing at its Home Office in the Town of New Hartford, New York

5 The Company shall have the exclusive right to determine for itself and the Indemnitors whether any claim or suit brought against the Company or the Principal upon any such bond shall be settled or defended and its decision shall be binding and conclusive upon the Indemnitors

6 The Company, and its designated agents, shall, at any and all reasonable times, have free access to the books and records of the Indemnitors



7 If such bond be given in connection with a contract the Company is hereby authorized, but not required, to consent to any change in the contract or in the plans or specifications relating thereto, to make or guarantee advances or loans for the purpose of the contract without necessity of seeing to the application thereof, it being understood that the amount of all such advances or loans, unless repaid with legal interest by the Contractor to the Company when due, shall be conclusively presumed to be a loss hereunder, in the event the Indemnitors, or any of them, shall fail to pay any premium charge when due, or abandon, forfeit or breach such contract, or breach any bond given in connection therewith, or fail, neglect or refuse to pay for any labor or materials used in the prosecution of such contract, or have proceedings instituted against them, or any of them, alleging that they are insolvent, or for the appointment of a receiver or trustee for the benefit of creditors, whether such Indemnitor(s) are insolvent or not, or have proceedings instituted against them, or any of them, the effect of which may be to deprive any of them of the use of any part of the equipment used in connection with the work under the contract so as to hinder, delay or impede the normal and satisfactory progress of the work, the Company shall have the right, but not the obligation, to take possession of the work under the contract and under any other contract in connection with which the Company has given its bond or bonds within the purview of this General Agreement of Indemnity and, at the expense of the Indemnitors, to complete the contract(s), or cause, or consent, to the completion thereof. The Indemnitors hereby assign, transfer, and set over to the Company (to be effective as of the date of such bond or bonds, but only in the event of a default as aforesaid), all of their rights under the contract(s), including their right, title and interest in and to all subcontracts let in connection therewith, all machinery, plant, equipment, tools and materials which shall be upon the site of the work or elsewhere for the purposes of the contract(s), including all materials ordered for the contract(s), any and all sums due under the contract(s) at the time of such default, or which may thereafter become due, and the Indemnitors hereby authorize the Company to endorse in the name of the payee, and to receive and collect any check, draft, warrant or other instrument made or issued in payment of any such sum, and to disburse the proceeds thereof.

8 That it shall not be necessary for the Company to give the Indemnitors, or any one or more of them, notice of the execution of any such bonds, nor of any fact or information coming to the notice or knowledge of the Company affecting its rights or liabilities, or the rights or liabilities of the Indemnitors under any such bond executed by it, notice of all such being hereby expressly waived.

9 In the event of any claim or demand being made by the Company against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of a bond or bonds, the Company is hereby expressly authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and we hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

10 The Company is not required, by reason of any applications for a bond or by reason of having issued a previous bond or bonds or otherwise, to execute or procure the execution of or participate in the execution of any such bond or bonds and the Company, at its option, may decline to execute or to participate in or procure the execution of any such bond without impairing the validity of this General Agreement of Indemnity.

11. If the Company procures the execution of such bonds by other companies, or executes such bonds with cosureties, or reinsures any portions of such bonds with reinsuring companies, then all the terms and conditions of this Agreement shall apply and operate for the benefit of such other companies, cosureties and reinsurers as their interest may appear.

12 The liability of the Indemnitors hereunder shall not be affected by the failure of the Principal to sign any such bond, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

13 These covenants herein and also all collateral security, if any, at any time deposited with the Company concerning the said bond or bonds and any other former or subsequent bonds executed for the Indemnitors at their instance shall, at the option of the Company, be available in its behalf and for its benefit as well concerning any bond or undertaking applied for, and also concerning all other former or subsequent bonds and undertakings, executed for the Indemnitors or for others at their request.

14 This Agreement may be terminated by the Indemnitors, or any one or more of the parties so designated, upon written notice sent by registered mail to the Home Office of the Company, P O Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force

15 Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee

16 THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF

17 This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of

18 IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of

19

Andrew J. Sutcliffe
Witness

2208 George Rd - Clarksfield Pa
Street or P O Box City State

Andrew J. Sutcliffe
Witness

2208 George Rd - Clarksfield Pa
Street or P O Box City State

Andrew J. Sutcliffe
Witness

2208 George Rd Clarksfield Pa
Street or P O Box City State

Raymond L. Thut
Witness

319 New Millport Pa
Street or P O Box City State

Cynthia Scheuer
Witness

125 E. DuBois Ave; DuBois, PA 15801
Street or P O Box City State

GUROSIK COAL CO., INC.
John O. Gurosik, President (L S)

R.D. #2, Box 42A, Kersey, PA 15846
Street or P O Box City State

John O. Gurosik, Individually (L S)

R.D. #2, Box 42A Kersey, PA 15846
Street or P O Box City State

Sharon Gurosik, Individually (L S)

R.D. #2, Box 42A, Kersey, PA 15846
Street or P O Box City State

HEPBURNIA COAL CORPORATION
Darrell G. Spencer, President (L S)

R.D., Grampian, PA 16838
Street or P O Box City State

SPENCER LAND CO., CO-PARTNERSHIP
Robert G. Spencer, Partner (L S)

P.O. Box 49, Grampian, PA 16838
Street or P O Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE

STATE OF

COUNTY OF

} ss

On this . . . day of . . . 19 . . . , before me personally came

to me known, and known to me to be the individual who executed the foregoing instrument, and acknowledged that he executed the same

Individual Acknowledgment

STATE OF

COUNTY OF

} ss:

On this . . . day of . . . 19 . . . , before me personally came

to me known, and known to me to be one of the firm of

and acknowledged that he executed the foregoing instrument as the act of the said firm

Co-partnership Acknowledgment

STATE OF

COUNTY OF

} ss

On this . . . day of . . . July . . . 1985, before me personally came

John O. Gurosik

to me known, who, being by me duly sworn, did depose and say that he resides in Kersey, PA

that he is the President . . . of the

Gurosik Coal Co., Inc.

the corporation which executed the foregoing instrument, that he knows the seal of the said corporation, that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order

Corporation Acknowledgment

Wanda M. Manning
CLERK OF ORIGIN, CLERK OF FIELD COUNTY
MY COMMISSION EXPIRES APRIL 19, 1986
I further Depose and Acknowledge that

days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force

15 Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligees

16 THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF

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18 IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of

19

Eugene J. Thurston
Witness

3. 3 New Hartford PA
Street or P O Box City State

Tim Morgan
Witness

Grampian PA
Street or P O Box City State

Tim Morgan
Witness

Grampian PA
Street or P O Box City State

Witness

Street or P O Box City State

Witness

Street or P O Box City State

Dalney F. Spencer (L S.)
Dalney F. Spencer, Individually

P.O. Box 89, Grampian, PA 16838
Street or P O Box City State

Ray L. Spencer (L S.)
Ray L. Spencer, Individually

R.D. #1, Grampian, PA 16838
Street or P O Box City State

Mildred W. Spencer (L S.)
Mildred W. Spencer, Individually

R.D. #1, Grampian, PA 16838
Street or P O Box City State

(L S.)

Street or P O Box City State

(L S.)

Street or P O Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE

14 This Agreement may be terminated by the Indemnitors, or any one or more of the parties so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force.

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18 IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of

19

Harold Thorton
Witness

319 New Hartford Pa.
Street or P O Box City State

Tim Morgan
Witness

GRAMPIAN PA
Street or P O Box City State

Cynthia Scheuer
Witness

125 E DuBois Ave; DuBois, PA 15801
Street or P O Box City State

Cynthia Scheuer
Witness

125 E DuBois Ave; DuBois, PA 15801
Street or P O Box City State

Harold L. Thorton
Witness

319 New Hartford Pa.
Street or P O Box City State

Darrell G. Spencer (L S.)
Darrell G. Spencer, Partner

P.O. Box 89, Grampian, PA 16838
Street or P O Box City State

Ray L. Spencer (L S.)
Ray L. Spencer, Partner

R.D. #1, Grampian, PA 16838
Street or P O Box City State

Robert G. Spencer (L S.)
Robert G. Spencer, Individually

P.O. Box 49, Grampian, PA 16838
Street or P O Box City State

Deloris B. Spencer (L S.)
Deloris B. Spencer, Individually

P.O. Box 49, Grampian, PA 16838
Street or P O Box City State

Darrell G. Spencer (L S.)
Darrell G. Spencer, Individually

P.O. Box 89, Grampian, PA 16838
Street or P O Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE

Individual Acknowledgment

STATE OF

Pennsylvania

COUNTY OF

Clearfield

On this

12th day of

July 1985

, before me personally came

John O. Guroski, Sharon Gurosik, Robert G. Spencer, Deloris Spencer, Darrell G.

Spencer, Dalney F. Spencer, Ray L. Spencer & Mildred W. Spencer

to me known, and known to me to be the individual who executed the foregoing instrument, and acknowledged that he executed the same.

Wanda Lee Moening
NOTARY PUBLIC
CLEARFIELD COUNTY
MY COMMISSION EXPIRES APRIL 19, 1986
Member, Pennsylvania Association of Notaries

STATE OF

Pennsylvania

COUNTY OF

Clearfield

On this

12th day of

July 1985

, before me personally came

Robert G. Spencer, Darrell G. Spencer & Ray L. Spencer

to me known, and known to me to be one of the firm of Spencer Land Co.

and acknowledged that he executed the foregoing instrument as the act of the said firm

Wanda Lee Moening
NOTARY PUBLIC
CLEARFIELD COUNTY
MY COMMISSION EXPIRES APRIL 19, 1986
Member, Pennsylvania Association of Notaries

STATE OF

Pennsylvania

COUNTY OF

Clearfield

On this

12th day of

July 1985

, before me personally came

Darrell G. Spencer

to me known, who, being by me duly sworn, did depose and say that he resides in Grampian, PA

that he is the President of the

Herbman Coal Corporation

the corporation

which executed the foregoing instrument, that he knows the seal of the said corporation, that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order

Wanda Lee Moening
NOTARY PUBLIC
CLEARFIELD COUNTY
MY COMMISSION EXPIRES APRIL 19, 1986

Co-partnership Acknowledgment

Corporation Acknowledgment

ER-MR-322 11/82

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION

**SURETY BOND FOR
SURFACE MINES**

Purpose, check one:

- (a) Original Application for Permit ☒
 (b) Additional Bond ☐
 (c) Replacement Bond ☐

To be filled in by Pennsylvania
Department of Environmental Resources:

License No _____

Permit No _____

Date(s) and Amount of Bond Release _____

To be filled in by Operator:

Name of Operation KingType of Mineral Bituminous Coal

To be filled in by Surety Company

Bond No SU 38514

WHEREAS, Gurosik Coal Co., Inc.
(Name of Surface Mine Operator)

a (1) Corporation, incorporated under the Laws in the State of
Pennsylvania, or

(2) _____
(Partnership, Individual, Registered Fictitious Name Business)

with its principal place of business at R. D. #2, Box 42A, Kersey, PA 15846

(Address) _____, has filed an application for a Surface Mining Permit

with the Department of Environmental Resources, under the provisions of the Act of Assembly, approved
 by 31, 1945, P L. 1198, as amended, known as the "Surface Mining Conservation and Reclamation Act",
 hereinafter Act 418) in which the operator estimated that it would affect 31.2 acres of land
Pine Creek Township, Jefferson County, of

Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we Gurosik Coal Co., Inc.
(Name of Surface

Mine Operator)

, as principal, and Utica Mutual Insurance Co.
(Name of Surety Company)

EXHIBIT

B

licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, Commonwealth of Pennsylvania (hereinafter referred to as the "Secretary" and the "Department"), with its principal place of business at
P. O. Box 530, Utica, NY 13503

(Address)

as surety, in consideration of the issuance of the aforesaid permit and intending to be legally bound hereby, are held and firmly bound unto the Department, in the just and full sum of Seventy One Thousand Seven Hundred and no/100---- (\$ 71,700.00) Dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns and successors, individually and/or jointly, firmly by these presents:

NOW THE CONDITION OF THIS OBLIGATION is such that if the principal shall faithfully perform all of the requirements of (1) Act 418, (2) the Act of Assembly approved June 22, 1937, P.L. 1987, as amended, known as "The Clean Streams Law" (Act 394), (3) the "Air Pollution Control Act", Act of January 8, 1960, P L 2119, as amended, (4) the applicable provisions of the "Dam Safety and Encroachments Act", Act 325 of 1978, P L 1375, as amended, (5) the "Coal Refuse Disposal Act", Act of September 24, 1968, No. 318, P L 1940, as amended, (6) the applicable provisions of the "Solid Waste Management Act", Act of July 7, 1980, No 97, as amended, (7) the rules and regulations promulgated thereunder, (8) the provisions and conditions of the permits issued thereunder and designated in this bond, and (9) such amendments or additions to the law as may hereinafter be lawfully made, (all of which are hereinafter referred to as the 'law') then this obligation shall be null and void, otherwise to be and remain in full force and effect in accordance with the provisions of the law

LIABILITY UPON THIS BOND shall be for the amount specified herein. Liability upon this bond shall continue for the duration of surface mining at the operation conducted hereunder and for a period of five (5) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto as provided by the law

UPON THE HAPPENING OF ANY DEFAULT of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the period for appeal provided by law having expired, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania, or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution AND WITH TEN PERCENT (10%) ADDED FOR COLLECTION FEES, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible.

FURTHER, the principal and the surety agree that their liability hereunder shall not be impaired or affected by, (a) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is conditioned, or (b) any forbearance or delay in declaring this bond to be forfeited or in enforcing payment on this bond. The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default, provided However, that the Department may authorize, in writing, the surety to cover such defaulted obligations if the Department determines that it is in their interest to do so.

FURTHER, the Department reserves the right to require additional bonding from the principal, for any reason, which shall be a supplement to and augment the bond liability provided herein. The Department may release, in writing, a portion of the amount of liability provided in this bond for partial completion of the provisions, conditions and obligations assumed by the principal herein, as may be authorized by the law, and such amount released shall be a credit upon the total amount of this bond. Nothing herein shall limit or preclude the Department from seeking any liability or remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee upon filing information in writing in the court where such judgment shall be entered.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to legally bound hereby, this 15th day of July, 19 85.

Surface Mine Operator

Gurosik Coal Co., Inc.

(Print Name)

TEST OR WITNESS

By: _____

(Title)

By: _____

(Title)

(Seal)

SURETY: Utica Mutual Insurance Co.

(Print Name)

TEST OR WITNESS:

By: _____

(Title) Attorney-in-Fact

By: _____

(Title)

(Seal)

proved as to legality and form:

y Attorney General/Chief Counsel/Assistant Counsel

proved for the Department:



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 8461

Harrisburg, PA 17105-8461

July 26, 2004

Bureau of Mining and Reclamation

717-787-5103

U9214

CERTIFIED MAIL NO. 7003 1010 0003 1029 4540

Utica Mutual Insurance Company
PO Box 530
Utica, NY 13503

Re BOND FORFEITURE
Gurosik Coal Company, Inc
Permit No 33830117
Case No 40-04-019
Pine Creek Township, Jefferson County

Dear Sir or Madam

The Department of Environmental Protection has declared forfeit bonds posted by Gurosik Coal Company, Inc. This action has been taken due to failure to comply with the requirements of the Pennsylvania Surface Mining Laws. A copy of the Order of Forfeiture is enclosed for your reference.

Section 4(h) of the Surface Mining Conservation and Reclamation Act states that the full amount of the forfeited surety bond shall be paid over to the Department within 30 days of your receipt of this notice. The filing of an appeal from the forfeiture with the Environmental Hearing Board does not stay the requirement to pay. The bond amount will be held in an interest bearing escrow account until any appeals are resolved.

Payment shall be made by a corporate check or a like instrument, payable to the "Commonwealth of Pennsylvania" and should be mailed to

Department of Environmental Protection
Bureau of Office Systems and Services
Bonding Division
P O Box 8766
Harrisburg, PA 17105-8766

If you do not pay the bond amount within 30 days of your receipt of this notice, the Department will take appropriate action to collect the bond monies to which it is entitled. Please note in this regard that the Department is entitled to the bond amount and any interest generated by the bond amount from

EXHIBIT

C

Utica Mutual Insurance Company

- 2 -

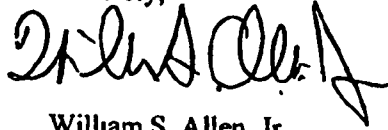
July 26, 2004

the date on which payment is due until the date on which it is collected. This letter does not waive any right that the Department may have to impose other sanctions if the bond monies are not paid.

Payment of the bond monies to the Department does not impair your right to file an appeal with the Environmental Hearing Board or affect any other rights that you may have, nor does it in and of itself create any right beyond that permitted by applicable statutes and decisional law. Where a court determines the Commonwealth was not entitled to the forfeited bond and all appeals are exhausted, the forfeited amount with accrued interest will be returned to the surety.

If you have any questions, please contact this office at 717-787-5103

Sincerely,



William S. Allen, Jr

Chief

Compliance Section

Division of Monitoring and Compliance

Enclosure

**Pennsylvania Department of Environmental Protection**

**Rachel Carson State Office Building
P.O. Box 8461
Harrisburg, PA 17105-8461
July 26, 2004**

Bureau of Mining and Reclamation

717-787-5103

CERTIFIED MAIL NO. 7003 1010 0003 1029 4557

**Guorsik Coal Company, Inc
800 Brandy Camp rd
Kersey, PA 15846**

**RE BOND FORFEITURE
Permit No 33830117
Forfeiture Case No 40-04-019
Pine Creek Township, Jefferson County**

Gentlemen:

On May 5, 2004, the Knox District Mining Office notified you by letter of the Department's intent to declare forfeit the bonds posted at the King mining operation. This action is necessary because of numerous violations of the law. These violations include

- Unauthorized discharge of mine drainage
- Failure to comply with an order of the Department
- Failure to maintain liability insurance
- Failure to maintain mine drainage treatment facilities
- Failure to show a willingness or intention to comply with the applicable laws and regulations
- Failure to pay outstanding civil penalties
- Other violations identified in the Inspection Reports, letters, and Notices of Violation which have been sent to you.

Because you have continued to fail to correct the violations and to reclaim the area affected by your mining operations at the above-referenced site, the Department hereby declares forfeit, in the full amount, the bond posted for the above-referenced surface mining operation. This action is in accordance with Section 4(h) of the Surface Mining Conservation and



Gurosik Coal Company, Inc

- 2 -

July 26, 2004

Reclamation Act and Chapter 86, Subchapter F, Section 86 180-86 190 of the Department's regulations

The bond hereby declared forfeit is described as follows

<u>Amount</u>	<u>Bond Number</u>	<u>Surety</u>
\$71,700 00	SU38514	Utica Mutual Insurance Company

Utica Mutual Insurance Company is hereby notified of this forfeiture action by copy of this declaration sent certified mail

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P S Section 7514, and the Administrative Agency Law, 2 Pa C S Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If you want to challenge this action, your appeal must reach the board within 30 days. You do not need a lawyer to file an appeal with the board.

Important legal rights are at stake, however, so you should show this document to a lawyer at once. If you cannot afford a lawyer, you may qualify for free pro bono representation. Call the secretary to the Board at 717-787-3483 for more information.

FOR THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION



Joseph G. Pizarchuk, Esq
Director
Bureau of Mining and Reclamation

Gurosik Coal Company, Inc

- 3 -

July 26, 2004

Cc Gurosik Coal Company, Inc (First Class Mail)
Utica Mutual Insurance Company
Cloyde E King



UTICA NATIONAL INSURANCE GROUP

Insurance that starts with you.

PA DEP
BUREAU OF OFFICE SERVICES
BONDING SECTION
PO BOX 8766
HARRISBURG PA 17105-8766

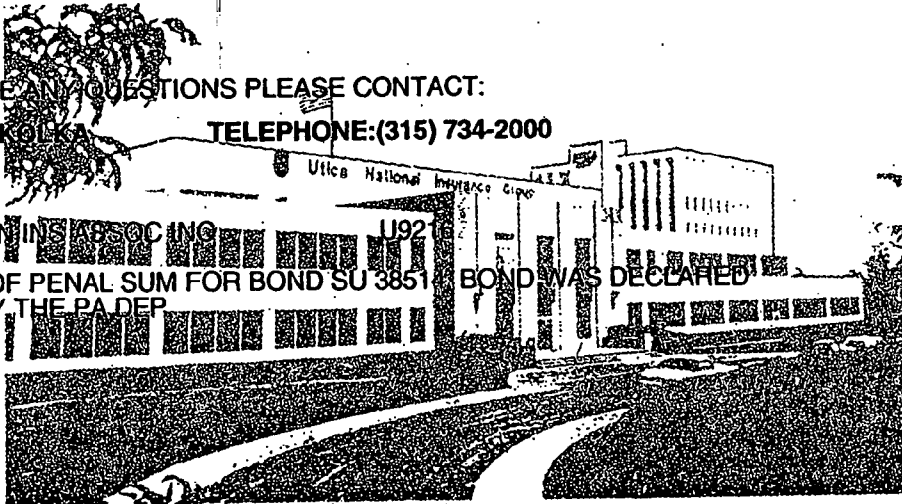
CLAIM NUMBER	PAYMENT DESCRIPTION	AMOUNT OF CHECK	CHECK NO	DATE OF ISSUE
0000715545	PENAL SUM PAYMENT BOND SU38514	\$71,700.00	9827129	09/14/2006

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT:

JASON JASKOL TELEPHONE:(315) 734-2000

EVERGREEN INS ASSOC INC

PAYMENT OF PENAL SUM FOR BOND SU 3851 BOND WAS DECLARED
FORFEIT BY THE PA DEP



2271 PA

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND NOT A WHITE BACKGROUND

UTICA NATIONAL INSURANCE GROUP
P.O. Box 530
Utica, NY 13503-0530

DATE OF ISSUE: 09/14/2006
CHECK NO: 9827129

AMOUNT OF CHECK: \$71,700.00
PLEASE CASH PROMPTLY

FOR: PENAL SUM PAYMENT BOND SU38514

PAY: SEVENTY ONE THOUSAND SEVEN HUNDRED AND 00/100 DOLLARS

COMMONWEALTH OF PENNSYLVANIA
TO THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION BONDING SECTION
PO BOX 8766
HARRISBURG PA 17105-8766

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK HOLE AT AN ANGLE

EXHIBIT
D

9827129 011900445

5705

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

UTICA MUTUAL INSURANCE
COMPANY, Plaintiff

vs.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and
Individually, SHARON GUROSIK,
HEPBURNIA COAL CORP., DARRELL
G. SPENCER, President,
Individually, Partner, and as
Administrator of the Estate of
Dalney F. Spencer, ESTATE OF
DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W.
SPENCER, Individually and as
Administratrix of the Estate
of Ray L. Spencer, SPENCER
LAND CO., ROBERT G. SPENCER,
Partner and Individually, AND
DELORIS B. SPENCER, Defendants

No. 06 - 1901 - CD

Type of Case: Civil

Type of Pleading: PRAECIPE FOR
ENTRY OF APPEARANCE

Filed on behalf of: Defendants,
HEPBURNIA COAL CORP., DARRELL G. SPENCER,
President, Individually, Partner, and as
Administrator of the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and Individually,
MILDRED W. SPENCER, individually and as
Administratrix of the Estate of Ray L. Spencer,
SPENCER LAND CO., ROBERT G. SPENCER,
Partner and Individually, AND DELORIS B.
SPENCER

Counsel of Record for this Party:
Laurance B. Seaman, Esquire

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

FILED

02:15p.m GK
MAY 31 2007 Ne CC

William A. Shaw
Prothonotary/Clerk of Courts

(GK)

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-vs-

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and
Individually, SHARON GUROSIK,
HEPBURNIA COAL CORP., DARRELL G.
SPENCER, President, Individually,
Partner, and as Administrator of
the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE
OF RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
Individually and as Administratrix
of the Estate of Ray L. Spencer,
SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B.
SPENCER, Defendants

PRAECIPE

TO WILLIAM A. SHAW, PROTHONOTARY:

Kindly enter my appearance on behalf of Defendants, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of
Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L.
Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, AND DELORIS B.
SPENCER, in the above-captioned proceeding.

GATES & SEAMAN

BY: 

Laurance B. Seaman, Esquire

Date: May 31, 2007

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-vs-

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and
Individually, SHARON GUROSIK,
HEPBURNIA COAL CORP., DARRELL G.
SPENCER, President, Individually,
Partner, and as Administrator of
the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE
OF RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
Individually and as Administratrix
of the Estate of Ray L. Spencer,
SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B.
SPENCER, Defendants

CERTIFICATE OF SERVICE

I hereby certify that I mailed by regular U. S. mail, postage prepaid, on the 31st day of May, 2007, a true and correct copy of the Praeipce for Entry of Appearance to:

Peter F. Smith, Esquire
P. O. Box 130
Clearfield, PA 16830

William T. Gorton, III, Esquire
STITES & HARBISON, PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507

Thomas G. Wagner, Esquire
MEYER & WAGNER
115 Lafayette Street
St. Marys, PA 15857

By: 

Laurance B. Seaman, Esquire

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

Civ.No. 2006-1901-CD
Civil Indemnity Action

GUROSIK COAL CO., INC.,

JOHN O. GUROSIK, President and Individually,

SHARON GUROSIK, HEPBURNIA COAL CORP.,

DARRELL G. SPENCER, President, Individually, Partner,

and as Administrator of the Estate of Dalney F. Spencer,

ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY

L. SPENCER, Partner and Individually, MILDRED W.

SPENCER, Individually and as Administratrix of the Estate:

of Ray L. Spencer, SPENCER LAND CO., ROBERT G.

SPENCER, Partner and Individually, AND

DELORIS B. SPENCER,

Defendants.

ACCEPTANCE OF SERVICE

I, Laurance B. Seaman, Esquire, attorney for Defendants, hereby accept service of a Complaint filed on March 29, 2007 of behalf of Hepburnia Coal Corporation, Darrell G. Spencer, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, Estate of Ray L. Spencer, Partner and Individually, Mildred W. Spencer, Individually and as Administratrix of the Estate of Ray L. Spencer, Spencer Land Company, Robert G. Spencer, Partner and Individually, and Deloris B. Spencer, and certified that I am authorized to do so in the above-captioned matter.

Date: May 31, 2007



Laurance B. Seaman, Esquire
Attorney for Defendants

FILED No Cl.

9/2:40 cm
JUN 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

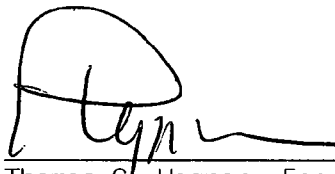
Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

PRAECIPE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of the Defendants, Gurosik Coal Co., Inc., John O. Gurosik and Sharon Gurosik, in the above matter.



Thomas G. Wagner, Esq.
Supreme Court ID 17404
115 Lafayette Street
St. Marys, Pa. 15857
(814) 781-3445

FILED NO CC
JUN 12 2007 EX

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE
COMPANY, Plaintiff

No. 06 - 1901 - CD

Type of Case: Civil

vs.

Type of Pleading: ANSWER, NEW
MATTER AND CROSS-CLAIM

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and
Individually, SHARON GUROSIK,
HEPBURNIA COAL CORP., DARRELL
G. SPENCER, President, Individually,
Partner, and as Administrator of the
Estate of Dalney F. Spencer, ESTATE OF
DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
Individually and as Administratrix of
the Estate of Ray L. Spencer, SPENCER
LAND CO., ROBERT G. SPENCER,
Partner and Individually, AND
DELORIS B. SPENCER, Defendants

Filed on Behalf of:
HEPBURNIA COAL CORP., DARRELL G.
SPENCER, President, Individually,
Partner, and as Administrator of the
Estate of Dalney F. Spencer, ESTATE
OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
individually and as Administratrix of
the Estate of Ray L. Spencer,
SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually,
and DELORIS B. SPENCER

Counsel of Record for this Party:
Laurance B. Seaman, Esquire

Supreme Court No.: 19620

GATES & SEAMAN, Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

FILED

6 11:14 am GK
JUN 20 2007 NO CC

(GK)

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-VS-

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually,
Partner, and as Administrator of the Estate
of Dalney F. Spencer, ESTATE OF DALNEY F.
SPENCER, ESTATE OF RAY L. SPENCER, Partner
and Individually, MILDRED W. SPENCER,
Individually and as Administratrix of the
Estate of Ray L. Spencer, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B. SPENCER,
Defendants

NOTICE


TO:

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

William T. Gorton, III, Esquire
STITES & HARBISON, PLLC
250 West Main St., Suite 2300
Lexington, KY 40507

Thomas G. Wagner, Esquire
MEYER & WAGNER
15 Lafayette Street
St. Marys, PA 15857

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW MATTER
AND CROSS-CLAIM WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY
BE ENTERED AGAINST YOU.

GATES & SEAMAN
By: 

Laurance B. Seaman, Esquire, Attorney for Defendants,
HEPBURNIA COAL CORP., DARRELL G. SPENCER, President,
Individually, Partner, and as Administrator of the Estate of
Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate of
Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER,
Partner and Individually, and DELORIS B. SPENCER

Date: 6/20/2007

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

UTICA MUTUAL INSURANCE COMPANY, :
Plaintiff : No. 06-1901-CD

-VS- :

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
President and Individually, SHARON GUROSIK, :
HEPBURNIA COAL CORP., DARRELL G. :
SPENCER, President, Individually, Partner, :
and as Administrator of the Estate of Dalney :
F. Spencer, ESTATE OF DALNEY F. SPENCER, :
ESTATE OF RAY L. SPENCER, Partner and :
Individually, MILDRED W. SPENCER, :
Individually and as Administratrix of the :
Estate of Ray L. Spencer, SPENCER LAND CO., :
ROBERT G. SPENCER, Partner and Individually, :
AND DELORIS B. SPENCER, Defendants :

ANSWER

AND NOW, come, Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER,
President, Individually, Partner, and as Administrator of the Estate of Dalney F.
Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate
of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and
Individually, and DELORIS B. SPENCER, ("answering Defendants"), by their attorneys,
Gates & Seaman, and respond to Plaintiff's Complaint as follows:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted, with the exception that Mildred W. Spencer serves in the capacity of Executrix of the Estate of Ray L. Spencer, deceased, rather than as Administratrix.

9. Paragraph 9 is admitted, with the exception that Dalney F. Spencer was of the female gender, and that Darrell G. Spencer serves in the capacity of Executor of the Estate of Dalney F. Spencer, deceased, rather than as Administrator.

10. Paragraph 10 is admitted.

11. Paragraph 11 is admitted.

12. Paragraph 12 is admitted in part and denied in part. It is admitted that Defendants executed the General Agreement of Indemnity (hereafter "the Agreement"), on or about July 12, 1985 and a photocopy of the Agreement is attached to Plaintiff's Complaint as Exhibit "A". It is specifically denied that the Agreement refers in any way to the issuing of surety bonds for coal mining activities undertaken by Defendant, Gurosik Coal Company, Inc. In answer thereto, it is

averred that Paragraph 17 of the Agreement is incomplete and fails to set forth necessary information as to on whose behalf a surety bond was to be written. By way of further answer, the specific terms of the Agreement speak for themselves as do those portions of the Agreement left blank, and the remaining allegations of Paragraph 12 are denied as conclusions of law, to which no answer is required. In further answer thereto, all other Paragraphs of this Answer and Paragraphs 25 through 43 of this New Matter and Cross-Claim are incorporated herein by reference.

13. Paragraph 13 is admitted in part and denied in part. It is admitted that a photocopy of the Agreement attached to Plaintiff's Complaint as Exhibit "A" was signed by Robert G. Spencer, Deloris B. Spencer, Mildred W. Spencer, Ray L. Spencer, Dalney F. Spencer and Darrell G. Spencer, individually. It is admitted that Defendant, Darrell G. Spencer, signed the Agreement in his capacity as President of Defendant, Hepburnia Coal Company, and as a partner of Spencer Land Company. It is admitted that Defendant, Robert G. Spencer, signed the Agreement as a partner of Defendant, Spencer Land Company. It is admitted that Ray L. Spencer (now deceased) signed the Agreement as a partner of Spencer Land Company. It is specifically denied that Defendant, Darrell G. Spencer, as Executor of the Estate of Dalney F. Spencer, and Mildred W. Spencer, as Executrix of the Estate of Ray L. Spencer, executed the Agreement in their fiduciary capacities. In answer thereto, it is averred that both Ray L. Spencer and Dalney F. Spencer died after their

execution of the Agreement, but before the filing of the Complaint.

14. Paragraph 14 is admitted.

15. Paragraph 15 is admitted.

16. Paragraph 16 is denied, since, after reasonable investigation, answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 16, and if relevant, strict proof thereof is demanded at time of trial.

17. Paragraph 17 is admitted.

18. Paragraph 18 is admitted

19. Paragraph 19 is admitted.

20. Paragraph 20 is denied as stated. It is admitted that Plaintiff, by letter dated August 30, 2005 (which was not attached to Plaintiff's Complaint), advised Defendants that Plaintiff had incurred defense costs as stated and requested reimbursement of the same. It is also admitted that Plaintiff, by that same letter, advised Defendants that DEP had demanded payment from Plaintiff of the Surety Bond and interest in the total amount stated. It is denied that answering Defendants are jointly and severally liable for the bond or defense costs. In answer thereto, all other Paragraphs of this Answer and Paragraphs 25 through 43 of this New Matter and Cross-Claim are incorporated herein by reference.

21. Paragraph 21 is admitted.

22. Paragraph 22 is admitted.

23. Paragraph 23 is denied, since, after reasonable investigation, answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in Paragraph 23, and if relevant, strict proof thereof is demanded at time of trial.

24. Paragraph 24 is denied and no answer thereto is required since the averments of Paragraph 24 set forth conclusions of law to which no responsive pleading is required. In the event it is ever determined that an answer is required, Paragraphs 1 through 23 of this Answer and Paragraphs 25 through 43 of this New Matter and Cross-Claim are incorporated herein by reference.

WHEREFORE, Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER, pray that this Honorable Court dismiss Plaintiff's Complaint, with prejudice, and enter judgment in favor of answering Defendants.

NEW MATTER

AND NOW, come, Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER,

President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER, by their attorneys, Gates & Seaman, and assert the following New Matter, and in support thereof, allege the following:

25. Paragraphs 1 through 24 of this Answer are incorporated herein by reference.

26. Paragraph 17 of the Agreement (Exhibit "A" to the Complaint), states that the Agreement "... applies to bonds, undertakings and other writings obligatory in nature of a bond written by . . . " Plaintiff, but said Paragraph fails to list or identify any specific bonds and/or other obligations to which the Agreement was to apply.

27. The Agreement makes no specific reference to Surety Bond No. SU 38514 referred to in Paragraph 14 of the Complaint, nor to any coal mining permit or operation being conducted or to be conducted by Defendant, Gurosik Coal Company, Inc.

28. By virtue of these omissions in Paragraph 17 of the Agreement, the Agreement is unenforceable against answering Defendants and is vague and ambiguous and by operation of law is to be construed against the drafter of the

Agreement, namely, Plaintiff.

29. Plaintiff was not legally obligated to pay to the Pennsylvania Department of Environmental Protection (hereafter "DEP") any money on the Surety Bond (Exhibit "B" to the Complaint) and thus has no right to recover under the Agreement from any of the answering Defendants any amount of money voluntarily paid by Plaintiff to DEP.

30. Plaintiff either failed to appeal to DEP the forfeiture of the Surety Bond or, if such an appeal was taken, failed to adequately pursue said appeal and raise all available defenses to said forfeiture action by DEP, including, but not limited to, the defenses that the Surety Bond was not enforceable against Plaintiff and was limited in duration, and liability thereon would only continue for the duration of surface mining at the operation conducted thereunder and for a period of five (5) years thereafter, and it is believed and therefore averred that surface mining at the operation in question was no longer conducted within a period of five (5) years prior to July 26, 2004, the date when DEP declared a forfeiture of the bonds, nor within a period of five (5) years prior to the date Plaintiff paid DEP under said Surety Bond.

WHEREFORE, Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate

of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER, pray that this Honorable Court dismiss Plaintiff's Complaint, with prejudice, and enter judgment in favor of answering Defendants.

CROSS CLAIM

Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER, assert this Cross Claim Pursuant to Pa.R.C.P. No. 1031.1 against Defendants, GUROSIK COAL COMPANY, INC., JOHN O. GUROSIK and SHARON GUROSIK, in this action on the following basis:

31. Paragraphs 1 through 24 of the Complaint and Paragraphs 1 through 24 of this Answer are incorporated herein by reference.

32. Surety Bond No. SU 38514 issued to DEP by Plaintiff on behalf of Defendant, Gurosik Coal Company, Inc., was under the condition that Defendant, Gurosik Coal Company, Inc., would faithfully perform all conditions and/or requirements contained therein and contained in the surface coal mining permit referenced by Plaintiff in Paragraph 14 of its Complaint, and Defendant, Gurosik

Coal Company, Inc., failed to perform said conditions and/or requirements.

33. All surface coal mining work performed under the DEP Permit referenced by Plaintiff in Paragraph 14 of it's Complaint, which Permit was issued solely to Defendant, Gurosik Coal Company, Inc., was performed by Defendant, Gurosik Coal Company, Inc.

34. All requirements, including all conditions, under the aforementioned surface coal mining permit were to be performed by Defendant, Gurosik Coal Company, Inc.

35. It is believed and therefore averred that the only officers, principals and/or stockholders of Defendant, Gurosik Coal Company, Inc., are Defendant, John O. Gurosik, and his wife, Defendant, Sharon Gurosik.

36. All actions taken or not taken which resulted in DEP declaring forfeiture of the Surety Bond posted by Plaintiff for Defendant, Gurosik Coal Company, Inc. were taken or not taken by Defendant, Gurosik Coal Company, Inc. at the direction of and/or with the acquiescence of Defendants, John O. Gurosik and/or Sharon Gurosik.

37. Defendants, Gurosik Coal Company, Inc., John O. Gurosik and/or Sharon Gurosik, were jointly and severally responsible and thus primarily liable for all failures and violations under the Mining Permit and the Surety Bond, which lead DEP to declare the forfeiture of Surety Bond No. SU 38514.

38. As a result of the joint and/or several actions and/or inactions of Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, which lead to the declaration of forfeiture of Surety Bond No. SU 38514 by DEP, and the subsequent payment of said bond amount by Plaintiff, Plaintiff has chosen to invoke the indemnity provisions of the Agreement in order to recover from the answering Defendants (as well as Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik) all sums actually paid by the Plaintiff to DEP, plus interest, attorney fees and all other costs provided for in the Agreement.

39. Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, all signed the Agreement, and if the Agreement should be found to be valid and enforceable, which validity and enforceability against answering Defendants have been and are hereby denied by answering Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, are jointly and/or severally solely liable to Plaintiff on the underlying cause of action.

40. As a result of the allegations against Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, in the Complaint and Paragraphs 32 through 39 of this New Matter, all of which allegations and paragraphs are incorporated herein by reference, Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, are solely liable, severally and jointly, to Plaintiff for any alleged damages Plaintiff may have suffered.

41. If, as a result of the matters alleged in Plaintiff's Complaint, answering Defendants, or any of them, or any combination of them, are held liable to Plaintiff for any of the amounts alleged by Plaintiff to be due in its Complaint, then Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, are primarily liable for such amounts and are liable over, jointly and/or severally, to answering Defendants by way of contribution and/or indemnification for all amounts answering Defendants, or any of them, or any combination of them, may be required to pay to Plaintiff.

42. In the alternative, if as a result of the matters alleged in Plaintiff's Complaint, answering Defendants, or any of them, or any combination of them, are held liable to Plaintiff for any of the amounts alleged by Plaintiff to be due in its Complaint, then Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, are jointly and/or severally liable to Plaintiff based upon the allegations set forth in the Complaint and in this Cross-Claim and are liable over to answering Defendants by way of contribution for all such amounts answering Defendants may be required to pay to Plaintiff.

43. If, as a result of the matters alleged in Plaintiff's Complaint, answering Defendants, or any of them, or any combination of them, are held liable to Plaintiff, then Defendants, Gurosik Coal Co., Inc., John O. Gurosik and Sharon Gurosik, have

been unjustly enriched at answering Defendants' expense and thus by operation of law and to prevent an unjust result, said Defendants, Gurosik Coal Co., Inc., John O. Gurosik and Sharon Gurosik, are jointly and/or severally solely liable to Plaintiff based upon the foregoing allegations and are liable over to answering Defendants for all such monetary damages answering Defendants may be required to pay Plaintiff as a result of any unjust enrichment.

WHEREFORE, Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER, demand:

(a) Judgment that, if there is any liability to Plaintiff, Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, are jointly and/or severally solely liable to Plaintiff;

(b) In the event that a verdict is recovered by Plaintiff against answering Defendants, that answering Defendants may have judgment over and against Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, by way of indemnification and/or contribution, and/or by way of unjust enrichment,

for the amount recovered by Plaintiff against answering Defendants, together with costs.

Respectfully submitted,

GATES & SEAMAN

By:



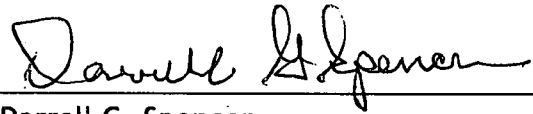
Laurance B. Seaman, Esquire, Attorney for Defendants,
HEPBURNIA COAL CORP., DARRELL G. SPENCER, President,
Individually, Partner, and as Administrator of the Estate of
Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate of
Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER,
Partner and Individually, and DELORIS B. SPENCER

Date: 6/20/2007

Two North Front Street, P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

VERIFICATION

The undersigned verifies that he is the President of Hepburnia Coal Company, and that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

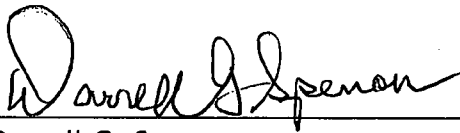


Darrell G. Spencer

DATE: 6/22/09

VERIFICATION

The undersigned verifies that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements herein are subject to the penalties of 18 Pa. C.S. Section 4904, related to unsworn falsification to authority.

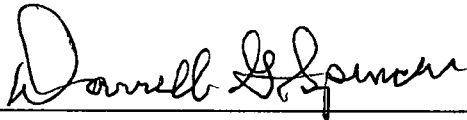


Darrell G. Spencer

Dated: 6/20/07

VERIFICATION

The undersigned verifies that he is a partner of Spencer Land Co., and that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Darrell G. Spencer

DATE: 6/20/07

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-vs-

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually,
Partner, and as Administrator of the Estate
of Dalney F. Spencer, ESTATE OF DALNEY F.
SPENCER, ESTATE OF RAY L. SPENCER, Partner
and Individually, MILDRED W. SPENCER,
Individually and as Administratrix of the
Estate of Ray L. Spencer, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B. SPENCER,
Defendants


AFFIDAVIT OF SERVICE

I hereby certify that service of a true and correct copy of the ANSWER, NEW MATTER
and CROSS-CLAIM was made upon the following, on the 20th day of June, 2007, by regular
first class mail, postage prepaid:

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

William T. Gorton, III, Esquire
STITES & HARBISON, PLLC
250 West Main St., Suite 2300
Lexington, KY 40507

Thomas G. Wagner, Esquire
MEYER & WAGNER
15 Lafayette Street
St. Marys, PA 15857

GATES & SEAMAN
By: 

Laurance B. Seaman, Esquire, Attorney for Defendants,
HEPBURNIA COAL CORP., DARRELL G. SPENCER, President,
Individually, Partner, and as Administrator of the Estate of
Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate of
Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER,
Partner and Individually, and DELORIS B. SPENCER

Date: 6/20/2007

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

FILED *no cc*
JUN 25 2007
William A. Shaw
Prothonotary/Clerk of Courts


CERTIFICATE OF SERVICE

I certify that on June 21, 2007, I mailed a true and correct copy of the Answer, New Matter and Cross Claimed, endorsed with Notice to Plead, filed on behalf of Defendants Gurosik by first class mail, postage prepaid, to the following:

Laurance B. Seaman, Esq.
Two North Front Street
PO Box 846
Clearfield, Pa. 16830

Peter F. Smith, Esq.
PO Box 130
Clearfield, Pa. 16830

William T. Gorton, III, Esq.
250 West Main Street, Ste. 2300
Lexington, KY 40507



Thomas G. Wagner, Attorney for
Defendants Gurosik

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

FILED ^{NO cc}
mH:00301
JUN 25 2007 @R

William A. Shaw
Prothonotary/Clerk of Courts

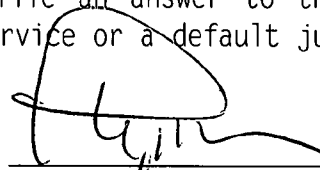
NOTICE

To: Utica Mutual Insurance Co., Plaintiff:

You are hereby required to file an answer to the within New Matter within twenty (20) days of service or a default judgment may be entered against you.

To: Defendants, Hepburnia Coal Corp., Darrell G. Spencer, President of Hepburnia Coal Corp., individually and as partner, and as Administrator of the Estate of Dalney F. Spencer, Estate of Dalney F. Spencer, Estate of Ray L. Spencer, Partner and individually, Mildred W. Spencer, individually and as Administratrix of the Estate of Ray L. Spencer, Spencer Land Co., Robert G. Spencer, partner and individually, and Deloris B. Spencer, Defendants:

You are hereby required to file an answer to the within Cross Claim within twenty (20) days of service or a default judgment may be entered against you.



Thomas G. Wagner, Attorney for
GUROSIK COAL CO., INC.,
JOHN O. GUROSIK and SHARON GUROSIK

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

ANSWER, NEW MATTER and CROSS CLAIM

The Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, Defendants (hereinafter "Defendants Gurosik") respond to the Complaint as follows:

Answer

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted, but in further answer, Defendants Gurosik incorporate all of the allegations set forth in the Cross Claim which follows.

13. Admitted.

14. Admitted that a surface coal mining permit was issued to Defendant Gurosik Coal Company, Inc., as stated. Denied that Utica posted the surety bond attached as Exhibit "B" on behalf of Gurosik Coal Company. Said surety bond was not executed by Defendant Gurosik Coal Company.

15. Admitted that said notice was given by DEP and received by Defendant Gurosik Coal Company. However, it is denied that the bond was subject to forfeiture for the reasons set forth the New Matter which follows.

16. Denied. After reasonable investigation, Defendants Gurosik are without information sufficient to form a belief as to the truth of this averment. Proof is demanded at trial.

17. Denied. After reasonable investigation, Defendants Gurosik are without information sufficient to form a belief as to the truth of this averment. Proof is demanded at trial.

18. Denied. After reasonable investigation, Defendants Gurosik are without information sufficient to form a belief as to the truth of this averment. Proof is demanded at trial.

19. Denied. After reasonable investigation, Defendants Gurosik are without information sufficient to form a belief as to the truth of this averment. Proof is demanded at trial.

20. Denied. After reasonable investigation, Defendants Gurosik are without information sufficient to form a belief as to the truth of this averment. Proof is demanded at trial.

21. Denied as stated, Defendants paid a premium for the issuance of the surety bond.

22. Denied. After reasonable investigation, Defendants Gurosik are without information sufficient to form a belief as to the truth of this averment. Proof is demanded at trial.

23. Denied. After reasonable investigation, Defendants Gurosik are without information sufficient to form a belief as to the truth of this averment. Proof is demanded at trial.

24. Denied. On the contrary, Utica is not entitled to recover the cost of the bond for the reasons more specifically set forth in the New Matter which follows.

WHEREFORE, Defendants Gurosik respectfully request that the Complaint be dismissed, with costs upon the Plaintiff.

New Matter

25. The surety bond attached to the Complaint as Exhibit "B" was not executed by Defendant Gurosik Coal Company, Inc.

26. Under the terms of the surety bond attached as Exhibit "B" to the Complaint, liability upon the bond continued for the duration of surface mining and for a period of five (5) years thereafter.

27. Surface mining at the site allegedly covered by the bond was terminated more than five (5) years prior to the payment by Utica on the bond.

28. Defendants Gurosik did not consent to payment on the bond by Utica.

29. At the time of payment on the bond by Utica, the bond had expired.

30. Utica was not required to make payment under the terms of the bond but did so as a volunteer.

31. Paragraph 17 of the General Agreement of Indemnity, attached to the Complaint as Exhibit "A", was not completed prior to execution of the same by Defendants Gurosik.

32. Paragraph 17 of the General Agreement of Indemnity fails to identify to which bonds, undertakings or other writings it applies.

33. Utica did not obtain the consent of Defendants Gurosik, particularly Defendant Sharon Gurosik, to the application of the Indemnity Agreement to the bond identified as Exhibit "B".

WHEREFORE, Defendants Gurosik respectfully request that the Complaint be dismissed or, in the alternative, be dismissed with respect to Defendant Sharon Gurosik.

Cross Claim

Defendants Gurosik make the following Cross Claim against the remaining Defendants, Hepburnia Coal Corp., Darrell G. Spencer, President of Hepburnia Coal Corp., individually and as partner, and as Administrator of the Estate of Dalney F. Spencer, Estate of Dalney F. Spencer, Estate of Ray L. Spencer. Partner and individually, Mildred W. Spencer, individually and as Administratrix of the Estate of Ray L. Spencer, Spencer Land Co., Robert G. Spencer, partner and individually, and Deloris B. Spencer:

34. Defendant Gurosik Coal Company entered into its contract to strip mine the property in Pine Creek Township, Jefferson County, under a partnership or joint venture with Defendants Hepburnia Coal Company and Spencer Land Company.

35. The verbal agreement between Defendant Gurosik Coal Company and Defendants Hepburnia Coal Company and Spencer Land Company was made on the following terms:

A. Defendant Gurosik Coal Company obtained the lease and surface mining permit for the premises;

B. Defendant Gurosik Coal Company stripped the property, removed the coal and backfilled the property;

C. Defendant Gurosik Coal Company loaded the coal onto trucks owned, operated or controlled by Defendant Hepburnia Coal Company;

D. Defendants Hepburnia Coal Company and/or Spencer Land Company sold the coal and received all of the proceeds;

E. Defendants Hepburnia Coal Company and/or Spencer Land Company then paid Defendant Gurosik Coal Company approximately \$10.00/ton for the coal;

F. Defendants Hepburnia Coal Company and/or Spencer Land Company were responsible for providing the bond and any necessary collateral to DEP;

G. Defendants Hepburnia Coal Company and/or Spencer Land Company were to set aside a portion of the proceeds from the sale of the coal as cash collateral for the bond; and

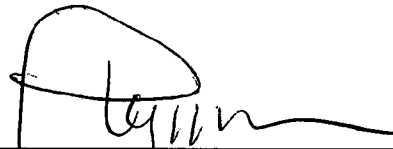
H. At the end of the project, the cash collateral was to be paid to Defendant Gurosik Coal Company as part of the payment for the work performed by Gurosik Coal Company.

36. Defendants Gurosik believe, and therefore aver, that the Defendants Hepburnia Coal Company and/or Spencer Land Company failed to set aside the cash collateral.

37. By virtue of said verbal agreement, the remaining Defendants are liable over to the Defendants Gurosik in the event that Defendants Gurosik are found liable under the allegations set forth in the Complaint in this matter.

38. The remaining Defendants are jointly liable with Defendants Gurosik for any claim made under the General Agreement of Indemnity.

WHEREFORE, Defendants Gurosik shall be granted judgment in their favor and against the remaining Defendants for any claims cognizable under the Complaint or, in the alternative, that the remaining Defendants be liable for contribution to Defendants Gurosik for any claim cognizable under the Complaint; together with such other relief as the Court deems proper and necessary.

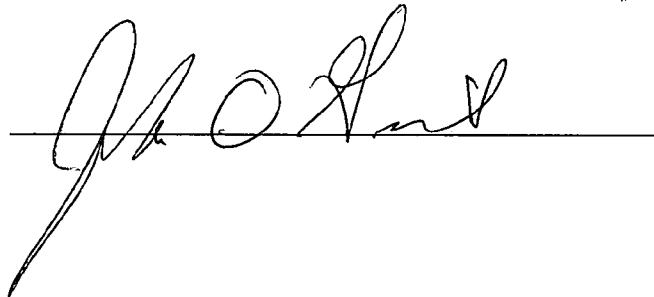
A handwritten signature in black ink, appearing to read 'T. G. Wagner', is written over a horizontal line.

Thomas G. Wagner, Attorney for
Defendants Gurosik

VERIFICATION

I, John Gurosik, individually and President of Gurosik Coal Company, Inc., having read the foregoing Answer, New Matter and Cross Claim, verify that the statements made therein are true and correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

A handwritten signature in black ink, appearing to read "John Gurosik", is written over a horizontal line.

Date: June __, 2007

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
)	
v.	)	Civ.No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants.)	

**PLAINTIFF UTICA MUTUAL INSURANCE COMPANY'S REPLY TO NEW MATTER
OF DEFENDANTS GUROSIK COAL COMPANY, INC., JOHN O. GUROSIK,
PRESIDENT AND INDIVIDUALLY, AND SHARON GUROSIK'S**

Comes now Plaintiff, Utica Mutual Insurance Company, by and through its counsel,
responding to the New Matter of Gurosik Coal Company, Inc., John O. Gurosik, President and
Individually, and Sharon Gurosik (collectively, "Gurosik Defendants") as follows:

1-24. Plaintiff incorporates by reference paragraphs 1-24 of its Complaint as if fully set
forth and realleged here. To the extent the Gurosik Defendants made specific averments in
response to Plaintiff's Complaint (§§ 12, 14-15, 21, 24) to which a responsive pleading is
required, they are denied.

25. Plaintiff admits that Exhibit B to its Complaint is an incomplete copy of Surety Bond Number 38514 and attaches a fully-executed copy of Surety Bond Number 38514 as Exhibit 1. The averments set forth in ¶ 25 refer to the terms of the bond attached as Exhibit 1, which speaks for itself and demonstrates that the bond was, in fact, executed by Gurosik Coal Company, Inc. To the extent the Gurosik Defendants' averments in ¶ 25 are inconsistent with the bond attached as Exhibit 1, they are denied.

26. The averments set forth in ¶ 26 refer to the terms of the surety bond, which speaks for itself. To the extent the averments of ¶ 26 are inconsistent with a reading of the entire bond, they are denied.

27. After reasonable investigation, Plaintiff is without information sufficient to form a belief as to the truth of the averments in ¶ 27, and they are therefore denied. Proof is demanded at trial.

28. The averments in ¶ 28 are admitted.

29. The averments in ¶ 29 are denied.

30. The averments in ¶ 30 are denied.

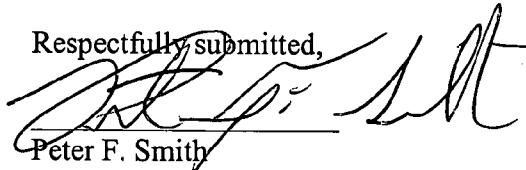
31. The averments in ¶ 31 refer to the General Agreement of Indemnity, Ex. A to Plaintiff's Complaint, which speaks for itself. To the extent the averments in ¶ 31 are inconsistent with a full reading of the General Agreement of Indemnity, they are denied.

32. The averments in ¶ 32 refer to the General Agreement of Indemnity, Ex. A to Plaintiff's Complaint, which speaks for itself. To the extent the averments in ¶ 32 are inconsistent with a full reading of the General Agreement of Indemnity, they are denied.

33. The averments in ¶ 33 are denied, to the extent that they allege consent of the Gurosik Defendants was necessary.

WHEREFORE, Plaintiff, Utica Mutual Insurance Company, respectfully asks the Court to dismiss the Gurosik Defendants' New Matter with prejudice, and enter judgment in Plaintiff's favor.

Respectfully submitted,



Peter F. Smith

Supreme Court #: 34291

P.O. Box 130

Clearfield, Pennsylvania 16830

(814) 765-5595

William T. Gorton III

Supreme Court #: 53009

Stites & Harbison, PLLC

250 West Main Street, Suite 2300

Lexington, Kentucky 40507

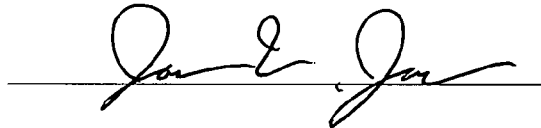
(859) 226-2241

Counsel for Plaintiff,

Utica Mutual Insurance Company

VERIFICATION

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

A handwritten signature in black ink, appearing to read "Jason Jaskolka", is written over a horizontal line.

Jason Jaskolka, Esq., of Utica Mutual Insurance Company

July 5, 2007
date

ER-MR-322:11/82

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION**FORFEITED**

JUL 26 2004

**SURETY BOND FOR
SURFACE MINES**

Purpose, check one:

- (a) Original Application for Permit ☒
- (b) Additional Bond ☐
- (c) Replacement Bond ☐

To be filled in by Pennsylvania
Department of Environmental Resources:License No. 101933Permit No. 33830117

Date(s) and Amount of Bond Release

To be filled in by Operator:

Name of Operation KingType of Mineral Bituminous Coal

To be filled in by Surety Company:

Bond No. SU 38514WHEREAS, Gurosik Coal Co., Inc.
(Name of Surface Mine Operator)

a (1) Corporation, incorporated under the Laws in the State of

Pennsylvania, or(2) _____
(Partnership, Individual, Registered Fictitious Name Business)with its principal place of business at R. D. #2, Box 42A, Kersy, PA 15846

(Address)

, has filed an application for a Surface Mining Permit
with the Department of Environmental Resources, under the provisions of the Act of Assembly, approved

May 31, 1945, P.L. 1198, as amended, known as the "Surface Mining Conservation and Reclamation Act",

(hereinafter Act 418) in which the operator estimated that it would affect 31.2 acres of landin Pine Creek Township, Jefferson County, of

the Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that we Gurosik Coal Co., Inc.
(Name of Surface

Mine Operator)

, as principal, and Utica Mutual Insurance Co.
(Name of Surety Company)**EXHIBIT**

licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, Commonwealth of Pennsylvania (hereinafter referred to as the "Secretary" and the "Department"), with its principal place of business at P. O. Box 530, Utica, NY 13503

(Address)

as surety, in consideration of the issuance of the aforesaid permit and intending to be legally bound hereby, are held and firmly bound unto the Department, in the just and full sum of Seventy One Thousand Seven Hundred and no/100---- (\$ 71,700.00) Dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns and successors, individually and/or jointly, firmly by these presents:

NOW THE CONDITION OF THIS OBLIGATION is such that if the principal shall faithfully perform all of the requirements of (1) Act 418, (2) the Act of Assembly approved June 22, 1937, P.L. 1987, as amended, known as "The Clean Streams Law" (Act 394), (3) the "Air Pollution Control Act", Act of January 8, 1960, P.L. 2119, as amended, (4) the applicable provisions of the "Dam Safety and Encroachments Act", Act 325 of 1978, P.L. 1375, as amended, (5) the "Coal Refuse Disposal Act", Act of September 24, 1968, No. 318, P.L. 1940, as amended, (6) the applicable provisions of the "Solid Waste Management Act", Act of July 7, 1980, No. 97, as amended, (7) the rules and regulations promulgated thereunder, (8) the provisions and conditions of the permits issued thereunder and designated in this bond, and (9) such amendments or additions to the law as may hereinafter be lawfully made, (all of which are hereinafter referred to as the "law") then this obligation shall be null and void, otherwise to be and remain in full force and effect in accordance with the provisions of the law.

LIABILITY UPON THIS BOND shall be for the amount specified herein. Liability upon this bond shall continue for the duration of surface mining at the operation conducted hereunder and for a period of five (5) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto as provided by the law.

UPON THE HAPPENING OF ANY DEFAULT of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the period for appeal provided by law having expired, the principal and the surety hereby authorize and empower the Attorney-General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania, or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution AND WITH TEN PERCENT (10%) ADDED FOR COLLECTION FEES, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible.

FURTHER, the principal and the surety agree that their liability hereunder shall not be impaired or affected by, (a) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is conditioned, or (b) any forbearance or delay in declaring this bond to be forfeited or in enforcing payment on this bond. The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default, provided however, that the Department may authorize, in writing, the surety to cover such defaulted obligations if the Department determines that it is in their interest to do so.

FURTHER, the Department reserves the right to require additional bonding from the principal, for any reason, which shall be a supplement to and augment the bond liability provided herein. The Department may release, in writing, a portion of the amount of liability provided in this bond for partial completion of the provisions, conditions and obligations assumed by the principal herein, as may be authorized by the law, and such amount released shall be a credit upon the total amount of this bond. Nothing herein shall limit or preclude the Department from seeking any liability or remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law.

The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee upon filing information in writing in the court where such judgment shall be entered.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, this 15th day of July, 19 85

Surface Mine Operator

Gurosik Coal Co., Inc.

(Print Name)

ATTEST OR WITNESS

Andrew J. Sutula Jr.
Andrew J. Sutula Jr.

By: X

(Title) President

By: Sharon Caylor Gurogik

(Title) Secretary (Seal)

SURETY: Utica Mutual Insurance Co.

(Print Name)

ATTEST OR WITNESS:

Alene M. Archick

By: William M. Champagne

(Title) Attorney-in-fact

By: _____

(Title) (Seal)

Approved as to legality and form:

John Wm. Caswell WBC 8/6/85
 Deputy Attorney General/Chief Counsel/Assistant Counsel

Approved for the Department:

William M. Champagne 8/7/85

1. The subject company and its agent is duly licensed in the Commonwealth to write fidelity & surety insurance. ☒ yes ☐ no

2. The bond is within the 10% limitation of capital & surplus as per Section 661 (40 P. S. 832). ☒ yes ☐ no

3. The signature appears to be in the original. ☒ yes ☐ no

Pennsylvania Insurance Dept.

Harrisburg, PA

Date: 7/16/85

RECEIVED
 1985 JUL 29 PM 1:10
 LICENSING & BONDING
 BUR. OF MIN. & RECLAM.
 1985 AUG -9 PM 1:24
 LICENSING & BONDING
 BUR. OF MIN. & RECLAM.

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

No. 259 —

POWER OF ATTORNEY

Know all men by these Presents, the UTICA MUTUAL INSURANCE COMPANY, a New York Corporation, having its principal office in the Town of New Hartford, County of Oneida, State of New York, does hereby make, constitute and appoint

David M. Champe, James Philip Hadden and Joseph R. Imler
of Ebensburg, Pennsylvania

its true and lawful Attorney(s)-in-fact in their separate capacity if more than one is named above to make, execute, sign, seal and deliver for and on its behalf as surety and as its act and deed (without power of redelegation) any and all bonds and undertakings and other writings obligatory in the nature thereof (except bonds guaranteeing the payment of principal and interest of notes, mortgage bonds and mortgages) provided the amount of no one bond or undertaking exceeds ONE MILLION Dollars (\$ 1,000,000.00).

The execution of such bonds and undertakings shall be as binding upon said UTICA MUTUAL INSURANCE COMPANY as fully and to all intents and purposes as if the same had been duly executed and acknowledged by its regularly elected officers at its Home Office in New Hartford, New York.

This Power of Attorney is granted under and by authority of the following resolution adopted by the Directors of the UTICA MUTUAL INSURANCE COMPANY on the 27th day of November, 1961.

"Resolved, that the President or any Vice-President, in conjunction with the Secretary or any Assistant Secretary, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly acknowledged by the regularly elected Officers of the Company in their own proper persons.

"Now Therefore, the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney by a facsimile, and any such Power of Attorney bearing such facsimile signatures or seal shall be valid and binding upon the Company."

In Witness Whereof, the UTICA MUTUAL INSURANCE COMPANY has caused these presents to be signed by its Authorized Officers, this 10th day of February, 1982.

UTICA MUTUAL INSURANCE COMPANY

John P. Acciaroni
Secretary



J.B. Riffle
President

STATE OF NEW YORK } ss:
COUNTY OF ONEIDA

On this 10th day of February, 1982, before me, a Notary Public in and for the State of New York, personally came J. B. RIFFLE and JOHN P. SULLIVAN to me known, who acknowledged execution of the preceding instrument and, being by me duly sworn, do depose and say, that they are President and Secretary respectively of UTICA MUTUAL INSURANCE COMPANY; that the seal affixed to said instrument is the corporate seal of UTICA MUTUAL INSURANCE COMPANY; that said corporate seal is affixed and their signatures subscribed to said instrument by authority and order of the Board of Directors of said Corporation.

In Testimony Whereof, I have hereunto set my hand at New Hartford, New York, the day and year first above written.



Rosemary Wladan
Notary Public

STATE OF NEW YORK } ss:
COUNTY OF ONEIDA

I, John D. Yonkers Assistant Secretary of the UTICA MUTUAL INSURANCE COMPANY do hereby certify that the foregoing is a true and correct copy of a Power of Attorney, executed by said UTICA MUTUAL INSURANCE COMPANY, which is still in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the said Corporation at New Hartford, New York, this 10th day of July, 1982.

John D. Yonkers
Assistant Secretary

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, Partner,
and as Administrator of the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY
L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,
Defendants,

Civil No. 2006-1901-CD
Civil Indemnity Action

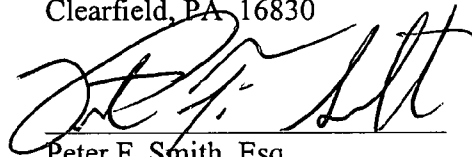
FILED 3cc ASH
08:10 am Smith
JUL 11 2007
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of the Reply to the New Matter of Defendants Gurosik Coal Company, Inc., John O. Gurosik, President and Individually, and Sharon Gurosik, was made upon the following, on the 11 day of July, 2007, by regular first class mail, postage prepaid:

Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830



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

William T. Gorton III, Esq.
Stites & Harbison PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507
COUNSEL FOR PLAINTIFF, UTICA
MUTUAL INSURANCE COMPANY

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 06-1901-CD
CIVIL DIVISION

UTICA MUTUAL INSURANCE
COMPANY, Plaintiff

-VS-

GUROSIK COAL CO., INC., et al
Defendants

ANSWER, NEW MATTER AND
CROSS-CLAIM
(filed on behalf of
Answering Defendants)

LAW OFFICES
GATES & SEAMAN
2 NORTH FRONT STREET
P.O. BOX 846
CLEARFIELD, PA. 16830

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)
Plaintiff,)

v.)

GUROSIK COAL CO., INC.,)
JOHN O. GUROSIK, President and Individually,)
SHARON GUROSIK, HEPBURNIA COAL CORP.,)
DARRELL G. SPENCER, President, Individually, Partner,)
and as Administrator of the Estate of Dalney F. Spencer,)
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)
L. SPENCER, Partner and Individually, MILDRED W.)
SPENCER, Individually and as Administratrix of the Estate)
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)
SPENCER, Partner and Individually, AND)
DELORIS B. SPENCER,)

Defendants,)

Civil No. 2006-1901-CD
Civil Indemnity Action

Type of Pleading:
**Answer & New Matter
Filed on Defendants
Hepburnia Coal Corp. and
Spencer etal**

Filed on Behalf of:
Plaintiff

Attorney for this party:
Peter F. Smith, Esq.
Supreme Court # 34291
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

William T. Gorton III
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main St., Suite 2300
Lexington, KY 40507
(859) 226-2241
Counsel for Plaintiff,
Utica Mutual Ins. Company

FILED 3cc Ath
C/9:10Lm Smith
JUL 11 2007
(LM)

William A. Shaw
Prothonotary/Clerk of Courts

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
)	
v.	)	Civ.No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants.		

**PLAINTIFF UTICA MUTUAL INSURANCE COMPANY'S REPLY TO NEW MATTER
OF DEFENDANTS HEPBURNIA COAL CORP., DARRELL G. SPENCER,
PRESIDENT, INDIVIDUALLY, PARTNER AND AS ADMINISTRATOR OF THE
ESTATE OF DALNEY F. SPENCER, ESTATE OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, PARTNER AND INDIVIDUALLY, MILDRED W. SPENCER,
INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF RAY L.
SPENCER, SPENCER LAND CO., ROBERT G. SPENCER, PARTNER AND
INDIVIDUALLY, AND DELORIS B. SPENCER**

Comes now Plaintiff, Utica Mutual Insurance Company, by and through counsel,
responding to the New Matter of Hepburnia Coal Corp., Darrell G. Spencer, President,
Individually, Partner and as Administrator of the Estate of Dalney F. Spencer, Estate of Dalney
F. Spencer, Estate of Ray L. Spencer, Partner and Individually, Mildred W. Spencer, Individually
and as Administratrix of the Estate of Ray L. Spencer, Spencer Land Co., Robert G. Spencer,
Partner and Individually, and Deloris B. Spencer (collectively, "Hepburnia Defendants") as
follows:

1–24. Paragraphs 1–24 of Plaintiff's Complaint are incorporated by reference and set forth as if realleged here, except to the extent Defendants' averments in ¶ 13 contend that neither Darrell G. Spencer nor Mildred W. Spencer signed the General Agreement of Indemnity in their respective fiduciary capacities. While Plaintiff admits the General Agreement of Indemnity was not signed by Darrell G. Spencer nor Mildred W. Spencer in their respective fiduciary capacities, they are proper parties in their fiduciary capacities as personal representatives of the estates of Dalney F. Spencer and Ray L. Spencer under 20 Pa.C.S. § 3373. To the extent the Hepburnia Defendants made specific averments in response to Plaintiff's Complaint (¶¶ 8, 9, 12, 16, 20), those averments are otherwise denied unless specifically admitted above.

25. Plaintiff denies the averments in ¶ 25 to the extent a responsive pleading is required.

26. The averments in ¶ 26 refer to the General Agreement of Indemnity, Ex. A of Plaintiff's Complaint, which speaks for itself. To the extent the averments of ¶ 26 are inconsistent with a full reading of the General Agreement of Indemnity, they are denied.

27. The averments in ¶ 27 refer to the General Agreement of Indemnity, Ex. A of Plaintiff's Complaint, which speaks for itself. To the extent the averments of ¶ 27 are inconsistent with a full reading of the General Agreement of Indemnity, they are denied.

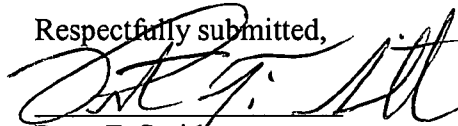
28. The averments in ¶ 28 contain a legal conclusion to which no responsive pleading is required. To the extent a response is required, the averments in ¶ 28 are denied.

29. The averments in ¶ 29 are denied.

30. The averments in ¶ 30 are denied. Plaintiff filed a protective Notice of Appeal with the Pennsylvania Department of Environmental Protection on or about August 19, 2004, in order to preserve the rights of the Gurosik- and Hepburnia-related defendants to pursue a settlement with the Pennsylvania Department of Environmental Protection. Proof is demanded to the extent that Defendants allege the bond was not enforceable against Plaintiff. Plaintiff specifically denies that the bond expired five years after operations ceased, since the mine never met regulatory standards for bond release and continues to be the subject of acid mine drainage discharges.

WHEREFORE, Plaintiff, Utica Mutual Insurance Company, requests that this Court dismiss the Hepburnia Defendants' New Matter with prejudice, and enter judgment in Plaintiff's favor.

Respectfully submitted,



Peter F. Smith

Supreme Court #: 34291

P.O. Box 130

Clearfield, Pennsylvania 16830

(814) 765-5595

William T. Gorton III

Supreme Court #: 53009

Stites & Harbison, PLLC

250 West Main Street, Suite 2300

Lexington, Kentucky 40507

(859) 226-2241

Counsel for Plaintiff,

Utica Mutual Insurance Company

VERIFICATION

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

A handwritten signature in cursive script, appearing to read "Jason Jaskolka", is written over a horizontal line.

Jason Jaskolka, Esq., of Utica Mutual Insurance Company

July 5, 2007

date

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

GUROSIK COAL CO., INC.,

JOHN O. GUROSIK, President and Individually,

SHARON GUROSIK, HEPBURNIA COAL CORP.,

DARRELL G. SPENCER, President, Individually, Partner,

and as Administrator of the Estate of Dalney F. Spencer,

ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY

L. SPENCER, Partner and Individually, MILDRED W.

SPENCER, Individually and as Administratrix of the Estate

of Ray L. Spencer, SPENCER LAND CO., ROBERT G.

SPENCER, Partner and Individually, AND

DELORIS B. SPENCER,

Defendants,

Civil No. 2006-1901-CD

Civil Indemnity Action

FILED 3 CC AH
0/9:10cm Smith
JUL 11 2007
(CM)

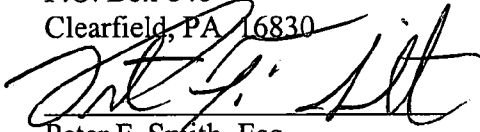
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of the Reply to New Matter of Defendants Hepburnia Coal Corp., Darrel G. Spencer, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, Estate of Dalney F. Spencer, Estate of Ray L. Spencer, Partner and Individually, Mildred W. Spencer, Individually and as Administratrix of the Estate of Ray L. Spencer, Spencer Land Co., Robert G. Spencer, Partner and Individually, and Deloris B. Spencer, was made upon the following, on the 11 day of July, 2007, by regular first class mail, postage prepaid:

Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830


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

William T. Gorton III, Esq.
Stites & Harbison PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507
COUNSEL FOR PLAINTIFF, UTICA
MUTUAL INSURANCE COMPANY

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, : Filed on behalf of
SHARON GUROSIK, HEPBURNIA COAL CORP., : Defendants Gurosik
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator Counsel of Record:
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY Thomas G. Wagner, Esq.
L. SPENCER, Partner and Individually, : 115 Lafayette Street
MILDRED W. SPENCER, Individually and as : St. Marys, Pa. 15857
Administratrix of the Estate of Ray L. : (814) 781-3445
Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER,
Defendants :

FILED
010:37601 no
JUL 26 2007 cc
(initials)

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

REPLY TO NEW MATTER and ANSWER TO CROSS CLAIM OF
DEFENDANTS HEPBURNIA COAL CORPORATION ET AL

NOW COME the Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, by their attorney, Thomas G. Wagner, and file the following response to the New Matter and Cross Claim filed on behalf of Defendants Hepburnia Coal Corporation et al:

Reply to New Matter

26. Admitted.

27. Admitted.

28. Admitted. However, in further answer, to the extent that Defendants Gurosik are liable under the said agreement, Defendants Hepburnia Coal Company et al are jointly or severally liable or liable over to Defendants Gurosik, as more specifically alleged in the pleadings previously filed by Defendants Gurosik.

29. Admitted.

30. Admitted.

WHEREFORE, Defendants Gurosik respectfully request that the Complaint be dismissed.

Answer to Cross Claim

32. Admitted in part and denied in part. Admitted that Defendant Gurosik Coal Company, Inc., was required to faithfully perform all conditions and/or requirements contained in the surface coal mining permit. However, it is denied that Defendant Gurosik Coal Company failed to perform said conditions and/or requirements. On the contrary, Defendant Gurosik Coal Company fully performed all of its obligations under the permit. To the extent that conditions exist on the premises which DEP alleges to be violations of the permit, Defendants Gurosik further allege that said conditions emanate from conditions on neighboring property rather than from any act or omission of Defendant Gurosik Coal Company, Inc.

33. Admitted.

34. Admitted. However, Defendant Gurosik Coal Company was acting as the agent in a joint venture with Defendants Hepburnia Coal Company and Spencer Land Company in the coal mining operations covered by the permit.

35. Admitted.

36. Denied. On the contrary, DEP declared a forfeiture of the surety bond based upon alleged violations which actually emanate from neighboring properties, not from the area covered by the permit. Additionally, Defendant Sharon Gurosik had no knowledge of, or participation or acquiescence in any actions taken or not taken at the coal mining site which was the subject of the permit.

37. Denied. On the contrary, Defendant John O. Gurosik and Sharon Gurosik were not jointly or severally responsible for any failure or violations under the mining permit and surety bond. Defendant John O. Gurosik and Sharon Gurosik were not parties to the mining permit or the surety bond.

38. Denied. Defendants Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik did not engage in any action or inaction which justified a forfeiture of the surety bond; and the Plaintiff was not justified in invoking the indemnity provisions of the agreement in order to recover from any of the Defendants.

39. This is a legal conclusion to which no response is required.

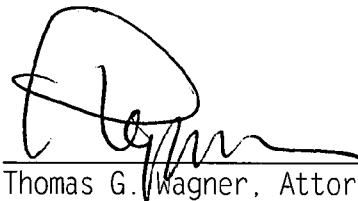
40. Denied. This is a legal conclusion to which no response is required. To the extent that the allegations in paragraph 40 contained in allegations of fact, it is specifically denied that the Defendants Gurosik engaged in any action or inaction creating any liability under the mining permit or the surety bond.

41. This is a legal conclusion to which no response is required.

42. This is a legal conclusion to which no response is required.

43. Denied. On the contrary, Defendants Hepburnia Coal Company, Spencer Land Company, Estate of Dalney F. Spencer, Estate of Ray L. Spencer, Mildred W. Spencer and Dolores B. Spencer have been unjustly enriched under the circumstances. Defendant Hepburnia Coal Company was required under verbal agreement between Defendant Hepburnia Coal and Defendant Gurosik Coal Company, Inc., to set aside a portion of the proceeds which it received from the sale of the coal to provide security for the mining permit and bond; but said Defendants either failed to set aside the proceeds or failed to apply said proceeds to payment of the liability claimed by DEP.

WHEREFORE, Defendants Gurosik respectfully request that the Cross Claim be dismissed, with costs upon the other Defendants.

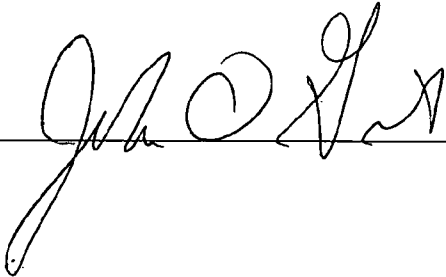
A handwritten signature in black ink, appearing to read 'T. G. Wagner', is written over a horizontal line.

Thomas G. Wagner, Attorney for
Defendants Gurosiks

VERIFICATION

I, John Gurosik, individually and President of Gurosik Coal Company, Inc., having read the foregoing Reply to New Matter and Answer to Cross Claim, verify that the statements made therein are true and correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

A handwritten signature in dark ink, appearing to read "John Gurosik", is written over a horizontal line. The signature is stylized with large, flowing letters.

Date: July 25, 2007

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

FILED *no cc*
010:37821
JUL 26 2007
William A. Shaw
Prothonotary/Clerk of Courts

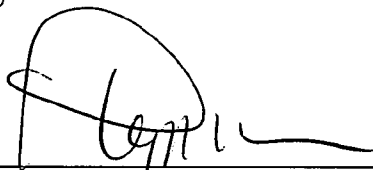
CERTIFICATE OF SERVICE

I certify that on July ___, 2007, I mailed a true and correct copy of the Reply to New Matter and Answer to Cross Claim of Defendants Hepburnia Coal Corporation, et al, filed on behalf of Defendants Gurosik by first class mail, postage prepaid, to the following:

Laurance B. Seaman, Esq.
Two North Front Street
PO Box 846
Clearfield, Pa. 16830

Peter F. Smith, Esq.
PO Box 130
Clearfield, Pa. 16830

William T. Gorton, III, Esq.
250 West Main Street, Ste. 2300
Lexington, KY 40507



Thomas G. Wagner, Attorney for
Defendants Gurosik

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

UTICA MUTUAL INSURANCE
COMPANY, Plaintiff

vs.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and
Individually, SHARON GUROSIK,
HEPBURNIA COAL CORP., DARRELL
G. SPENCER, President, Individually,
Partner, and as Administrator of the
Estate of Dalney F. Spencer, ESTATE OF
DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
Individually and as Administratrix of
the Estate of Ray L. Spencer, SPENCER
LAND CO., ROBERT G. SPENCER,
Partner and Individually, AND
DELORIS B. SPENCER, Defendants

No. 06 - 1901 - CD

Type of Case: Civil

Type of Pleading: REPLY TO CROSS
CLAIM OF DEFENDANTS, GUROSIK
COAL CO., INC., JOHN O. GUROSIK
AND SHARON GUROSIK
AND NEW MATTER

Filed on Behalf of:
HEPBURNIA COAL CORP., DARRELL G.
SPENCER, President, Individually,
Partner, and as Administrator of the
Estate of Dalney F. Spencer, ESTATE
OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
individually and as Administratrix of
the Estate of Ray L. Spencer,
SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually,
and DELORIS B. SPENCER

Counsel of Record for this Party:
Laurance B. Seaman, Esquire

Supreme Court No.: 19620

GATES & SEAMAN, Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

FILED
013:39/61
JUL 27 2007

1cc
Dty Seaman
GR

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-vs-

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually,
Partner, and as Administrator of the Estate
of Dalney F. Spencer, ESTATE OF DALNEY F.
SPENCER, ESTATE OF RAY L. SPENCER, Partner
and Individually, MILDRED W. SPENCER,
Individually and as Administratrix of the
Estate of Ray L. Spencer, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B. SPENCER,
Defendants

NOTICE

TO:
Thomas G. Wagner, Esquire
MEYER & WAGNER
15 Lafayette Street
St. Marys, PA 15857

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW
MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE
ENTERED AGAINST YOU.

GATES & SEAMAN
By: 

Laurance B. Seaman, Esquire, Attorney for Defendants,
HEPBURNIA COAL CORP., DARRELL G. SPENCER, President,
Individually, Partner, and as Administrator of the Estate of
Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate of
Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER,
Partner and Individually, and DELORIS B. SPENCER

Date: July 27, 2007

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-vs-

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually,
Partner, and as Administrator of the Estate
of Dalney F. Spencer, ESTATE OF DALNEY F.
SPENCER, ESTATE OF RAY L. SPENCER, Partner
and Individually, MILDRED W. SPENCER,
Individually and as Administratrix of the
Estate of Ray L. Spencer, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B. SPENCER,
Defendants

REPLY TO CROSS CLAIM OF GUROSIK COAL CO., INC.,
JOHN O. GUROSIK AND SHARON GUROSIK

AND NOW, come, Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER,
President, Individually, Partner, and as Administrator of the Estate of Dalney F.
Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of
Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually,
and DELORIS B. SPENCER, ("answering Defendants"), by their attorneys, Gates &
Seaman, and reply to the Cross Claim of Defendants, Gurosik Coal Co., Inc., John O.
Gurosik and Sharon Gurosik ("Defendants Gurosiks"), as follows:

34. The allegations of Paragraph 34 are denied. In answer thereto, it is averred that
there was never any partnership, joint venture or any other type of association of
Defendants Gurosiks with any of answering Defendants, generally or specifically to strip

mine the property in question in Pine Creek Township, Jefferson County. In further answer thereto, it is averred that Defendants Gurosiks either owned outright or entered into a lease with the owners of the surface and/or coal in the property in question in Pine Creek County, Jefferson County and obtained a permit to mine the same, and mined and removed the coal entirely on their own. In further answer thereto, Paragraphs 31 through 43 of answering Defendants' Cross Claim against Defendants Gurosiks, Paragraphs 35 through 38 hereof and Paragraphs 39 through 41 of the hereinafter New Matter are incorporated herein by reference.

35. The allegations of Paragraph 35 and subparagraphs A through H are denied. In answer thereto, answering Defendants aver that there was no verbal agreement between Defendants Gurosiks and any of answering Defendants, nor was there any written agreement between the same parties to any of the terms alleged in Subparagraphs 35A through H of the Cross Claim of Defendants Gurosiks. In further answer thereto, Paragraphs 31 through 43 of answering Defendants' Cross Claim, Paragraphs 34, 36, 37 and 38 hereof and Paragraphs 39 through 41 of the hereinafter New Matter are incorporated herein by reference. In further answer thereto, answering Defendants aver as follows:

a. Defendants Gurosiks obtained on their own, before approaching answering Defendants to sign the General Agreement of Indemnity ("the Agreement"), the lease from the property owner(s);

b. Defendants Gurosiks stripped the property and removed the coal, but did not adequately backfill and reclaim the property.

c. If Defendants, Hepburnia Coal Company and/or Spencer Land Co., paid Defendants Gurosiks any amount of money for any of the coal from said job, the price of the same was a negotiated price arrived at by an arms length transaction.

d. Defendants Gurosiks were responsible for providing the bond and necessary collateral in order to obtain the mining permit from the Pennsylvania Department of Environmental Protection ("DEP") and answering Defendants only agreed to sign the Agreement as an accommodation to help them obtain the necessary bonding, but not in furtherance of any type of agreement with Defendants Gurosiks, nor any partnership, joint venture or any other association with Defendants Gurosiks. Defendants, Hepburnia Coal Company and Spencer Land Co., never were asked to nor did they provide any collateral for the issuance of any bond.

36. The allegations of Paragraph 36 and any inference that Defendants, Hepburnia Coal Company and Spencer Land Co., were to set aside any money as collateral or for any other purpose are denied. In answer thereto, Paragraphs 31 through 43 of answering Defendants' Cross Claim against Defendants Gurosiks, Paragraphs 34, 35, 37 and 38 hereof, and Paragraphs 39 through 41 of the hereinafter New Matter are incorporated herein by reference.

37. The allegations of Paragraph 37 and any inference that there was any verbal agreement between answering Defendants and Defendants Gurosiks are denied. In answer thereto, Paragraphs 31 through 43 of answering Defendants' Cross Claim against Defendants, Gurosiks, Paragraphs 34, 35, 36 and 38 hereof, and Paragraphs 39 through 41 of the hereinafter New Matter are incorporated herein by reference. In further answer thereto, answering Defendants are not liable over to Defendants Gurosiks if Defendants Gurosiks are found liable under the allegations set forth in the Complaint.

38. The allegations of Paragraph 38 are denied. In answer thereto, Paragraphs 31 through 43 of answering Defendants' Cross Claim against Defendants Gurosiks, Paragraphs 34, 35, 36 and 37 hereof, and Paragraphs 39 through 41 of the hereinafter New Matter are

incorporated herein by reference. In further answer thereto, answering Defendants are not jointly liable with Defendants Gurosiks for any claim made under the agreement.

WHEREFORE, answering Defendants request that the Cross Claim of Defendants Gurosiks be denied and dismissed and that the prayers for relief of answering Defendants as set forth in the Answer, New Matter and Cross Claim of answering Defendants, which are all incorporated herein by reference, be granted.

NEW MATTER

AND NOW, come answering Defendants, by their attorneys, Gates & Seaman, and assert the following New Matter, and in support thereof, allege the following:

39. Defendants Gurosiks allege in their Cross Claim against answering Defendants the existence of a verbal agreement between Defendants Gurosiks and Defendants, Hepburnia Coal Company and Spencer Land Co., with terms which include obtaining an interest in real estate and/or a lease in real estate, which would have been for a period in excess of three (3) years, the mining, removal and sale of coal therefrom, which would have been for a value in excess of \$500.00, and the establishment of a fund which would constitute a trust or constructive trust, from the sale of coal as collateral for a bond.

40. The verbal agreement alleged by Defendants Gurosiks would have created an interest in real estate and/or a lease in real estate which would have been for a period in excess of three (3) years, and/or goods, for a price of \$500.00 or more, to be removed from said land and sold, and the establishment of a fund, which would constitute a trust or constructive trust. Defendants Gurosiks have made no claim of the existence of any writing which would cover the creation of the interest in land, a lease for more than three years, the severance, removal and sale of coal at a price of greater than \$500.00, nor the establishment of said fund.

41. Answering Defendants raise herein as affirmative defenses the statute of frauds, the Uniform Written Obligations Act and the Uniform Commercial Code, as there is no writing signed by Defendants Gurosiks or answering Defendants supportive of the claim of Defendants Gurosiks against any of answering Defendants, and thus the claims of Defendants Gurosiks against answering Defendants as set forth in the Cross Claim of Defendants Gurosiks are not enforceable against answering Defendants.

WHEREFORE, answering Defendants request that the Cross Claim of Defendants Gurosiks be denied and dismissed and that the prayers for relief of answering Defendants as set forth in the Answer, New Matter and Cross Claim of answering Defendants, which are all incorporated herein by reference, be granted.

Respectfully submitted,

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire, Attorney for Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER

Date: July 27, 2007

Two North Front Street, P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

VERIFICATION

The undersigned verifies that he is the President of Hepburnia Coal Company, and that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

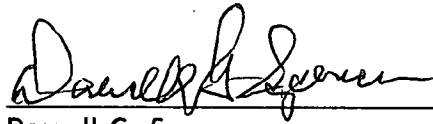


Darrell G. Spencer

DATE: 7/27/07

VERIFICATION

The undersigned verifies that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements herein are subject to the penalties of 18 Pa. C.S. Section 4904, related to unsworn falsification to authority.

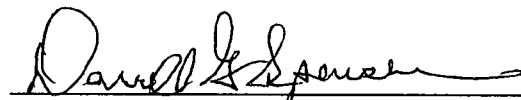


Darrell G. Spencer

Dated: 9/27/07

VERIFICATION

The undersigned verifies that he is a partner of Spencer Land Co., and that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Darrell G. Spencer

DATE: 7/27/07

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-vs-

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually,
Partner, and as Administrator of the Estate
of Dalney F. Spencer, ESTATE OF DALNEY F.
SPENCER, ESTATE OF RAY L. SPENCER, Partner
and Individually, MILDRED W. SPENCER,
Individually and as Administratrix of the
Estate of Ray L. Spencer, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B. SPENCER,
Defendants

AFFIDAVIT OF SERVICE

I hereby certify that service of a true and correct copy of the REPLY TO CROSS CLAIM OF GUROSIK COAL CO., INC., JOHN O. GUROSIK AND SHARON GUROSIK AND NEW MATTER, was made upon the following, on the 27 day of July, 2007, by regular first class mail, postage prepaid:

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

William T. Gorton, III, Esquire
STITES & HARBISON, PLLC
250 West Main St., Suite 2300
Lexington, KY 40507

Thomas G. Wagner, Esquire
MEYER & WAGNER
15 Lafayette Street
St. Marys, PA 15857

GATES & SEAMAN
By: 

Laurance B. Seaman, Esquire, Attorney for Defendants,
HEPBURNIA COAL CORP., DARRELL G. SPENCER, President,
Individually, Partner, and as Administrator of the Estate of
Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate of
Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER,
Partner and Individually, and DELORIS B. SPENCER

Date: July 27, 2007

COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, : Attorney of Record for
SHARON GUROSIK, HEPBURNIA COAL CORP., : Gurosik Coal Co., John O.
DARRELL G. SPENCER, President, : Gurosik and Sharon Gurosik:
Individually, Partner, and as Administrator
Of the Estate of Dalney F. Spencer, : Thomas G. Wagner, Esq.
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY : 115 Lafayette Street
L. SPENCER, Partner and Individually, : St. Marys, Pa. 15857
MILDRED W. SPENCER, Individually and as : (814) 781-3445
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER,
Defendants :

FILED
m 11:10 AM
AUG 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

REPLY OF DEFENDANTS GUROSIK TO NEW MATTER FILED BY
DEFENDANTS HEPBURNIA COAL CORPORATION ET AL

Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, by their attorney, Thomas G. Wagner, file the following response to the New Matter filed by Defendants Hepburnia Coal Corporation et al:

Reply to New Matter

39. Denied. On the contrary, the cross claim filed by Defendants Gurosik raises a claim solely involving an obligation to pay money.

40. Denied. On the contrary, the verbal agreement between Defendants Gurosik and Defendants Hepburnia Coal Company et al related solely to the payment of money.

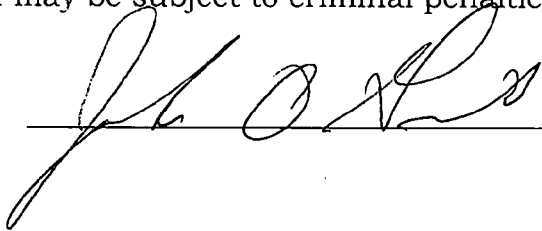
41. This is a legal conclusion to which no response is required.

VERIFICATION

I, John O. Gurosik, having read the foregoing Reply to New Matter, verify that the statements made therein are true and correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 8-10-07



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DKT PG. 102625

UTICA MUTUAL INSURANCE COMPANY

NO . 06-1901-CD

-VS-

GUROSIK COAL CO. INC. d/

COMPLAINT

FILED
012:59/61
AUG 14 2007
W

SHERIFF'S RETURN

William A. Shaw
Prothonotary/Clerk of Courts

NOW MAY 31, 2007 SERVED THE WITHIN COMPLAINT ON HEPBURNIA COAL CO.; DARRELL G. SPENCER; DELORES B. SPENCER; SPENCER LAND COMPANY; ESTATE OF RAY L. SPENCER; ESTATE OF DALNEY F. SPENCER; and ROBERT G. SPENCER, DEFENDANTS BY ACCEPTANCE OF SERVICE OF LAURANCE B. SEAMAN, ATTORNEY. ACCEPTANCE OF SERVICE FILED IN PROTHONOTARY OFFICE.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102625
NO: 06-1901-CD
SERVICE # 8 OF 10
COMPLAINT

PLAINTIFF: UTICA MUTUAL INSURANCE COMPANY
vs.
DEFENDANT: GUROSIK COAL CO. INC. al

SHERIFF RETURN

NOW, April 11, 2007, SHERIFF OF ELK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON GUROSIK COAL CO. COMPANY, INC..

NOW, April 16, 2007 AT 10:28 AM SERVED THE WITHIN COMPLAINT ON GUROSIK COAL CO. COMPANY, INC., DEFENDANT. THE RETURN OF ELK COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102625
NO: 06-1901-CD
SERVICE # 9 OF 10
COMPLAINT

PLAINTIFF: UTICA MUTUAL INSURANCE COMPANY
vs.
DEFENDANT: GUROSIK COAL CO. INC. al

SHERIFF RETURN

NOW, April 11, 2007, SHERIFF OF ELK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON JOHN O. GUROSIK.

NOW, April 16, 2007 AT 10:28 AM SERVED THE WITHIN COMPLAINT ON JOHN O. GUROSIK, DEFENDANT. THE RETURN OF ELK COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102625
NO: 06-1901-CD
SERVICE # 10 OF 10
COMPLAINT

PLAINTIFF: UTICA MUTUAL INSURANCE COMPANY
vs.
DEFENDANT: GUROSIK COAL CO. INC. al

SHERIFF RETURN

NOW, April 11, 2007, SHERIFF OF ELK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON SHARON GUROSIK.

NOW, April 16, 2007 AT 10:28 AM SERVED THE WITHIN COMPLAINT ON SHARON GUROSIK, DEFENDANT. THE RETURN OF ELK COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102625
NO: 06-1901-CD
SERVICES 10
COMPLAINT

PLAINTIFF: UTICA MUTUAL INSURANCE COMPANY
vs.
DEFENDANT: GUROSIK COAL CO. INC. al

SHERIFF RETURN

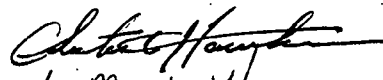
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	STITES	73120	100.00
SHERIFF HAWKINS	STITES	73120	68.00
ELK CO.	STITES	N/A	42.70

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,


by Marilyn Harris

Chester A. Hawkins
Sheriff

Affidavit of Service

Utica Mutual Insurance Company

vs.

Gurosik Coal Co., Inc., John O.
Gurosik, President and Individually,
Sharon Gurosik, etal.

No. 1901 Term, 20 06

Returnable within _____ days
from date of service hereof.

NOW April 16, 20 07 at 10:28 o'clock A.M.

served the within Complaint on Gurosik Coal Co., Inc.,

John O. Gurosik, President and Individually and Sharon Gurosik

at 800 Brandy Camp Rd., Kersey, Elk County, PA

by handing to John O. Gurosik, President of Gurosik Coal and husband of Sharon Gurosik,
three copies
a true and attested copy of the original Complaint and made

known to him the contents thereof. Sheriff's Costs - \$42.70 PAID

Sworn to before me this 30th

day of april A.D. 20 07

Carolee H. [Signature]

Prothonotary

My Commission Expires
January 7, 2008

So answers,

Thomas C. Ronte

Sheriff

Earl C. Pontious

Deputy



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986

FAX (814) 765-5915

ROBERT SNYDER

CHIEF DEPUTY

MARILYN HAMM

DEPT. CLERK

CYNTHIA AUGHENBAUGH

OFFICE MANAGER

KAREN BAUGHMAN

CLERK TYPIST

PETER F. SMITH

SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 102625

UTICA MUTUAL INSURANCE COMPANY

vs.

GUROSIK COAL CO. INC. al

TERM & NO. 06-1901-CD

COMPLAINT

SERVE BY: 04/28/07

HEARING:

MAKE REFUND PAYABLE TO STITES & HARIBSON, PLLC

SERVE: SHARON GUROSIK

ADDRESS: 800 BRANDY CAMP ROAD, KERSEY, PA 15846

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby depute the SHERIFF OF ELK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, April 11, 2007.

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986

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ROBERT SNYDER

CHIEF DEPUTY

MARILYN HAMM

DEPT. CLERK

CYNTHIA AUGHENBAUGH

OFFICE MANAGER

KAREN BAUGHMAN

CLERK TYPIST

PETER F. SMITH

SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 102625

UTICA MUTUAL INSURANCE COMPANY

vs.

GUROSIK COAL CO. INC. et al

TERM & NO. 06-1901-CD

COMPLAINT

SERVE BY: 04/28/07

HEARING:

MAKE REFUND PAYABLE TO STITES & HARBISON, PLLC

SERVE: GUROSIK COAL CO. COMPANY, INC.

ADDRESS: 800 BRANDY CAMP ROAD, KERSEY, PA 15846

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ELK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, April 11, 2007.

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986

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ROBERT SNYDER
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

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OFFICE MANAGER

KAREN BAUGHMAN
CLERK TYPIST

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 102625

UTICA MUTUAL INSURANCE COMPANY

vs.

GUROSIK COAL CO. INC. al

TERM & NO. 06-1901-CD

COMPLAINT

SERVE BY: 04/28/07

HEARING:

MAKE REFUND PAYABLE TO STITES & HARBISON, PLLC

SERVE: JOHN O. GUROSIK

ADDRESS: 800 BRANDY CAMP ROAD, KERSEY, PA 15846

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ELK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, April 11, 2007.

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

FILED

OCT 17 2007

William A. Shaw
Prothonotary/Clerk of Courts

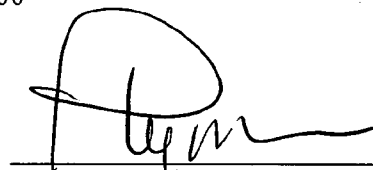
CERTIFICATE OF SERVICE

I certify that on October 16, 2007, I mailed a true and correct copy:

1. Answers of Defendant Sharon Gurosik to Plaintiff's First Set of Requests for Admissions;
2. Answers of Defendant Gurosik Coal Company, Inc., to Plaintiff's First Set of Requests for Admissions;
3. Answers of Defendant John O. Gurosik to Plaintiff's First Set of Requests for Admissions,

By first class United States mail, postage prepaid, to the following:

William T. Gorton, III, Esq.
250 West Main Street, Ste. 2300
Lexington, KY 40507



Thomas G. Wagner, Attorney for
Defendants Gurosik

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

FILED
M 11:02 AM
OCT 17 2007
cc
GK

William A. Shaw
Prothonotary/Clerk of Courts

**ANSWERS OF DEFENDANT SHARON GUROSIK TO PLAINTIFF'S FIRST SET
OF REQUESTS FOR ADMISSIONS**

In response to the Request for Admissions filed by Plaintiff, Defendant Sharon Gurosik states as follows:

Request No. 1. - Admitted.

Request No. 2 - Admitted.

Request No. 3 - Admitted. But only to the extent provided under the General Agreement of Indemnity.

Request No. 4 - It is denied that the General Agreement of Indemnity makes Gurosik Coal Company an indemnitor of the Plaintiff under all circumstances, in particular, it is denied that Gurosik Coal Company is an indemnitor of the Plaintiff under the circumstances involved in this action.

Request No. 5 - Admitted. However, it is denied that the General Agreement of Indemnity applies to the circumstances involved in this action because the Defendants Gurosik did not execute the subject bond, nor was said bond executed by the Plaintiff on behalf of the Defendants Gurosik.

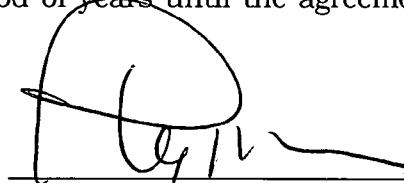
Request No. 6 – Denied. Paragraph 16 refers to bonds executed by the Plaintiff on behalf of the indemnitors.

Request No. 7 – Denied. The surety bond was issued by Plaintiff for the benefit of Hepburnia Coal Company.

Request No. 8 – Denied. Paragraph 16 of the General Agreement states that the agreement is intended to cover whatever bonds are executed from time to time and over an indefinite period of years until the agreement is cancelled in accordance with its terms.

Request No. 9 – Denied.

Request No. 10 – Denied. Paragraph 16 of the General Agreement states that the agreement is intended to cover whatever bonds are executed from time to time and over an indefinite period of years until the agreement is cancelled in accordance with its terms.

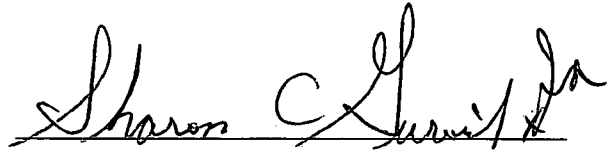
A handwritten signature in black ink, appearing to read 'T. G. Wagner', is written over a horizontal line.

Thomas G. Wagner, Attorney for
Defendant Sharon Gurosik

VERIFICATION

I, Sharon Gurosik, having read the foregoing Answers to Request for Admissions, verify that the statements made therein are true and correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.



Date: 10-15-07

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

FILED
OCT 17 2007
NRC
GX

William A. Shaw
Prothonotary/Clerk of Courts

**ANSWERS OF DEFENDANT GUROSIK COMPANY, INC., TO PLAINTIFF'S
FIRST SET OF REQUESTS FOR ADMISSIONS**

In response to the Request for Admissions filed by Plaintiff, Defendant Gurosik Coal Company, Inc., states as follows:

Request No. 1. - Admitted.

Request No. 2 - Admitted.

Request No. 3 - It is denied that the General Agreement of Indemnity makes Gurosik Coal Company an indemnitor of the Plaintiff under all circumstances, in particular, it is denied that Gurosik Coal Company is an indemnitor of the Plaintiff under the circumstances involved in this action.

Request No. 4 - Admitted. However, it is denied that the General Agreement of Indemnity applies to the circumstances involved in this action because the Defendants Gurosik did not execute the subject bond, nor was said bond executed by the Plaintiff on behalf of the Defendants Gurosik.

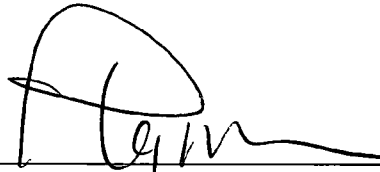
Request No. 5 - Denied. Paragraph 16 refers to bonds executed by the Plaintiff on behalf of the indemnitors.

Request No. 6 - Admitted. However, it is denied that the General Agreement of Indemnity applies to the circumstances involved in this action because the Defendants Gurosik did not execute the subject bond, nor was said bond executed by the Plaintiff on behalf of the Defendants Gurosik.

Request No. 7 - Admitted, to the extent that bonds were executed by Utica in accordance with and under the authority of the General Agreement of Indemnity.

Request No. 8 - Denied.

Request No. 9 - Denied. Paragraph 16 of the General Agreement states that the agreement is intended to cover whatever bonds are executed from time to time and over an indefinite period of years until the agreement is cancelled in accordance with its terms.

A handwritten signature in black ink, appearing to read 'T. G. Wagner', is written over a horizontal line.

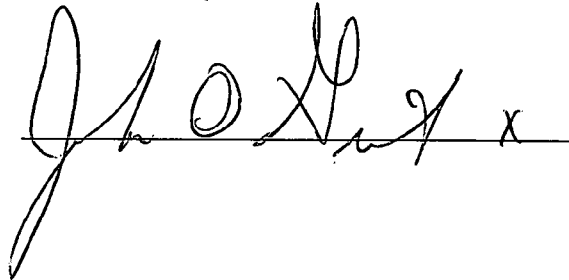
Thomas G. Wagner, Attorney for
Defendant Gurosik Coal Company

VERIFICATION

I, John O. Gurosik, Gurosik Coal Company, Inc., having read the foregoing Answers to Request for Admissions, verify that the statements made therein are true and correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 10-15-07

A handwritten signature in black ink, appearing to read "John O. Gurosik", is written over a horizontal line. The signature is stylized with a large initial "J" and a long, sweeping underline.

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

FILED
OCT 17 2007
William A. Shaw
Prothonotary/Clerk of Courts

**ANSWERS OF DEFENDANT JOHN O. GUROSIK TO PLAINTIFF'S FIRST SET
OF REQUESTS FOR ADMISSIONS**

In response to the Request for Admissions filed by Plaintiff, Defendant John O. Gurosik states as follows:

Request No. 1. - Admitted.

Request No. 2 - Admitted.

Request No. 3 - Admitted. But in further answer, it is denied that my signature on the General Agreement of Indemnity makes me an indemnitor under all circumstances. I deny that I am an indemnitor of the Plaintiff under the circumstances involved in this action.

Request No. 4 - It is denied that the General Agreement of Indemnity makes Gurosik Coal Company an indemnitor of the Plaintiff under all circumstances, in particular, it is denied that Gurosik Coal Company is an indemnitor of the Plaintiff under the circumstances involved in this action.

Request No. 5 - Admitted. However, it is denied that the General Agreement of Indemnity applies to the circumstances involved in this action because the Defendants Gurosik did not execute the subject bond, nor was said bond executed by the Plaintiff on behalf of the Defendants Gurosik.

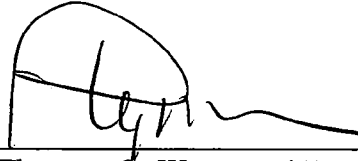
Request No. 6 - Denied. Paragraph 16 refers to bonds executed by the Plaintiff on behalf of the indemnitors.

Request No. 7 - Denied. The surety bond was issued by Plaintiff for the benefit of Hepburnia Coal Company.

Request No. 8 - Paragraph 1 of General Agreement of Indemnity speaks for itself. I did not make any premium payments for the issuance of the subject bond by Utica.

Request No. 9 - Denied.

Request No. 10 - Denied. Paragraph 16 of the General Agreement states that the agreement is intended to cover whatever bonds are executed from time to time and over an indefinite period of years until the agreement is cancelled in accordance with its terms.

A handwritten signature in dark ink, appearing to read 'T. G. Wagner', is written over a horizontal line.

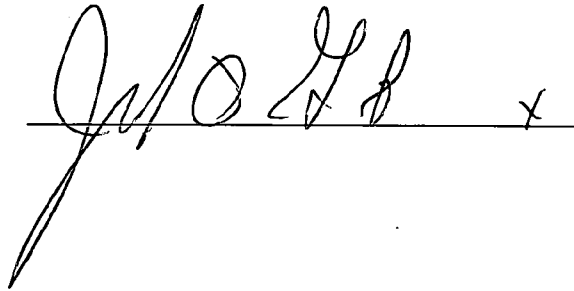
Thomas G. Wagner, Attorney for
Defendant John O. Gurosik

VERIFICATION

I, John O. Gurosik, having read the foregoing Answers to Request for Admissions, verify that the statements made therein are true and correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 10-15-07

 x

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

UTICA MUTUAL INSURANCE
COMPANY, Plaintiff

vs.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and
Individually, SHARON GUROSIK,
HEPBURNIA COAL CORP., DARRELL
G. SPENCER, President, Individually,
Partner, and as Administrator of the
Estate of Dalney F. Spencer, ESTATE OF
DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
Individually and as Administratrix of
the Estate of Ray L. Spencer, SPENCER
LAND CO., ROBERT G. SPENCER,
Partner and Individually, AND
DELORIS B. SPENCER, Defendants

:
: No. 06 - 1901 - CD
:
: Type of Case: Civil
:
:
: Type of Pleading: NOTICE OF SERVICE OF ANSWERS
: OF DEFENDANTS, HEPBURNIA COAL CORP., DARRELL
: G. SPENCER, ESTATE OF DALNEY F. SPENCER,
: ESTATE OF RAY L. SPENCER, MILDRED W. SPENCER,
: SPENCER LAND CO., ROBERT G. SPENCER and
: DELORIS B. SPENCER, TO PLAINTIFF'S FIRST SET OF
: INTERROGATORIES, REQUEST FOR ADMISSIONS, AND
: REQUEST FOR PRODUCTION OF DOCUMENTS TO
: DEFENDANTS

:
:
:
:
: Filed on Behalf of:
: HEPBURNIA COAL CORP., DARRELL G.
: SPENCER, President, Individually,
: Partner, and as Administrator of the
: Estate of Dalney F. Spencer, ESTATE
: OF DALNEY F. SPENCER, ESTATE OF
: RAY L. SPENCER, Partner and
: Individually, MILDRED W. SPENCER,
: individually and as Administratrix of
: the Estate of Ray L. Spencer,
: SPENCER LAND CO., ROBERT G.
: SPENCER, Partner and Individually,
: and DELORIS B. SPENCER

:
:
:
: Counsel of Record for this Party:
: Laurance B. Seaman, Esquire

:
:
: Supreme Court No.: 19620

:
:
: GATES & SEAMAN, Attorneys at law
: Two North Front Street
: P. O. Box 846
: Clearfield, PA 16830
: (814) 765-1766

FILED No CC.
9/2:00um
OCT 19 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-vs-

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually,
Partner, and as Administrator of the Estate
of Dalney F. Spencer, ESTATE OF DALNEY F.
SPENCER, ESTATE OF RAY L. SPENCER, Partner
and Individually, MILDRED W. SPENCER,
Individually and as Administratrix of the
Estate of Ray L. Spencer, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B. SPENCER,
Defendants

**NOTICE OF SERVICE OF ANSWERS OF DEFENDANTS, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER,
MILDRED W. SPENCER, SPENCER LAND CO., ROBERT G. SPENCER AND DELORIS B.
SPENCER, TO PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUEST FOR ADMISSIONS,
AND REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

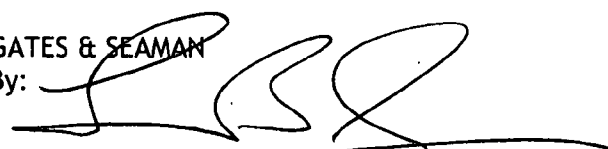
Take notice that on the 19th day of October, 2007, a true and correct copy of the
above referenced Answers were served as noted herein:

By Hand Delivery to:

Peter F. Smith, Esquire
(Attorney for Plaintiff)
30 South Second Street
Clearfield, PA 16830

By First Class, U. S. Mail, Postage Prepaid to:

Thomas G. Wagner, Esquire
(Attorney for Defendants Gurosik)
115 Lafayette Street
St. Marys, PA 15857

GATES & SEAMAN
By: 

Laurance B. Seaman, Esquire, Attorney for Defendants,
HEPBURNIA COAL CORP., DARRELL G. SPENCER,
President, Individually, Partner, and as Administrator of
the Estate of Dalney F. Spencer, ESTATE OF DALNEY F.
SPENCER, ESTATE OF RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, Individually and as
Administratrix of the Estate of Ray L. Spencer, SPENCER
LAND CO., ROBERT G. SPENCER, Partner and
Individually, and DELORIS B. SPENCER

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,	)	Civil No. 2006-1901-CD
Plaintiff,	)	Civil Indemnity Action
)	
v.	)	Type of Pleading: Notice
)	
GUROSIK COAL CO., INC.,	)	Filed on Behalf of:
JOHN O. GUROSIK, President and Individually,	)	Plaintiff
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,	)	Attorney for this Party:
and as Administrator of the Estate of Dalney F. Spencer,	)	Peter F. Smith, Esq.
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY	)	Supreme Court #34291
L. SPENCER, Partner and Individually, MILDRED W.	)	P.O. Box 130
SPENCER, Individually and as Administratrix of the Estate	)	Clearfield, PA 16830
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.	)	(814) 765-5595
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,	)	William T. Gorton III
Defendants.	)	Supreme Court #53009
	)	Stites & Harbison, PLLC
	)	250 West Main St., Suite 2300
	)	Lexington, Kentucky 40507
	)	(859) 226-2241
	)	Counsel for Plaintiff,
	)	Utica Mutual Insurance
	)	Company

FILED *no cc*
M/12/34/01
FEB 08 2008 *CK*

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

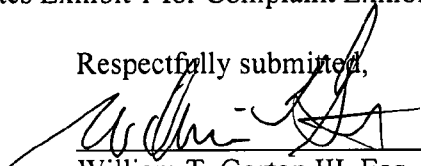
UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
)	
v.	)	Civ.No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants.)	

NOTICE OF SUBSTITUTION OF EXHIBIT

Comes now Plaintiff, Utica Mutual Insurance Company, by and through counsel, to give notice of substitution to all parties of Exhibit B to the Complaint with Exhibit 1 to Plaintiff's Reply to the New Matter of Defendants Gurosik Coal Company, Inc., John O. Gurosik, and Sharon Gurosik ("Plaintiff's Reply").

Exhibit B, an unexecuted copy of surety bond SU 38514, was inadvertently attached to the Complaint. When brought to the attention of Plaintiff, Plaintiff attached an executed copy of the surety bond as Exhibit 1 to Plaintiff's Reply, a copy of which is also attached hereto for ease of reference. By this Notice, Plaintiff substitutes Exhibit 1 for Complaint Exhibit B.

Respectfully submitted,


William T. Gorton III, Esq.

Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

Peter F. Smith
Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, Partner,
and as Administrator of the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY
L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants.

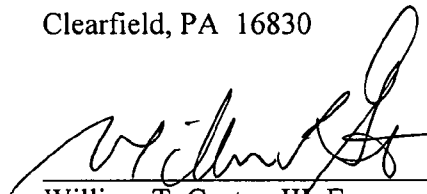
Civ.No. 2006-1901-CD
Civil Indemnity Action

AFFIDAVIT OF SERVICE

I hereby certify that service of a true and correct copy of the Notice of Substitution of Exhibit, was made upon the following, on the 5 day of February, 2008, by regular first class mail, postage prepaid:

Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830


William T. Gorton III, Esq.
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

Peter F. Smith
Supreme Court #: 34291

P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

ER-MR-322:11/82

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION**FORFEITED**

JUL 26 2004

**SURETY BOND FOR
SURFACE MINES**

Purpose, check one:

(a) Original Application for Permit



(b) Additional Bond



(c) Replacement Bond

To be filled in by Pennsylvania
Department of Environmental Resources:

License No. 101933

Permit No. 33830117

Date(s) and Amount of Bond Release

To be filled in by Operator:

Name of Operation King

Type of Mineral Bituminous Coal

To be filled in by Surety Company:

Bond No. SU 38514

WHEREAS, Gurosik Coal Co., Inc.

(Name of Surface Mine Operator)

a (1) Corporation, incorporated under the Laws in the State of

Pennsylvania, or

(2)

(Partnership, Individual, Registered Fictitious Name Business)

with its principal place of business at R. D. #2, Box 42A, Kersey, PA 15846

(Address)

, has filed an application for a Surface Mining Permit

with the Department of Environmental Resources, under the provisions of the Act of Assembly, approved
May 31, 1945, P.L. 1198, as amended, known as the "Surface Mining Conservation and Reclamation Act",(hereinafter Act 418) in which the operator estimated that it would affect 31.2 acres of land
in Pine Creek Township, Jefferson County, of
the Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN, BY THESE PRESENTS that we Gurosik Coal Co., Inc.

(Name of Surface

Mine Operator)

, as principal, and Utica Mutual Insurance Co.

(Name of Surety Company)

EXHIBIT

licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, Commonwealth of Pennsylvania (hereinafter referred to as the "Secretary" and the "Department"), with its principal place of business at P. O. Box 530, Utica, NY 13503

(Address)

as surety, in consideration of the issuance of the aforesaid permit and intending to be legally bound hereby, are held and firmly bound unto the Department, in the just and full sum of Seventy One Thousand Seven Hundred and no/100---- (\$ 71,700.00) Dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns and successors, individually and/or jointly, firmly by these presents:

NOW THE CONDITION OF THIS OBLIGATION is such that if the principal shall faithfully perform all of the requirements of (1) Act 418, (2) the Act of Assembly approved June 22, 1937, P.L. 1987, as amended, known as "The Clean Streams Law" (Act 394), (3) the "Air Pollution Control Act", Act of January 8, 1960, P.L. 2119, as amended, (4) the applicable provisions of the "Dam Safety and Encroachments Act", Act 325 of 1978, P.L. 1375, as amended, (5) the "Coal Refuse Disposal Act", Act of September 24, 1968, No. 318, P.L. 1940, as amended, (6) the applicable provisions of the "Solid Waste Management Act", Act of July 7, 1980, No. 97, as amended, (7) the rules and regulations promulgated thereunder, (8) the provisions and conditions of the permits issued thereunder and designated in this bond, and (9) such amendments or additions to the law as may hereinafter be lawfully made, (all of which are hereinafter referred to as the "law") then this obligation shall be null and void, otherwise to be and remain in full force and effect in accordance with the provisions of the law.

LIABILITY UPON THIS BOND shall be for the amount specified herein. Liability upon this bond shall continue for the duration of surface mining at the operation conducted hereunder and for a period of five (5) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto as provided by the law.

UPON THE HAPPENING OF ANY DEFAULT of the provisions, conditions and obligations assumed under this bond and the declaration of a forfeiture by the Secretary, or his designee, the period for appeal provided by law having expired, the principal and the surety hereby authorize and empower the Attorney-General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania, or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution AND WITH TEN PERCENT (10%) ADDED FOR COLLECTION FEES, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible.

FURTHER, the principal and the surety agree that their liability hereunder shall not be impaired or affected by, (a) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is conditioned, or (b) any forbearance or delay in declaring this bond to be forfeited or in enforcing payment on this bond. The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default, provided however, that the Department may authorize, in writing, the surety to cover such defaulted obligations if the Department determines that it is in their interest to do so.

FURTHER, the Department reserves the right to require additional bonding from the principal, for any reason, which shall be a supplement to and augment the bond liability provided herein. The Department may release, in writing, a portion of the amount of liability provided in this bond for partial completion of the provisions, conditions and obligations assumed by the principal herein, as may be authorized by the law, and such amount released shall be a credit upon the total amount of this bond. Nothing herein shall limit or preclude the Department from seeking any liability or remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law;

The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee upon filing information in writing in the court where such judgment shall be entered.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to be legally bound hereby, this 15th day of July, 19 85

Surface Mine Operator

Gurosik Coal Co., Inc.

(Print Name)

By: [Signature]

President

By: [Signature]

Secretary

SURETY: Utica Mutual Insurance Co.

(Print Name)

ATTEST OR WITNESS

[Signature]
[Signature]

ATTEST OR WITNESS:

[Signature]

By: [Signature]

(Title) Attorney-in-Fact

By: _____

(Title)

(Seal)

Approved as to legality and form:

[Signature] WBC 8/6/85
Deputy Attorney General/Chief Counsel/Assistant Counsel

Approved for the Department:

[Signature] 8/9/85

1. The subject company and its agent is duly licensed in the Commonwealth to write fidelity & Surety Insurance. ☒ yes ☐ no
2. The bond is within the 10% limitation of capital & Surplus as per Section 661 (40 P. S. 832). ☒ yes ☐ no
3. The signature appears to be in the original. ☒ yes ☐ no

Pennsylvania Insurance Dept.

Harrisburg, PA

Date 7/15/85

RECEIVED
BUREAU OF MINING & RECLAMATION
1985 JUL 29 PM 1:10
RECEIVED
BUREAU OF MINING & RECLAMATION
1985 AUG -9 PM 1:24
RECEIVED
BUREAU OF MINING & RECLAMATION
1985 JUL 29 PM 1:10

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

No. 259 —

POWER OF ATTORNEY

Know all men by these Presents, the UTICA MUTUAL INSURANCE COMPANY, a New York Corporation, having its principal office in the Town of New Hartford, County of Oneida, State of New York, does hereby make, constitute and appoint

David M. Champe, James Philip Hadden and Joseph R. Imler
of Ebensburg, Pennsylvania

its true and lawful Attorney(s)-in-fact in their separate capacity if more than one is named above to make, execute, sign, seal and deliver for and on its behalf as surety and as its act and deed (without power of reddelegation) any and all bonds and undertakings and other writings obligatory in the nature thereof (except bonds guaranteeing the payment of principal and interest of notes, mortgage bonds and mortgages) provided the amount of no one bond or undertaking exceeds ONE MILLION Dollars (\$ 1,000,000.00).

The execution of such bonds and undertakings shall be as binding upon said UTICA MUTUAL INSURANCE COMPANY as fully and to all intents and purposes as if the same had been duly executed and acknowledged by its regularly elected officers at its Home Office in New Hartford, New York.

This Power of Attorney is granted under and by authority of the following resolution adopted by the Directors of the UTICA MUTUAL INSURANCE COMPANY on the 27th day of November, 1961.

"Resolved, that the President or any Vice-President, in conjunction with the Secretary or any Assistant Secretary, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly acknowledged by the regularly elected Officers of the Company in their own proper persons.

"Now Therefore, the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney by a facsimile, and any such Power of Attorney bearing such facsimile signatures or seal shall be valid and binding upon the Company."

In Witness Whereof, the UTICA MUTUAL INSURANCE COMPANY has caused these presents to be signed by its Authorized Officers, this 10th day of February, 1982.

UTICA MUTUAL INSURANCE COMPANY

John P. Sullivan
Secretary



J.B. Riffle
President

STATE OF NEW YORK } ss:
COUNTY OF ONEIDA

On this 10th day of February, 1982, before me, a Notary Public in and for the State of New York, personally came J. B. RIFFLE and JOHN P. SULLIVAN to me known, who acknowledged execution of the preceding instrument and, being by me duly sworn, do depose and say, that they are President and Secretary respectively of UTICA MUTUAL INSURANCE COMPANY; that the seal affixed to said instrument is the corporate seal of UTICA MUTUAL INSURANCE COMPANY; that said corporate seal is affixed and their signatures subscribed to said instrument by authority and order of the Board of Directors of said Corporation.

In Testimony Whereof, I have hereunto set my hand at New Hartford, New York, the day and year first above written.



Rosemary Wadas
Notary Public

STATE OF NEW YORK } ss:
COUNTY OF ONEIDA

I, John D. Yonkers Assistant Secretary of the UTICA MUTUAL INSURANCE COMPANY do hereby certify that the foregoing is a true and correct copy of a Power of Attorney, executed by said UTICA MUTUAL INSURANCE COMPANY, which is still in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the said Corporation at New Hartford, New York, this 15th day of July, 1985.

John D. Yonkers
Assistant Secretary

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, Partner,
and as Administrator of the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY
L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants,

Civil No. 2006-1901-CD
Civil Indemnity Action

FILED NO CC
01/01/47/01
MAR 05 2008
William A. Shaw
Prothonotary/Clerk of Courts

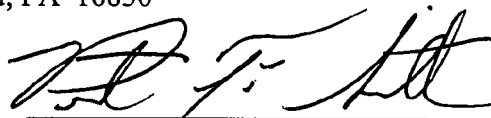
CERTIFICATE OF SERVICE

I, hereby certify that I delivered a true and correct copy of a SUBPOENAS for attendance of TIMOTHY N. MORGAN and DARREL G. SPENCER scheduled for March 20, 2008 at 1:00 p.m. and 2:00 p.m. at Attorney Peter F. Smith's office 30 South Second Street, Clearfield, PA 16830 by U.S. First Class Postage Prepaid to the following address:

Laurance B. Seaman, Esq.
Gates & Seaman
Counsel for Darrel G. Spencer
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Date:

3/4/08



Peter F. Smith, Esq.
30 S. 2nd St., P.O. Box 130
Clearfield, PA 16830

William T. Gorton III, Esq.
Stites & Harbison PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507
COUNSEL FOR PLAINTIFF, UTICA
MUTUAL INSURANCE COMPANY

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

GUROSIK COAL CO., INC.,

JOHN O. GUROSIK, President and Individually,

SHARON GUROSIK, HEPBURNIA COAL CORP.,

DARRELL G. SPENCER, President, Individually, Partner,

and as Administrator of the Estate of Dalney F. Spencer,

ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY

L. SPENCER, Partner and Individually, MILDRED W.

SPENCER, Individually and as Administratrix of the Estate

of Ray L. Spencer, SPENCER LAND CO., ROBERT G.

SPENCER, Partner and Individually, AND

DELORIS B. SPENCER,

Defendants,

Civil No. 2006-1901-CD

Civil Indemnity Action

FILED no cc
MAR 05 2008
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, hereby certify that I delivered a true and correct copy of a SUBPOENA for attendance of his client of JOHN O. GUROSIK scheduled for March 20, 2008 at 9:00 a.m. at Attorney Peter F. Smith's office 30 South Second Street, Clearfield, PA 16830 by U.S. First Class Postage Prepaid to the following address:

Thomas G. Wagner, Esq.
Counsel for John O. Gurosik
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Date: 3/4/08



Peter F. Smith, Esq.
30 S. 2nd St., P.O. Box 130
Clearfield, PA 16830

William T. Gorton III, Esq.
Stites & Harbison PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507
COUNSEL FOR PLAINTIFF, UTICA
MUTUAL INSURANCE COMPANY

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

GUROSIK COAL CO., INC.,

JOHN O. GUROSIK, President and Individually,

SHARON GUROSIK, HEPBURNIA COAL CORP.,

DARRELL G. SPENCER, President, Individually, Partner,

and as Administrator of the Estate of Dalney F. Spencer,

ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY

L. SPENCER, Partner and Individually, MILDRED W.

SPENCER, Individually and as Administratrix of the Estate

of Ray L. Spencer, SPENCER LAND CO., ROBERT G.

SPENCER, Partner and Individually, AND

DELORIS B. SPENCER,

Defendants,

Civil No. 2006-1901-CD

Civil Indemnity Action

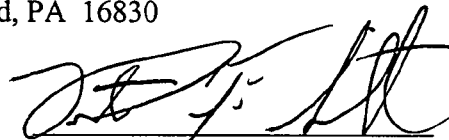
FILED *no cc*
01/11/08
MAR 06 2008
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, hereby certify that I delivered a true and correct copy of a NOTICE OF DEPOSITIONS for attendance of TIMOTHY N. MORGAN and DARREL G. SPENCER scheduled for March 20, 2008 at 1:00 p.m. and 2:00 p.m. at Attorney Peter F. Smith's office 30 South Second Street, Clearfield, PA 16830 by U.S. First Class Postage Prepaid to the following address:

Laurance B. Seaman, Esq.
Gates & Seaman
Counsel for Darrel G. Spencer
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Date: *3/6/08*



Peter F. Smith, Esq.
30 S. 2nd St., P.O. Box 130
Clearfield, PA 16830

William T. Gorton III, Esq.
Stites & Harbison PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507
COUNSEL FOR PLAINTIFF, UTICA
MUTUAL INSURANCE COMPANY

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,	)	Civil No. 2006-1901-CD
Plaintiff,	)	Civil Indemnity Action
)	
v.	)	Type of Pleading: Notice of
	)	Deposition
)	
GUROSIK COAL CO., INC.,	)	Filed on Behalf of:
JOHN O. GUROSIK, President and Individually,	)	Plaintiff
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,	)	Attorney for this Party:
and as Administrator of the Estate of Dalney F. Spencer,	)	Peter F. Smith, Esq.
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY	)	Supreme Court #34291
L. SPENCER, Partner and Individually, MILDRED W.	)	P.O. Box 130
SPENCER, Individually and as Administratrix of the Estate	)	Clearfield, PA 16830
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.	)	(814) 765-5595
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,	)	William T. Gorton III
Defendants.	)	Supreme Court #53009
	)	Stites & Harbison, PLLC
	)	250 West Main St., Suite 2300
	)	Lexington, Kentucky 40507
	)	(859) 226-2241
	)	Counsel for Plaintiff,
	)	Utica Mutual Insurance
	)	Company

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
)	
v.	)	Civ.No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants.)	

NOTICE OF DEPOSITION

Comes now Plaintiff, Utica Mutual Insurance Company, by and through counsel, to give Notice of Deposition of Defendant Darrell G. Spencer, of P.O. Box 1, Grampian, Pennsylvania, 16838, in his individual capacity, as Partner of Spencer Land Company, and as President of Hepburnia Coal Corp., to all parties to this action. This deposition shall take place on March 20, 2008 at the Office of Peter F. Smith, Esq., 30 South Second Street, Clearfield, Pennsylvania 16830. The deposition will begin at 2:00 PM, before a person duly authorized to administer oaths pursuant to Pa. C. R. 4015.

Pursuant to Rules 4007.1(d), 4009.1, and 4009.11, Plaintiff requests Defendant to produce on behalf of Hepburnia Coal Corp. and/or Spencer Land Co.:

(1) Any and all documents, including correspondence, pertaining to the execution of the General Agreement of Indemnity, including but not limited to, any application materials and documents identifying the need for additional indemnitors.

(2) Any and all corporate notes, minutes, resolutions or other documentation in whatever form under any title, pertaining to or memorializing consideration of Hepburnia Coal Corp. of the following:

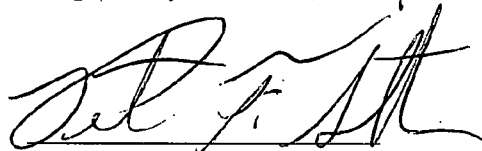
(a) Any discussion or consideration pertaining to John Gurosik or Gurosik Coal Co., Inc., its operations at the King Site (Surface Mining Permit No. 33830117), bond premiums or bond collateral, or signing the General Agreement of Indemnity.

(b) Any discussion or consideration pertaining to Plaintiff's letter dated November 11, 2004, asking for a recommendation on how to proceed before the Environmental Hearing Board.

(c) Any discussion or consideration of water treatment systems at the King Site (Surface Mining Permit No. 33830117), treatment trusts, and/or conclusions or decisions of Hepburnia Coal Corp. arising from discussions with the Pennsylvania Department of Environmental Protection.

(3) Any and all correspondence, in whatever form, received from the Pennsylvania Department of Environmental Protection pertaining to the Surface Mining Permit No. 33830117.

Respectfully submitted,



Peter F. Smith
Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

William T. Gorton III, Esq.
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,	)	Civil No. 2006-1901-CD
Plaintiff,	)	Civil Indemnity Action
)	
v.	)	Type of Pleading: Notice of
	)	Deposition
)	
GUROSIK COAL CO., INC.,	)	Filed on Behalf of:
JOHN O. GUROSIK, President and Individually,	)	Plaintiff
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,	)	Attorney for this Party:
and as Administrator of the Estate of Dalney F. Spencer,	)	Peter F. Smith, Esq.
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY	)	Supreme Court #34291
L. SPENCER, Partner and Individually, MILDRED W.	)	P.O. Box 130
SPENCER, Individually and as Administratrix of the Estate	)	Clearfield, PA 16830
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.	)	(814) 765-5595
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,	)	William T. Gorton III
Defendants.	)	Supreme Court #53009
	)	Stites & Harbison, PLLC
	)	250 West Main St., Suite 2300
	)	Lexington, Kentucky 40507
	)	(859) 226-2241
	)	Counsel for Plaintiff,
	)	Utica Mutual Insurance
	)	Company

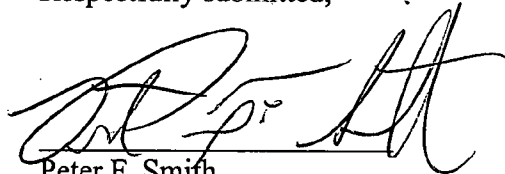
**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
v.)	Civil No. 2006-1901-CD
)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
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SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants.		

NOTICE OF DEPOSITION

Comes now Plaintiff, Utica Mutual Insurance Company, by and through counsel, to give Notice of Deposition of Timothy N. Morgan, of P.O. Box 1, Grampian, Pennsylvania, 16838, to all parties to this action. This deposition shall take place on March 20, 2008 at the Office of Peter F. Smith, Esq., 30 South Second Street, Clearfield, Pennsylvania 16830. The deposition will begin at 9:00 AM, before a person duly authorized to administer oaths pursuant to Pa. C. R. 4015.

Respectfully submitted,



Peter F. Smith
Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

William T. Gorton III, Esq.
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, Partner,
and as Administrator of the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY
L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants,

Civil No. 2006-1901-CD
Civil Indemnity Action

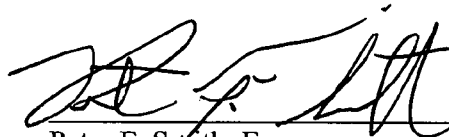
FILED *no cc*
01/11:10/08
MAR 06 2008
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, hereby certify that I delivered a true and correct copy of a NOTICE OF DEPOSITIONS for attendance of his client of JOHN O. GUROSIK scheduled for March 20, 2008 at 9:00 a.m. at Attorney Peter F. Smith's office 30 South Second Street, Clearfield, PA 16830 by U.S. First Class Postage Prepaid to the following address:

Thomas G. Wagner, Esq.
Counsel for John O. Gurosik
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Date: 3/6/08


Peter F. Smith, Esq.
30 S. 2nd St., P.O. Box 130
Clearfield, PA 16830

William T. Gorton III, Esq.
Stites & Harbison PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507
COUNSEL FOR PLAINTIFF, UTICA
MUTUAL INSURANCE COMPANY

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,	)	Civil No. 2006-1901-CD
Plaintiff,	)	Civil Indemnity Action
)	
v.	)	Type of Pleading: Notice of
	)	Deposition
)	
GUROSIK COAL CO., INC.,	)	Filed on Behalf of:
JOHN O. GUROSIK, President and Individually,	)	Plaintiff
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,	)	Attorney for this Party:
and as Administrator of the Estate of Dalney F. Spencer,	)	Peter F. Smith, Esq.
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY	)	Supreme Court #34291
L. SPENCER, Partner and Individually, MILDRED W.	)	P.O. Box 130
SPENCER, Individually and as Administratrix of the Estate	)	Clearfield, PA 16830
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.	)	(814) 765-5595
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,	)	William T. Gorton III
Defendants.	)	Supreme Court #53009
	)	Stites & Harbison, PLLC
	)	250 West Main St., Suite 2300
	)	Lexington, Kentucky 40507
	)	(859) 226-2241
	)	Counsel for Plaintiff,
	)	Utica Mutual Insurance
	)	Company

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
)	
v.	)	Civ.No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants.)	

NOTICE OF DEPOSITION

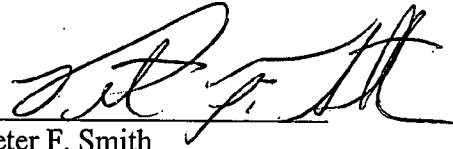
Comes now Plaintiff, Utica Mutual Insurance Company, by and through counsel, to give Notice of Deposition of Defendant John O. Gurosik, of 800 Brandy Campy Road, Kersey, Pennsylvania, 15846, in his individual capacity and as President of Gurosik Coal Company, Inc., to all parties to this action. This deposition shall take place on March 20, 2008 at the Office of Peter F. Smith, Esq., 30 South Second Street, Clearfield, Pennsylvania 16830. The deposition will begin at 9:00 AM, before a person duly authorized to administer oaths pursuant to Pa. C. R. 4015.

Pursuant to Rules 4007.1(d), 4009.1, and 4009.11, Plaintiff requests Defendant to produce on behalf of Gurosik Coal Co., Inc.:

(1) Any and all documents, including correspondence, pertaining to the execution of the General Agreement of Indemnity, including but not limited to, any application materials and documents identifying the need for additional indemnitors.

(2) Any and all correspondence, in whatever form, received from the Pennsylvania
Department of Environmental Protection pertaining to the Surface Mining Permit No. 33830117.

Respectfully submitted,



Peter F. Smith
Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

William T. Gorton III, Esq.
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
v.	)	Civil No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants.)	

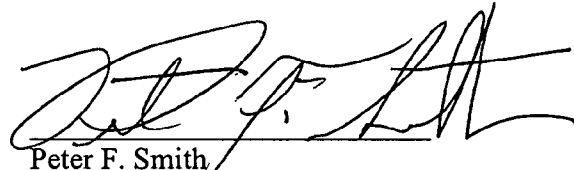
AMENDED **AFFIDAVIT OF SERVICE**

I hereby certify that service of a true and correct copy of the Notice of Deposition, was made upon the following, on the 10th day of **March, 2008**, by regular first class mail, postage prepaid:

Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Date: March 10, 2008



Peter F. Smith
Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

FILED NO
0/10:1761 CC
MAR 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

William T. Gorton III, Esq.
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,	)	Civil No. 2006-1901-CD
Plaintiff,	)	Civil Indemnity Action
)	
v.	)	Type of Pleading: AMENDED
	)	Notice of Deposition
)	
GUROSIK COAL CO., INC.,	)	Filed on Behalf of:
JOHN O. GUROSIK, President and Individually,	)	Plaintiff
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,	)	Attorney for this Party:
and as Administrator of the Estate of Dalney F. Spencer,	)	Peter F. Smith, Esq.
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY	)	Supreme Court #34291
L. SPENCER, Partner and Individually, MILDRED W.	)	P.O. Box 130
SPENCER, Individually and as Administratrix of the Estate	)	Clearfield, PA 16830
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.	)	(814) 765-5595
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,	)	William T. Gorton III
Defendants.	)	Supreme Court #53009
	)	Stites & Harbison, PLLC
	)	250 West Main St., Suite 2300
	)	Lexington, Kentucky 40507
	)	(859) 226-2241
	)	Counsel for Plaintiff,
	)	Utica Mutual Insurance
	)	Company

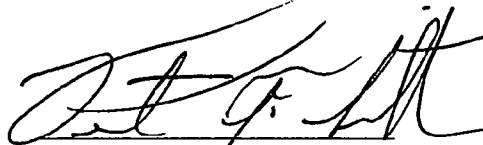
**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
)	
Plaintiff,)	
	)	Civil No. 2006-1901-CD
v.	)	Civil Indemnity Action
)	
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants.)	

AMENDED NOTICE OF DEPOSITION

Comes now Plaintiff, Utica Mutual Insurance Company, by and through counsel, to give Notice of Deposition of **Timothy N. Morgan**, of P.O. Box 1, Grampian, Pennsylvania, 16838, to all parties to this action. This deposition shall take place on **March 20, 2008** at the Office of Peter F. Smith, Esq., 30 South Second Street, Clearfield, Pennsylvania 16830. The deposition will begin at **1:00 PM**, before a person duly authorized to administer oaths pursuant to Pa. C. R. 4015.

Respectfully submitted,



Peter F. Smith
Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

William T. Gorton III, Esq.
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
v.	)	Civ.No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants)	

FILED No
07/1/2009 CC
MAY 12 2009
William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

I hereby certify that service of a true and correct copy of the Notice of Deposition and corresponding Subpoena, was made upon the following, on the 12 day of May, 2009, by regular first class mail, postage prepaid:

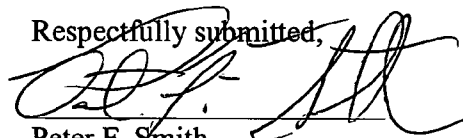
Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Date:

5/12/09

Respectfully submitted,



Peter F. Smith
Supreme Court #: 34291
P.O. Box 130, Clearfield, PA 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

William T. Gorton III, Esq.
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
v.	)	Civ.No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants)	

FILED NO
07/11/2009 CC
MAY 12 2009
William A. Shaw
Prothonotary/Clerk of Courts

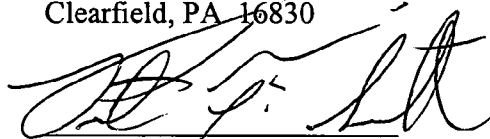
AFFIDAVIT OF SERVICE

I hereby certify that service of a true and correct copy of the Notice of Deposition and corresponding subpoena, was made upon the following, on the 12 day of **May, 2009**, by regular first class mail, postage prepaid:

Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Date: 5/12/09


Peter F. Smith
Supreme Court #: 34291
P.O. Box 130, Clearfield, PA 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

William T. Gorton III, Esq.
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241
Utica Mutual Insurance Company

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

GUROSIK COAL CO., INC.,

JOHN O. GUROSIK, President and Individually,

SHARON GUROSIK, HEPBURNIA COAL CORP.,

DARRELL G. SPENCER, President, Individually, Partner,

and as Administrator of the Estate of Dalney F. Spencer,

ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY

L. SPENCER, Partner and Individually, MILDRED W.

SPENCER, Individually and as Administratrix of the Estate

of Ray L. Spencer, SPENCER LAND CO., ROBERT G.

SPENCER, Partner and Individually, AND

DELORIS B. SPENCER,

Defendants

Civ.No. 2006-1901-CD

Civil Indemnity Action

5
FILED
01/11/2009
MAY 12 2009
William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

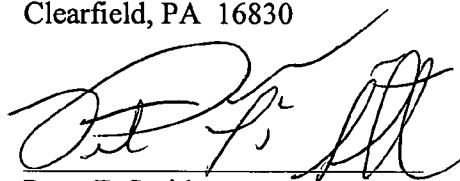
I hereby certify that service of a true and correct copy of the Notice of Deposition and corresponding Subpoena, was made upon the following, on the 12 day of **May**, 2009, by regular first class mail, postage prepaid:

Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Date:

5/12/09



Peter F. Smith
Supreme Court #: 34291
P.O. Box 130, Clearfield, PA 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

William T. Gorton III, Esq.
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

GUROSIK COAL CO., INC.,

JOHN O. GUROSIK, President and Individually,

SHARON GUROSIK, HEPBURNIA COAL CORP.,

DARRELL G. SPENCER, President, Individually, Partner,

and as Administrator of the Estate of Dalney F. Spencer,

ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY

L. SPENCER, Partner and Individually, MILDRED W.

SPENCER, Individually and as Administratrix of the Estate

of Ray L. Spencer, SPENCER LAND CO., ROBERT G.

SPENCER, Partner and Individually, AND

DELORIS B. SPENCER,

Defendants,

Civil No. 2006-1901-CD

Civil Indemnity Action

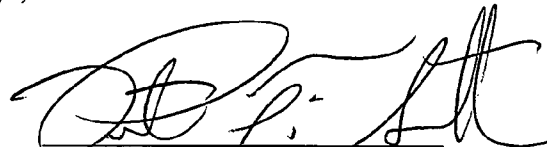
FILED No
017:12601 CC
MAY 12 2009
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, hereby certify that I sent a true, correct and certified correct copy of a SUBPEONA and a true and correct copy of the NOTICE OF DEPOSITIONS for attendance of his client of JOHN O. GUROSIK scheduled for June 18, 2009 at 9:00 a.m. at Attorney Peter F. Smith's office 30 South Second Street, Clearfield, PA 16830 by U.S. First Class Postage Prepaid to the following address:

Thomas G. Wagner, Esq.
Counsel for John O. Gurosik
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Date: May 12, 2009



Peter F. Smith, Esq.
30 S. 2nd St., P.O. Box 130
Clearfield, PA 16830

William T. Gorton III, Esq.
Stites & Harbison PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507
COUNSEL FOR PLAINTIFF, UTICA
MUTUAL INSURANCE COMPANY

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

GUROSIK COAL CO., INC.,

JOHN O. GUROSIK, President and Individually,

SHARON GUROSIK, HEPBURNIA COAL CORP.,

DARRELL G. SPENCER, President, Individually, Partner,

and as Administrator of the Estate of Dalney F. Spencer,

ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY

L. SPENCER, Partner and Individually, MILDRED W.

SPENCER, Individually and as Administratrix of the Estate

of Ray L. Spencer, SPENCER LAND CO., ROBERT G.

SPENCER, Partner and Individually, AND

DELORIS B. SPENCER,

Defendants,

Civil No. 2006-1901-CD

Civil Indemnity Action

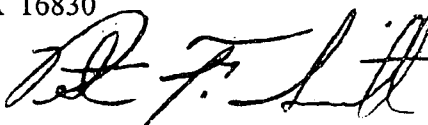
FILED *NRc*
07:12 AM
MAY 12 2009
WAS William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, hereby certify that I sent a true, correct and certified copy of a SUBPEONA and a true and correct copy of the NOTICE OF DEPOSITIONS for attendance of TIMOTHY N. MORGAN, as Guardian of Robert G. Spencer and in his corporate capacity for Hepburnia Coal Corp and DARRELL G. SPENCER scheduled for June 18, 2009 at 1:00 p.m. and 2:00 p.m. at Attorney Peter F. Smith's office 30 South Second Street, Clearfield, PA 16830 by U.S. First Class Postage Prepaid to the following address:

Laurance B. Seaman, Esq.
Gates & Seaman
Counsel for Darrel G. Spencer and
Hepburnia Coal Corp.
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Date: May 12, 2009



Peter F. Smith, Esq.
30 S. 2nd St., P.O. Box 130
Clearfield, PA 16830

William T. Gorton III, Esq.
Stites & Harbison PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507
COUNSEL FOR PLAINTIFF, UTICA
MUTUAL INSURANCE COMPANY

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,	)	Civil No. 2006-1901-CD
Plaintiff,	)	Civil Indemnity Action
)	
v.	)	Type of Pleading: Praecipe for
	)	Entry of Appearance
)	
GUROSIK COAL CO., INC.,	)	Filed on Behalf of:
JOHN O. GUROSIK, President and Individually,	)	Plaintiff
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,	)	Attorney for this Party:
and as Administrator of the Estate of Dalney F. Spencer,	)	Peter F. Smith, Esq.
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY	)	Supreme Court #34291
L. SPENCER, Partner and Individually, MILDRED W.	)	P.O. Box 130
SPENCER, Individually and as Administratrix of the Estate	)	Clearfield, PA 16830
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.	)	(814) 765-5595
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,	)	William T. Gorton III
Defendants.	)	Supreme Court #53009
	)	Stites & Harbison, PLLC
	)	250 West Main St., Suite 2300
	)	Lexington, Kentucky 40507
	)	(859) 226-2241
	)	Counsel for Plaintiff,
	)	Utica Mutual Insurance
	)	Company

Dated: September 15, 2009

5
FILED
SEP 17 2009
William A. Shaw
Prothonotary/Clerk of Courts

NCC
copy to CIA

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, Partner,
and as Administrator of the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY
L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants.

Civ.No. 2006-1901-CD
Civil Indemnity Action

PRAECIPE FOR ENTRY OF APPEARANCE

To William A. Shaw, Prothonotary:

Please enter my appearance on behalf of Plaintiff, Utica Mutual Insurance Company,
along with Mr. William T. Gorton, Esq. and Mr. Peter F. Smith, Esq, in the above-captioned
proceeding.



Jennifer E. Drust
Supreme Court ID: 200434
Stites & Harbison, PLLC
250 West Main Street, Ste. 2300
Lexington, Kentucky 40507
(859) 226-2293

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, Partner,
and as Administrator of the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY
L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants.

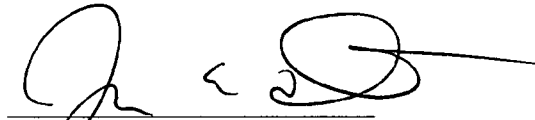
Civ.No. 2006-1901-CD
Civil Indemnity Action

AFFIDAVIT OF SERVICE

I hereby certify that service of a true and correct copy of the Praecipe for Entry of Appearance were made upon the following, on the 15th day of September, 2009, by regular first class mail, postage prepaid:

Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830



William T. Gorton III
Supreme Court #: 53009
Jennifer E. Drust
Supreme Court #: 200434
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2300

Peter F. Smith
Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595

LA

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,	)	Civil No. 2006-1901-CD
Plaintiff,	)	Civil Indemnity Action
)	
v.	)	Type of Pleading: Motion
)	
GUROSIK COAL CO., INC.,	)	Filed on Behalf of:
JOHN O. GUROSIK, President and Individually,	)	Plaintiff
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,	)	Attorney for this Party:
and as Administrator of the Estate of Dalney F. Spencer,	)	Peter F. Smith
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY	)	Supreme Court #34291
L. SPENCER, Partner and Individually, MILDRED W.	)	P.O. Box 130
SPENCER, Individually and as Administratrix of the Estate)	)	Clearfield, PA 16830
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.	)	(814) 765-5595
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,	)	William T. Gorton III
Defendants.	)	Supreme Court #53009
	)	Stites & Harbison, PLLC
	)	250 West Main St., Suite 2300
	)	Lexington, Kentucky 40507
	)	(859) 226-2241
	)	Counsel for Plaintiff,
	)	Utica Mutual Insurance
	)	Company

Dated: September 15, 2009

5
FILED *no cc*
10/10:34/01
SEP 17 2009
William A. Shaw
Prothonotary/Clerk of Courts

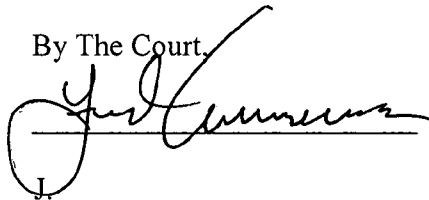
FILED 4CC
01/10/30/09
SEP 22 2009
Atty Gorton
610
William A. Shaw
Prothonotary/Clerk of Courts

(5) An evidentiary hearing on disputed issues of material fact shall be held on _____ @ _____, in Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. _____;

(6) Argument shall be held on October 26 @ 11:00 A.M., in Courtroom No. 1 of the Clearfield County Courthouse; and

(7) Notice of entry of this order shall be provided to all parties by the moving party.

By The Court.



NOTICE TO DEFEND

A petition has been filed against you in court. If you wish to defend against the matters set forth in the following petition, you must enter a written appearance personally or by attorney and file an answer in writing with the prothonotary setting forth your defenses or objections to the matter set forth against you and serve a copy on the attorney or person filing the petition. You are warned that if you fail to do so the case may proceed without you by the Court without you and an order may be entered against you by the Court without further notice for the relief requested by the petitioner. You may lose rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets,
Clearfield, PA 16830
(814) 765-2641 (ext. 5982)

2. Hepburnia Coal Corporation ("Hepburnia"), Spencer Land Company ("SLC"), Dalney F. Spencer, Deloris B. Spencer, Ray L. Spencer (individually and as partner of SLC), Mildred W. Spencer, Darrell G. Spencer (individually, as partner of SLC, and as President of Hepburnia), Robert G. Spencer (individually, as partner of SLC), Gurosik Coal Company, Inc. ("Gurosik Coal"), Sharon Gurosik, and John O. Gurosik (individually and as President of Gurosik Coal), collectively, the Indemnitors,¹ are signatories to and guarantors under a General Agreement of Indemnity, executed on or about July 12, 1985, with Utica. The Indemnitors agreed to reimburse Utica for, *inter alia*, all claims and expenses incurred as a result of Utica's issuance of surety bonds for the reclamation of surface coal mining operations. See Ex. A, General Agreement of Indemnity ("GAI").
3. Gurosik Coal approached Hepburnia about signing the GAI in order to get a surety bond from Utica so that the Pennsylvania Department of Environmental Protection ("DEP") would issue Gurosik Coal a permit to mine coal from an area in Pine Creek Township, Jefferson County. Mine permits cannot be issued without financial assurance for reclamation such as surety bonds.

¹ Hepburnia, SLC, and all of the individually-named Spencer Defendants or their estates are jointly represented, and are referred to collectively as the "Hepburnia-related Defendants." Sharon Gurosik, John Gurosik and Gurosik Coal are also jointly represented, and are referred to collectively as the "Gurosik-related Defendants." Where it is not necessary to specify which sub-set of defendants make certain claims, Utica will refer to them all as "Defendants." By using the term Indemnitors, Utica makes specific reference to the signatories to the GAI, which, with the exception of the individuals who are now deceased, is synonymous with Defendants (which include those individuals' estates and estate representatives).

4. On or about July 15, 1985, Utica posted reclamation surety bond number SU 38514 on behalf of Defendant Gurosik Coal Co., Inc. ("Bond). A copy of the Bond is attached hereto as Exhibit B.²
5. Surety bond SU 38514 is a statutory bond and is on a form provided by the bond obligee, the DEP.³ The penal sum of the bond totaled \$71,700. *See* Ex. B.
6. The Bond was provided in support of Gurosik Coal Co., Inc.'s permit for the "King" mining operation in Jefferson County, Pennsylvania and was expressly conditioned on the performance of all requirements under a series of environmental laws, including the Clean Streams Law, 35 P.S. §§691.1 *et seq.*, and the Surface Mining Conservation and Reclamation Act, 52 P.S. §§1396.1 *et seq.* *See* Ex. B.
7. Gurosik Coal mined the King site in 1986. Hepburnia purchased the coal from Gurosik Coal. Subsequent to Gurosik Coal's completion of coal removal activities, the King site developed environmental problems including the development of a pollutorial discharge of acid mine drainage.

² Utica acknowledges it inadvertently attached an unexecuted copy of the Bond as an exhibit to the Complaint. However, Utica subsequently attached an executed copy of the Bond to its Reply to the Gurosik Defendants' New Matter and additionally submitted a Notice of Substitution of Exhibit, to which there was no objection. With this defect cured without objection, Defendants have waived any defenses related to execution of the Bond.

³ DEP was formerly known as the "Department for Environmental Resources."

8. On May 5, 2004, DEP notified Gurosik Coal by letter that it intended to declare the bonds forfeit. Complaint at Ex. C. The action was necessary due to “numerous violations of the law,” including the unauthorized discharge of mine drainage, failure to maintain mine drainage facilities and a failure to show a willingness or intention to comply with applicable laws and regulations, among others. By letter dated July 26, 2004, DEP informed Gurosik Coal that it was forfeiting the Bond due to Gurosik Coal’s failure to correct the violations and reclaim the King site (“Forfeiture Notice”). *Id.*
9. To preserve any rights that it and Gurosik Coal might have had and to potentially mitigate costs to the Indemnitors, Utica filed a protective appeal of the Forfeiture Notice with the Pennsylvania Environmental Hearing Board (*see Utica Mutual Ins. Co. v. Dep’t of Env’tl. Protection*, EHB Docket No. 2004-193-L) and engaged discussions with representatives of DEP, Gurosik Coal and Hepburnia to determine if a solution short of total Bond forfeiture could be reached.
10. Following discussions with representatives of DEP, Gurosik Coal and Hepburnia regarding the asserted environmental violations at the King site and the forfeiture and determining that neither Gurosik Coal nor Hepburnia intended to abate the violation, by check dated September 14, 2006, Utica paid the full penal sum of the Bond to DEP. Complaint at Ex. D. Defendants failed to provide indemnification of this cost Utica incurred as a result of issuing the Bond.

11. On March 29, 2007, Utica filed its Complaint with this Court against the Defendants, in their respective corporate and individual capacities. With this lawsuit, Utica seeks indemnification from the Defendants for losses incurred as a result of the issuance of SU 38514 per the terms of the GAI. In addition to the payment of the penal sum of the Bond, Utica has incurred costs, including attorneys fees incurred in this lawsuit as well as in the administrative appeal of the Bond forfeiture, for which Defendants are also liable.

II. STANDARD OF REVIEW & STATEMENT OF QUESTIONS INVOLVED

Under Pa. R. Civ. Proc. 1035.2 (1), any party can move for summary judgment as a matter of law when there is “no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report.” While courts review motions for summary judgment in light most favorable to the non-moving party, “[t]he party with the burden of proof on an issue may not merely rely on the allegations in its pleadings, but rather produce evidence of facts demonstrating a genuine issue for trial.” *Phillips v. Selig*, 959 A. 2d 420, 427 (Pa. Super. 2008) *quoting Fennell v. Nationwide Mut. Fire Ins. Co.*, 603 A. 2d 1064, 1067 (Pa. Super. 1992).

The questions involved in this Motion for Summary Judgment are: (A) whether the GAI is enforceable; (B) whether the Bond was an enforceable instrument when Utica remitted payment to DEP of the penal sum; (C) whether Utica was legally obligated to pay DEP for the underlying environmental issues at Gurosik Coal’s mine site; and (D) whether the consent of the Indemnitors was required prior to payment.

III. ARGUMENT

A. THE GENERAL AGREEMENT OF INDEMNITY IS ENFORCEABLE

By way of an introduction to Utica's rights against the Defendants, a brief description of indemnity agreements in the context of commercial sureties may be helpful to the Court:

The typical surety in today's marketplace requires its principal (and indemnitors) to sign a written indemnity agreement before issuing any bonds. The indemnity agreement often restates the surety's common law rights of contribution, exoneration, and subrogation. The intent of the written indemnity agreement is not to alter those fundamental rights, but to describe how, when, and where the surety can enforce them in the event of default. Thus, the indemnity agreement is the starting point to evaluate indemnitors' obligations to the surety and the surety's rights and remedies against the indemnitors.

Brett D. Divers, et al., *Surety's Rights Of Recovery Against Principals and Indemnitors Under the General Indemnity Agreement and Common Law*, in *THE LAW OF PERFORMANCE BONDS* (Lawrence R. Moehlman et al., eds., 2d ed. 2009) at 267. *See* Attachment 1.

In their Answers/New Matters, Defendants argue that the GAI, attached here as Exhibit A, is vague and unenforceable. Their claim—apparently predicated solely on paragraph 17's lack of identification of Gurosik Coal, its permit for the King site, or the Bond—must fail. The GAI is an enforceable contract with all its essential terms and was indisputably executed by the Indemnitors. The parties' course of performance following the execution of the GAI further reinforces Utica's interpretation of the GAI to hold all parties thereto jointly and severally responsible for the costs it has incurred, as they acted consistent with the expectation of being liable to Utica.

1. The GAI Contains All Essential Terms

Contract interpretation is a question of law. *See Standard Venetian Blind Co. v. American Empire Ins. Co.*, 469 A. 2d 563, 566 (Pa. 1983). Contracts are enforceable “when

parties reach mutual agreement, exchange consideration and have set forth terms of their bargain with sufficient clarity...an agreement is definite if it indicates that the parties intended to make a contract and if there is an appropriate basis upon which a court can fashion a remedy.” *Biddle v. Johnsonbaugh*, 664 A. 2d 159, 163 (Pa. Super. 1995) (citations omitted).

Here, Defendants only allege that the contract lacks sufficient clarity. *Cf.* New Matter of Hepburnia-related Defendants at ¶¶ 26-28; New Matter of Gurosik-related Defendants at ¶¶ 31-32. To the contrary, the GAI is a three-page (excluding all signature pages), single-spaced document that precisely lays out the respective rights and duties of the parties. The GAI states that Utica would provide bonds on behalf of the undersigned Indemnitors, and that the Indemnitors would “indemnify and save [Utica] harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense,” including attorney fees, that Utica may pay or incur as a result of having executed a bond on their behalf. *See* Ex. A.

That paragraph 17 does not specify that the GAI applied to bonds written on behalf of Gurosik Coal does not render the GAI void for vagueness. Paragraph 16, set off in all capital letters, contains an express acknowledgement by the Indemnitors that the GAI applies to “whatever bonds...which may be executed by [Utica] on behalf of the Indemnitors, or any one of them” Ex. A (emphasis added). Thus, paragraph 16 identifies the obligations to which Defendants bound themselves; Utica bonds issued on behalf of any of the Indemnitors.

The GAI satisfies the requirements of an enforceable contract in *Biddle*. All the natural persons and entities listed as Defendants in this lawsuit signed the GAI under seal and “[a] party’s signature to a contract is designed to evidence his intention to be bound thereby.” *Petrie v. Haddock*, 119 A. 2d 45, 47 (Pa. 1956). The GAI recites the consideration and mutual promises exchanged. Ex. A. Clause 2 of the GAI describes how a court may fashion relief: by

providing indemnity for losses Utica sustained. *Id.* As it contains all the necessary elements for a contract, the GAI should be found enforceable.

2. The Parties' Course of Performance is Consistent with a Binding GAI

"The course of the parties' performance under a contract is always relevant in interpreting that contract." *Glenn Matthews and Maintenance Supply Co., Inc. v. Unisource Worldwide, Inc.*, 748 A. 2d 219, 222 (Pa. Super. 2000) citing *Atlantic Richfield Co. v. Razumic*, 390 A. 2d 736, 741 n. 6 (Pa. 1978). Here, the course of performance following the execution of the GAI shows that: (1) Gurosik Coal obtained a permit for the King site, meeting its obligations for permit issuance with Utica's Bond; (2) Hepburnia paid premiums on the Bond; and (3) Hepburnia attempted to reclaim the King site after Gurosik Coal failed to do so completely. These parties acted consistent with an expectation that they were bound by the GAI.

DEP issued Gurosik Coal a surface mining permit for the King site and the Bond was associated with the King site. Ex. C (permit); Ex. B; Ex. D (Deposition Transcript of John O. Gurosik [hereafter "Gurosik Transcript"]) at 27; Answer of Hepburnia-related Defendants at ¶14. Mr. Gurosik understood that in order to get a permit, he had to put up a reclamation bond.

Q: Let's get back to the bond itself. You agree that one of the requirements of getting your permit is that you have to put up what's referred to as a Surface Reclamation Bond?

A: That's right.

Q: I'm handing you Exhibit 3, which is labeled Surface Bond for—Surety Bond for Surface Mines. Would you agree, this is the bond that was posted for the King Mine?

A: It appears to be, yes.

Ex. D (Gurosik Transcript) at 27.

Hepburnia also paid the Bond premiums. Timothy N. Morgan, now secretary and treasurer of Hepburnia, unequivocally testified to that fact in his deposition.

Q: Would you agree that Hepburnia paid the premiums on the bonds?

A: Yes.

See Ex. E (Deposition Transcript of Timothy N. Morgan [hereafter "Morgan Transcript"]) at 22.

In addition to Mr. Morgan's testimony, Hepburnia's corporate records also show that Hepburnia paid premiums on the Bond. See Ex. F. Thus, Hepburnia acted consistently with being bound to the GAI.

Mr. Morgan also testified to the actions taken by Hepburnia prior to Bond forfeiture.

Q: What else did Hepburnia do on the site pre-forfeiture in order to meet environment compliance requirements on the permit?

A: I don't—specifically, I can't tell you what they did. I just know we did numerous environmental things with the ground. I know we planted. We put lime addition. We tried to get good vegetation....I'm not sure. I do know about some of the reclamation work we did. I know we did some reclamation work.

Ex. E (Morgan Transcript) at 38. Hepburnia's only known written agreement with Gurosik Coal related to the King site is the GAI; it would be illogical for Hepburnia to perform reclamation work there if it did not believe it would have to reimburse Utica in the event of a forfeiture.

3. To the Extent There is Any Ambiguity, it is Resolved in Utica's Favor by Parol Evidence

While a contract is not ambiguous simply because the parties do not agree on its construction, a contract can be considered ambiguous if it is "reasonably or fairly susceptible of different constructions and is capable of being understood in more senses than one and is obscure in meaning through indefiniteness of expression or has a double meaning." *Samuel Rappaport*

Family Partnership v. Meridian Bank, 657 A. 2d 17, 21 (Pa. Super. 1995) quoting *Z&L Lumber Co. of Atlasburg v. Nordquist*, 502 A. 2d 697, 700 (Pa. Super. 1985). Parol evidence may be used to ascertain the contracting parties' intent regarding an ambiguity. See *Glenn Matthews & Maintenance Supply Co., Inc.*, 648 A. 2d at 222 (allowing parol evidence to demonstrate parties' intent to enter into agreement that reserved customer list to one party where contract exhibit listing reserved customer was not in evidence); *Title Guaranty & Surety Co. v. Lippincott*, 97 A. 201, 205 (Pa. 1916) (if the subject matter of a contract is expressed in general terms, parol evidence may be admitted to identify the subject or show loss).

At best, any conflict between the language in paragraph 16 and paragraph 17 of the GAI creates an ambiguity rather than rendering the GAI vague. Extrinsic evidence is admissible to resolve ambiguities, and here, the Defendants' own testimony shows that they intended to sign the GAI to get the Bond for Gurosik Coal's King mine.

At the deposition of John O. Gurosik, President of Gurosik Coal and personal Indemnitor, Mr. Gurosik testified that he did not have the credit to obtain a bond independently and needed Hepburnia to help him get a bond.

Q: In your involvement with all these parties, could you explain how you came to sign this General Agreement of Indemnity?

...

A: Permitted the property. I did all that. That was my cost. Went through everything you had to do to get a permit on it. At the same time, didn't have the money, too many breakdowns. I had multiple breakdowns, didn't have the money to get the bonds. Hepburnia at the time looked at the coal records, said, 'Yeah, we'd like to have the coal.' And here we are.

Ex. D (Gurosik Transcript) at 33-34. Mr. Gurosik further opined that that the purpose of a reclamation bond and his knowledge that DEP would forfeit the bond if a mine operator goes out of business or does not meet DEP's criteria.

Q: In your opinion, what's the purpose of having to post a Surety Reclamation Bond?

A: I think we all know the answer to that. If the mine operator goes, we'll use the term 'out of business,' or doesn't meet, I suppose if you want to term DEP's criteria, then bonds are forfeited. It's their supposable safeguard in, I guess, supposedly cleaning up the site, or whatever you want to call it.

Ex. D (Gurosik Transcript) at 27-28.

Mr. Gurosik has never claimed that he did not operate the King site or did not benefit from having the Bond—indeed, he was issued a permit by DEP and was paid for the coal removed from the King site by Hepburnia. *See* Ex. C, Ex. D (Gurosik Transcript) at 77-78. Mr. Gurosik's testimony shows that he understood that he had to have a bond to get his permit for the King mine, and that he knew that he could not get the bond without Hepburnia's help. Ex. D (Gurosik Transcript) at 27, 34-35. There can be no doubt it was his intention to sign the GAI with Hepburnia to have Utica issue the Bond.

The testimony of Darrell G. Spencer, personal Indemnitor, President of Hepburnia, and partner in SLC, establishes that he and the entities with which he is affiliated intended to be bound to the GAI. Mr. Spencer testified that he signed the GAI "[i]n order to receive the bond and the coal, probably. The long-run range was to get the coal, and we provided the bond in order for that to happen." Ex. G (Deposition Transcript of Darrell G. Spencer [hereafter "Spencer Transcript"]) at 21. Mr. Spencer testified further that his brother, Defendant/Indemnitor Robert Spencer, was primarily involved in negotiating coal contracts, but

that he, Darrell, was not concerned about being involved with the bonding on Gurosik Coal's mine. Ex. G (Spencer Transcript) at 22-23.

Mr. Morgan witnessed in writing several signatures on the GAI. *See* Ex. B. Mr. Morgan also acknowledged that Hepburnia's business relationship with Gurosik Coal was distinct from its relationship with other contractors from whom it bought coal, since it also provided surety credit.

Q: But the distinction here is, you also provided surety credit for [Gurosik].

A: Right.

Ex. E (Morgan Transcript) at 29.

Collectively, Mr. Spencer's and Mr. Morgan's testimony evidences the intention of the Hepburnia-related Defendants to sign the GAI to help Gurosik Coal obtain the Bond and a mining permit, so that they could benefit from the coal removed from the King site. When considered with the testimony of Mr. Gurosik, there is no real dispute among the Defendants that they all signed the GAI so that Utica would issue the Bond and Gurosik Coal would get its permit for the King site, and Hepburnia would benefit from the purchase of the coal mined.

B. SURETIES DO NOT HAVE TO PROVE THE PRINCIPAL'S LIABILITY TO RECOVER UNDER INDEMNITY AGREEMENTS

The Gurosik-related Defendants argue that the Bond had expired at the time of payment, *New Matter* at ¶¶ 26-27, 29, and that the King site was not properly forfeited by DEP, since it was not the source of acid mine drainage pollution. The Hepburnia-related Defendants argue that Utica was not legally obligated to pay DEP under the Bond and it either failed to appeal or failed to adequately pursue an appeal of forfeiture and raise all defenses, including that the Bond had expired. Hepburnia-related Defendants *New Matter* at ¶¶ 29-30. In the subsequent sections, Utica summarizes applicable law as to why these putative defenses fail. However, the Court

need not decide resolve the legal issues in these purported defenses, since Utica is not required to prove that DEP's forfeiture was proper to recover under the GAI.

The existence of an indemnity agreement changes the nature of the surety's right to indemnity from that which exists under common law. The court in *United States Fidelity & Guaranty Co. v. Feibus*, 15 F. Supp. 2d 579 (M.D. Pa. 1998) distinguished common law and contractual indemnity as follows:

Under the common law, equity generally implies a right of indemnification in favor of a surety only when the surety pays off debt for which his principal is liable. However, resort to implied indemnity principles is improper when an express indemnification contract exists; when there is such an express contract, a surety is entitled to stand upon the letter of the contract.

Feibus, 15 F. Supp. at 583 (citations omitted). Paragraph 5 of the GAI gives Utica the exclusive right to resolve claims or suits for itself and the Indemnitors. If the Defendants' argument were accepted—i.e., that there is no proof the Bond was not properly forfeited—then this term of the GAI would have no meaning because it would preclude Utica from settling a claim without certain proof of legal liability, whatever that might be. Contractual indemnity provisions giving sureties the right to recover costs paid are “uniformly sustained and upheld,” except where a challenge to payment is predicated on fraud or bad faith. *Fidelity & Deposit Co. v. Bristol Steel & Iron Works*, 722 F. 2d 1160, 1163-64 (4th Cir. 1983) (citations omitted). As there are no allegations of bad faith or fraud, Utica is entitled to reimbursement from the Defendants of the costs sustained as a result of having issued the Bond as a matter of law.

C. THE BOND WAS NOT VOID FIVE YEARS AFTER COAL REMOVAL

Defendants' claims that the Bond was void five years after the Gurosik Coal ceased earth-moving operations are incorrect as a matter of law. Neither the terms of the Bond itself nor the applicable regulatory framework support such an erroneous assertion.

First, the Bond itself states: "Liability upon this bond shall continue for the duration of surface mining at the operation conducted hereunder and for a period of five (5) years thereafter, unreleased in whole or in part by the Department, in writing, prior thereto as provided by the law." Ex. B (emphasis added). Defendants attempt to read this language of the Bond to limit its duration to the time period when coal was being extracted or earth moving activities were taking place, without acknowledging that the legal obligations associated with a surface mining operation in Pennsylvania can exceed the period of time when the operator ceases earth work.

This precise argument was rejected by the Commonwealth Court in 1990 in *Martin v. Commonwealth, Dep't of Env'tl. Res.*, 570 A. 2d 122, 125 (Pa. Commw. 1990), where, in response to claims that the term surface mining "includes only the period of time when coal is being extracted from the earth and not the period of time when the surface of the earth is being reclaimed," the Commonwealth Court stated that such a theory was "clearly erroneous" in the context of reclamation bonds. *Id.* The reclamation bonds are statutory in nature and thus "must be construed in light of the statute creating the obligation served, keeping in mind the statute's purpose." *Id.* at 126. Observing that the Surface Mining Conservation and Reclamation Act ("SMCRA") required the completion of reclamation and a report attesting to such completion, the Commonwealth Court held that "reclamation is a part of the term 'surface mining' in the context of liability." *Id.*; see also *Morcoal Co. v. Commonwealth, Dep't of Env'tl. Resources*, 459 A. 2d 1303, 1306 (Pa. Commw. 1983) ("The Mining Act, as does the Anthracite Strip Mining and Conservation Act..., requires the filing of bonds conditioned on the faithful performance of all of the Mining Act's requirements."); *Am. Casualty Co. v. Commonwealth, Dep't of Env'tl. Resources*, 441 A. 2d 1383, 1387 (Pa. Commw. 1982).

Consistent with the Commonwealth Court's opinion in the *Martin* case, regulations adopted pursuant to SMCRA further enforce the notion that bond liability includes reclamation operations. See 25 Pa. Code § 86.143(c). The operations and reclamation must comply with the requirements of SMCRA, as well as various other environmental laws and regulations, including the Pennsylvania Clean Streams Law. §86.143(a); §86.1; see also Ex. B.

Persons conducting surface mining and reclamation operations must prevent water pollution, and "when necessary, operate and maintain the necessary water treatment facilities until applicable treatment requirements and effluent limitations established under §87.102 are achieved and maintained." 25 Pa. Code §87.101(d). The period of liability under the bonds extends not only for the duration of mining activities, but also for the reclamation of mining activities which include water treatment if necessary, then for an additional five years after the revegetation of the permit site. §86.151(a). DEP specifically identified the continuing discharge of acid mine drainage as a reason to forfeit the Bond. Complaint at Ex. C.

Under the Clean Streams Law, bond liability continues until there is no significant risk of a pollutional discharge. 35 P.S. §691.315(b). Further, "a mine operator, by the terms of Section 315, assumes an obligation when he gets a mine permit to treat all discharges emanating from its mine until the bond is returned." *N. Cambria Fuel Co. v. Dep't of Env'tl. Prot.*, 621 A. 2d 1155, 1162 (Pa. Commw. 1993). Neither fault nor causation is necessary to impose liability. *Id.* at 1159. See also *Commonwealth v. Harmar Coal Co.*, 306 A. 2d 308, 321 (Pa. 1973) ("In order to prevent further pollution and to reclaim and restore those surface waters presently polluted, *any* polluting discharge essential to the operation of a mine must be treated.") (emphasis in original); *Ingram v. Dep't of Env'tl. Resources*, 595 A. 2d 733, 738-39 (Pa. Commw. 1991).

The standards for bond release are found at 25 Pa. Code §86.174. Release occurs in stages in conjunction with completed reclamation obligations, subject to the limitations in §86.172. At all stages of release, DEP inspects reclamation work to determine whether there is any surface or groundwater pollution, or if the potential for such pollution exists. §86.171(f)(1)(iii). If there is a post-mining pollutorial discharge, there are minimum effluent criteria which must be met under §87.102(e). Ergo, a bond cannot be released until the pollution ceases. As the pollution from the King operation was never abated and the Gurosik Coal made no attempt to fully reclaim the site as required, DEP would not have had the authority to release the Bond and instead was required to forfeit the Bond. *See* § 86.181.

The touchstone of the termination of bond liability, the completion of reclamation, which includes either treating or abating the pollutorial discharge, simply was never reached at Gurosik Coal's King mine. Accordingly, Utica's payment of the penal sum of the bond was not as a volunteer. The Bond was an enforceable obligation when it was forfeited by DEP.

D. WHETHER POLLUTIONAL DISCHARGE WAS CAUSED BY A THIRD PARTY AT THE KING SITE IS NOT A DEFENSE

In response to interrogatories, the Gurosik-related Defendants also contend that Utica was under no legal obligation to remit payment to DEP as, allegedly, Gurosik Coal was not the source of the water pollution at the King mine site. Rather, they claim the source of the contamination was acid mine drainage that was wrongfully diverted from an adjacent mine site to its permit area. Assuming that Gurosik Coal did not cause the acid mine drainage on its permit site, it is no defense to liability under the Clean Streams Law. Since the Clean Streams Law obligations are incorporated into the Bond, *see supra* III. C., Utica was required to pay the Bond's penal sum to DEP for Gurosik Coal's failure to treat or abate acid mine drainage occurring on and being discharged from Gurosik Coal's permit.

The Clean Streams Law forbids mine operators from *allowing* an unauthorized discharge from a mine into the waters of the Commonwealth. See 35 P.S. § 691.315(a). "...[A] mine operator, by the terms of Section 315, assumes an obligation when he gets a mine permit to treat all discharges emanating from its mine until the bond is returned." *N. Cambria Fuel Co.*, 621 A. 2d at 1162. The source or origin of the pollution is irrelevant. *Thompson & Phillips Clay Co. v. Dep't of Envtl. Resources*, 582 A. 2d 1162, 1165 (Pa. Commw. 1990). Though this may seem draconian, it is nonetheless how the Clean Streams Law has been universally interpreted. *N. Cambria Fuel Co.*, 621 A. 2d at 1162 ("This result is mandated because the complexity of locating sources of polluted waters would hinder abatement of mine pollution if the defense could always be raised that 'it's not coming from our mine.'"); *Nat'l Wood Preservers, Inc. v. Dep't of Envtl. Resources*, 414 A. 2d 37, 40 (Pa. 1980) ("...the Legislature has clearly and unambiguously authorized DER to require the correction of water pollution causing conditions without regard to the source of the pollution."); *Ingram*, 595 A. 2d at 739 ("[L]iability under the Clean Streams Law is not founded in tort, but based on the police power of the Commonwealth...It is not necessary to establish a causal link between mining activities and stream pollution for liability to attach....").

Thus, it was no defense to forfeiture to argue over the source of pollution and Utica was not obligated to raise frivolous defenses to payment. See Ex. A at ¶ 5. Thus, despite the Gurosik-related Defendants attempt to reargue Gurosik Coal's liability for environmental issues, they have already waived their ability to challenge Utica's settlement determinations. See *id.* The same is true of the Hepburnia-related Defendants' attempt to raise a New Matter based on allegations that Utica did not adequately defend bond forfeiture or was not obligated to pay DEP; the GAI waived their ability to assert such defenses to indemnity.

Further, Gurosik Coal did not appeal the DEP's factual findings relating to environmental problems at the King site; thus, DEP's determination of these conditions is final. *See* 35 P.S. §7514(c) ("The department may take an action initially...but no action of the department adversely affecting a person shall be final as to that person until the person has had the opportunity to appeal the action to the board.... If a person has not perfected an appeal in accordance with the regulations of the board, the department's action shall be final as to the person."). Gurosik Coal's liability, therefore, was *res judicata*.

E. UTICA HAD NO OBLIGATION TO OBTAIN DEFENDANTS' CONSENT

The Gurosik-related Defendants raised an additional New Matter, claiming that Utica failed to obtain their consent "to the application of the Indemnity Agreement to the bond attached as Exhibit 'B.'" *See* Gurosik-related Defendants New Matter at ¶ 33. Though it is not clear exactly what type of consent Utica allegedly was required to obtain, the GAI resolves this issue. Paragraph 5 of the GAI gives Utica the exclusive right to settle claims related to the Bond. Ex. A. Paragraph 8 expressly waives any obligation for Utica to give the Indemnitors notice of execution of a bond or "facts or information coming to the notice or knowledge" of Utica that affect the rights or liabilities of the Indemnitors. *Id.* Plainly, Utica had no obligation to obtain the consent of any of the Defendants prior to applying the GAI to Indemnitor Gurosik Coal's Bond and remitting the forfeited Bond's penal sum to DEP.

Further, Utica contacted and discussed the matter with representatives of Gurosik Coal and Hepburnia to mitigate expenses. Mr. Morgan acknowledged his receipt of Utica's counsel's letter dated November 10, 2004, which pertains to the Bond forfeiture and seeks a recommendation on how to proceed. *See* Ex. E (Morgan Transcript) at Exhibit 1. Mr. Morgan also acknowledged speaking with counsel around the time the letter was received.

Q: Do you recall the conversation we had prior to that letter?

...

Q: Or around the time the letter came out.

A: You and I had a conversation, yes.

Q: To figure out what was going on?

A: Right.

Ex. E (Morgan Transcript) at 34.

IV. CONCLUSION

There are no genuine issues of material fact that preclude the Court from entering judgment as a matter of law in favor of Utica. Defendants Gurosik Coal and Hepburnia had a business relationship where Gurosik Coal agreed to mine coal for exclusive sale to Hepburnia, and Gurosik Coal had no surety credit, so Hepburnia stepped up to help obtain the reclamation bond. To get the bond Hepburnia, as well as the other signatories to the GAI, agreed to indemnify Utica. The GAI is valid and enforceable, and Hepburnia and Gurosik Coal intended to execute the GAI to obtain the Bond. Both acted consistent with that agreement.

Moreover, even if the GAI could be considered vague, that creates an ambiguity only, one which is easily remedied by reviewing the course of conduct and the deposition testimony. As a surety, Utica is not required to prove absolute liability of the Bond Principal Gurosik Coal, though even if it were required to do so, the New Matters raised by Defendants fail to provide any valid defense to payment on the Bond. Lastly, Utica was not required to give the Gurosik-related Defendants any ability to consent, the same not being required under the GAI. Therefore, Utica respectfully requests the Court grant its Motion for Summary Judgment and find Defendants jointly and severally liable for the costs Utica incurred as a result of issuing the Bond.

V. OPINIONS OF COURT/AGENCY INVOLVED

Pursuant to Local Rule 210(f), the court decisions cited herein are:

Phillips v. Selig, 959 A. 2d 420, 427 (Pa. Super. 2008);

Fennell v. Nationwide Mut. Fire Ins. Co., 603 A. 2d 1064, 1067 (Pa. Super. 1992);

Standard Venetian Blind Co. v. American Empire Ins. Co., 469 A. 2d 563 (Pa. 1983);

Biddle v. Johnsonbaugh, 664 A. 2d 159 (Pa. Super. 1995);

Petrie v. Haddock, 119 A. 2d 45 (Pa. 1956);

Glenn Matthews and Maintenance Supply Co., Inc. v. Unisource Worldwide, Inc., 748 A. 2d 219 (Pa. Super. 2000);

Atlantic Richfield Co. v. Razumic, 390 A. 2d 736 (Pa. 1978);

Samuel Rappaport Family P'ship v. Meridian Bank, 657 A. 2d 17 (Pa. Super. 1995);

Z&L Lumber Co. of Atlasburg v. Nordquist, 502 A. 2d 697 (Pa. Super. 1985);

Title Guaranty & Surety Co. v. Lippincott, 97 A. 201 (Pa. 1916);

United States Fidelity & Guaranty Co. v. Feibus, 15 F. Supp. 2d 579 (M.D. Pa. 1998);

Fidelity & Deposit Co. v. Bristol Steel & Iron Works, 722 F. 2d 1160 (4th Cir. 1983);

Martin v. Commonwealth, Dep't of Env'tl. Res., 570 A. 2d 122, 125 (Pa. Commw. 1990);

Morcoal Co. v. Commonwealth, Dep't of Env'tl. Resources, 459 A. 2d 1303, 1306 (Pa. Commw. 1983);

Am. Casualty Co. v. Commonwealth, Dep't of Env'tl. Resources, 441 A. 2d 1383, 1387 (Pa. Commw. 1982);

N. Cambria Fuel Co. v. Dep't of Env'tl. Prot., 621 A. 2d 1155, 1162 (Pa. Commw. 1993);

Commonwealth v. Harmar Coal Co., 306 A. 2d 308, 321 (Pa. 1973);

Ingram v. Dep't of Env'tl. Resources, 595 A. 2d 733, 738-39 (Pa. Commw. 1991);

Thompson & Phillips Clay Co. v. Dep't of Env'tl. Resources, 582 A. 2d 1162 (Pa.

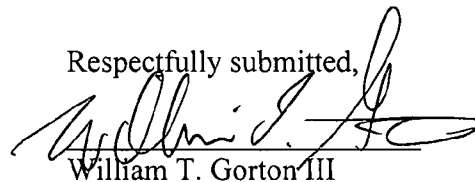
Commw. 1990); and

Nat'l Wood Preservers, Inc. v. Dep't of Env'tl. Resources, 414 A. 2d 37, 40 (Pa. 1980).

VI. STATEMENT OF COMPLIANCE WITH L.R. 208.2(D)

Pursuant to Local Rule 208.2(d), opposing counsel have been consulted regarding their concurrence with the foregoing Motion for Summary Judgment; such concurrence has been denied.

Respectfully submitted,



William T. Gorton III
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

Peter F. Smith
Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
)	
v.	)	Civ.No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants.		

ORDER

AND NOW, on this ____ day of _____, 2009, upon consideration of the foregoing Motion for Summary Judgment, the Court hereby GRANTS Plaintiff Utica Mutual Insurance Company's Motion for Summary Judgment.

BY THE COURT,

J.

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

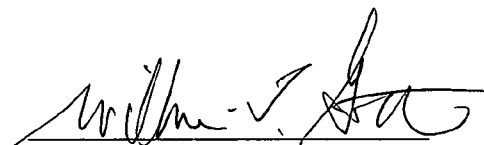
UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
)	
v.	)	Civ.No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants.)	

AFFIDAVIT OF SERVICE

I hereby certify that service of a true and correct copy of the Motion for Summary Judgment and proposed Order were made upon the following, on the 15 day of September, 2009, by regular first class mail, postage prepaid:

Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830


William T. Gorton III
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241
Counsel for Plaintiff,
Utica Mutual Insurance Company

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

GENERAL AGREEMENT OF INDEMNITY

This Agreement entered into by and between the undersigned, herein called the Indemnitors, and the Utica Mutual Insurance Company of New Hartford, New York, herein called the Company, witnesseth

WHEREAS, in the transaction of business certain bonds, undertakings and other writings obligatory in the nature of a bond have heretofore been, and may hereafter be, required by, for, or on behalf of the Indemnitors or any one or more of the parties included in the designation Indemnitors, and application has been made and will hereafter be made to the Company to execute such bonds, and as a prerequisite to the execution of such bond or bonds, the Company requires complete indemnification

NOW, THEREFORE, in consideration of the premises, and the payment by the Company of the sum of One (\$1 00) Dollar to each of the Indemnitors, receipt whereof is hereby acknowledged, and for other good and valuable considerations, the Indemnitors do, for themselves, their heirs, executors, administrators and assigns, jointly and severally, agree with the Company as follows

1 The Indemnitors will pay to the Company, at its Home Office in the Town of New Hartford, New York, premiums and charges at the rates, and at the times specified in respect to each such bond in the Company's schedule of rates, which, with any additions or amendments thereto, is by reference made a part hereof, and will continue to pay the same where such premium or charge is annual, until the Company shall be discharged and released from any and all liability and responsibility upon and from each such bond or matters arising therefrom, and until the Indemnitors shall deliver to the Company at its Home Office in New Hartford, New York, competent written evidence satisfactory to the Company of its discharge from all liability on such bond or bonds

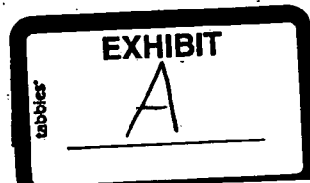
2 The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of, such bonds, or any renewals or continuations thereof or substitutes therefor, including fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. In the event of payments by the Company, the Indemnitors agree to accept the voucher or other evidence of such payments as prima facie evidence of the propriety thereof, and of the Indemnitors' liability therefor to the Company

3 If the Company shall set up a reserve to cover any claim, suit or judgment under any such bond, the Indemnitors will, immediately upon demand, deposit with the Company a sum of money equal to such reserve, such sum to be held by the Company as collateral security on such bond, and such sum and any other money or property which shall have been, or shall hereafter be, pledged as collateral security on any such bond shall, unless otherwise agreed in writing by the Company, be available, in the discretion of the Company, as collateral security on any other or all bonds coming within the scope of this Agreement

4 The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability with which the Company may be subsequently charged under any such bond, shall notify the Company thereof in writing at its Home Office in the Town of New Hartford, New York

5 The Company shall have the exclusive right to determine for itself and the Indemnitors whether any claim or suit brought against the Company or the Principal upon any such bond shall be settled or defended and its decision shall be binding and conclusive upon the Indemnitors

6 The Company, and its designated agents, shall, at any and all reasonable times, have free access to the books and records of the Indemnitors



7 If such bond be given in connection with a contract the Company is hereby authorized, but not required, to consent to any change in the contract or in the plans or specifications relating thereto, to make or guarantee advances or loans for the purpose of the contract without necessity of seeing to the application thereof, it being understood that the amount of all such advances or loans, unless repaid with legal interest by the Contractor to the Company when due, shall be conclusively presumed to be a loss hereunder, in the event the Indemnitors, or any of them, shall fail to pay any premium charge when due, or abandon, forfeit or breach such contract, or breach any bond given in connection therewith, or fail, neglect or refuse to pay for any labor or materials used in the prosecution of such contract, or have proceedings instituted against them, or any of them, alleging that they are insolvent, or for the appointment of a receiver or trustee for the benefit of creditors, whether such Indemnitor(s) are insolvent or not, or have proceedings instituted against them, or any of them, the effect of which may be to deprive any of them of the use of any part of the equipment used in connection with the work under the contract so as to hinder, delay or impede the normal and satisfactory progress of the work, the Company shall have the right, but not the obligation, to take possession of the work under the contract and under any other contract in connection with which the Company has given its bond or bonds within the purview of this General Agreement of Indemnity and, at the expense of the Indemnitors, to complete the contract(s), or cause, or consent, to the completion thereof. The Indemnitors hereby assign, transfer, and set over to the Company (to be effective as of the date of such bond or bonds, but only in the event of a default as aforesaid), all of their rights under the contract(s), including their right, title and interest in and to all subcontracts let in connection therewith, all machinery, plant, equipment, tools and materials which shall be upon the site of the work or elsewhere for the purposes of the contract(s), including all materials ordered for the contract(s), any and all sums due under the contract(s) at the time of such default, or which may thereafter become due, and the Indemnitors hereby authorize the Company to endorse in the name of the payee, and to receive and collect any check, draft, warrant or other instrument made or issued in payment of any such sum, and to disburse the proceeds thereof.

8 That it shall not be necessary for the Company to give the Indemnitors, or any one or more of them, notice of the execution of any such bonds, nor of any fact or information coming to the notice or knowledge of the Company affecting its rights or liabilities, or the rights or liabilities of the Indemnitors under any such bond executed by it, notice of all such being hereby expressly waived.

9 In the event of any claim or demand being made by the Company against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of a bond or bonds, the Company is hereby expressly authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and we hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

10 The Company is not required, by reason of any applications for a bond or by reason of having issued a previous bond or bonds or otherwise, to execute or procure the execution of or participate in the execution of any such bond or bonds and the Company, at its option, may decline to execute or to participate in or procure the execution of any such bond without impairing the validity of this General Agreement of Indemnity.

11 If the Company procures the execution of such bonds by other companies, or executes such bonds with cosureties, or reinsures any portions of such bonds with reinsuring companies, then all the terms and conditions of this Agreement shall apply and operate for the benefit of such other companies, cosureties and reinsurers as their interest may appear.

12 The liability of the Indemnitors hereunder shall not be affected by the failure of the Principal to sign any such bond, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

13 These covenants herein and also all collateral security, if any, at any time deposited with the Company concerning the said bond or bonds and any other former or subsequent bonds executed for the Indemnitors at their instance shall, at the option of the Company, be available in its behalf and for its benefit as well concerning any bond or undertaking applied for, and also concerning all other former or subsequent bonds and undertakings, executed for the Indemnitors or for others at their request.

14 This Agreement may be terminated by the Indemnitors, or any one or more of the parties so designated, upon written notice sent by registered mail to the Home Office of the Company, P O Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force

15 Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee

16 THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF

17 This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of

18 IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of

19

Andrew J. Autbeling
Witness

2208 George Rd - Clearfield Pa
Street or P O Box City State

Andrew J. Autbeling
Witness

2208 George Rd - Clearfield Pa
Street or P O Box City State

Andrew J. Autbeling
Witness

2208 George Rd Clearfield Pa
Street or P O Box City State

Robert L. Thayer
Witness

319 New Millport Pa
Street or P O Box City State

Cynthia Scheuer
Witness

125 E. DuBois Ave; DuBois, PA 15801
Street or P O Box City State

GUROSIK COAL CO., INC..

John O. Gurosik (L S.)
John O. Gurosik, President

R.D. #2, Box 42A, Kersey, PA 15846
Street or P O Box City State

John O. Gurosik (L S.)
John O. Gurosik, Individually

R.D. #2, Box 42A Kersey, PA 15846
Street or P O Box City State

Sharon Gurosik (L S.)
Sharon Gurosik, Individually

R.D. #2, Box 42A, Kersey, PA 15846
Street or P O Box City State

HEPBURNIA COAL CORPORATION
Darrell G. Spencer (L S.)
Darrell G. Spencer, President

R.D., Grampian, PA 16838
Street or P O Box City State

SPENCER LAND CO., CO-PARTNERSHIP
Robert G. Spencer (L S.)
Robert G. Spencer, Partner

P.O. Box 49, Grampian, PA 16838
Street or P O Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE

STATE OF
COUNTY OF

} ss

Individual Acknowledgment

On this . . . day of . . . 19 . . . , before me personally came

to me known, and known to me to be the individual who executed the foregoing instrument, and acknowledged that he executed the same

STATE OF
COUNTY OF

} ss

Co-partnership Acknowledgment

On this . . . day of . . . 19 . . . , before me personally came

to me known, and known to me to be one of the firm of

and acknowledged that he executed the foregoing instrument as the act of the said firm

STATE OF
COUNTY OF

Pennsylvania
Clearfield

} ss

Corporation Acknowledgment

On this . . . day of . . . July . . . 1985, before me personally came

John O. Gurosik

to me known, who, being by me duly sworn, did depose and say that he resides in Kersey, PA

that he is the President

of the

Gurosik Coal Co., Inc.

the corporation

which executed the foregoing instrument, that he knows the seal of the said corporation, that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order

Wanda Manning
CRATCHEBROOK COUNTY
NOT COMMISSION EXPIRES APRIL 19, 1986

days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force

15 Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee

16 THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF

17 This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of

18 IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of

19

Eugene J. Thuermer
Witness

3.3 New York PA
Street or P O Box City State

Tim Morgan
Witness

Grampian PA
Street or P O Box City State

Tim Morgan
Witness

Grampian PA
Street or P O Box City State

Witness

Street or P O Box City State

Witness

Street or P O Box City State

Dalney F. Spencer (L S.)
Dalney F. Spencer, Individually

P.O. Box 89, Grampian, PA 16838
Street or P O Box City State

Ray L. Spencer (L S.)
Ray L. Spencer, Individually

R.D. #1, Grampian, PA 16838
Street or P O Box City State

Mildred W. Spencer (L S.)
Mildred W. Spencer, Individually

R.D. #1, Grampian, PA 16838
Street or P O Box City State

(L S.)

Street or P O Box City State

(L S.)

Street or P O Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE

14 This Agreement may be terminated, by Indemnitors, or any one or more of the Indemnitors so designated, upon written notice sent by registered mail to the Home Office of the Company, P.O. Box 530, Utica, New York 13503, of not less than twenty (20) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force.

15 Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Company is construed toward its obligee.

16 THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS, WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS WHICH MAY BE EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM, FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS UNTIL THIS AGREEMENT SHALL BE CANCELLED IN ACCORDANCE WITH THE TERMS HEREOF

17 This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in nature of a bond written by Utica Mutual Insurance Company of New Hartford, New York on behalf of

18 IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this day of

19

Harold Thibault
Witness

319 New Market Pk. PA
Street or P O Box City State

Tim Morgan
Witness

GRAMPIAN PA
Street or P O Box City State

Cynthia Scheuer
Witness

125 E DuBois Ave; DuBois, PA 15801
Street or P O Box City State

Cynthia Scheuer
Witness

125 E DuBois Ave; DuBois, PA 15801
Street or P O Box City State

Loise L. Thibault
Witness

319 New Market Pk. PA
Street or P O Box City State

Darrell G. Spencer (L S)
Darrell G. Spencer, Partner

P.O. Box 89, Grampian, PA 16838
Street or P O Box City State

Ray L. Spencer (L S)
Ray L. Spencer, Partner

R.D. #1, Grampian, PA 16838
Street or P O Box City State

Robert G. Spencer (L S)
Robert G. Spencer, Individually

P.O. Box 49, Grampian, PA 16838
Street or P O Box City State

Deloris B. Spencer (L S)
Deloris B. Spencer, Individually

P.O. Box 49, Grampian, PA 16838
Street or P O Box City State

Darrell G. Spencer (L S)
Darrell G. Spencer, Individually

P.O. Box 89, Grampian, PA 16838
Street or P O Box City State

FORMS OF ACKNOWLEDGMENT WILL BE FOUND ON THE REVERSE SIDE

STATE OF Pennsylvania
COUNTY OF Clearfield

On this

12th day of

July 1985, before me personally came

John O. Guroski, Sharon Gurosik, Robert G. Spencer, Deloris Spencer, Darrell G.

Spencer, Dalney F. Spencer, Ray L. Spencer & Mildred W. Spencer

to me known, and known to me to be the individual who executed the foregoing instrument, and acknowledged that he executed the same.

Wanda Lee Moening
Notary Public for Pennsylvania
Clearfield County
My Commission Expires April 19, 1986
Member, Pennsylvania Association of Notaries

STATE OF Pennsylvania
COUNTY OF Clearfield

On this

12th day of

July 1985, before me personally came

Robert G. Spencer, Darrell G. Spencer & Ray L. Spencer

to me known, and known to me to be one of the firm of Spencer Land Co.

and acknowledged that he executed the foregoing instrument as the act of the said firm

Wanda Lee Moening
Notary Public for Pennsylvania
Clearfield County
My Commission Expires April 19, 1986
Member, Pennsylvania Association of Notaries

STATE OF Pennsylvania
COUNTY OF Clearfield

On this

12th day of

July 1985, before me personally came

Darrell G. Spencer

to me known, who, being by me duly sworn, did depose and say that he resides in Grampian, PA

that he is the President

of the

Herbivore Coal Corporation

the corporation

which executed the foregoing instrument, that he knows the seal of the said corporation, that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order

Wanda Lee Moening
Notary Public for Pennsylvania
Clearfield County
My Commission Expires April 19, 1986

Individual Acknowledgment

Co-partnership Acknowledgment

Corporation Acknowledgment

ER-MR-322:11/82

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF MINING AND RECLAMATION**FORFEITED**

JUL 26 2004

**SURETY BOND FOR
SURFACE MINES**

Purpose, check one:

(a) Original Application for Permit



(b) Additional Bond



(c) Replacement Bond



To be filled in by Pennsylvania

Department of Environmental Resources:

License No. 101933Permit No. 33830117

Date(s) and Amount of Bond Release

To be filled in by Operator:

Name of Operation KingType of Mineral Bituminous Coal

To be filled in by Surety Company:

Bond No. SU 38514

WHEREAS,

Gurosik Coal Co., Inc.

(Name of Surface Mine Operator)

a (1) Corporation, incorporated under the Laws in the State of

Pennsylvania, or

(2)

(Partnership, Individual, Registered Fictitious Name Business)

with its principal place of business at R. D. #2, Box 42A, Kersoy, PA 15846

(Address)

, has filed an application for a Surface Mining Permit

with the Department of Environmental Resources, under the provisions of the Act of Assembly, approved

May 31, 1945, P.L. 1198, as amended, known as the "Surface Mining Conservation and Reclamation Act",

(hereinafter Act 418) in which the operator estimated that it would affect 31.2 acres of landin Pine Creek 899-55 Township, Jefferson County, of

the Commonwealth of Pennsylvania.

NOW THEREFORE, KNOW ALL MEN, BY THESE PRESENTS that we Gurosik Coal Co., Inc.

(Name of Surface

, as principal, and Utica Mutual Insurance Co.

(Name of Surety Company)

(Mine Operator)

EXHIBIT

B

licensed to do business in the Commonwealth of Pennsylvania, and approved by the Secretary of the Department of Environmental Resources, Commonwealth of Pennsylvania (hereinafter referred to as the "Secretary" and the "Department"), with its principal place of business at
P. O. Box 530, Utica, NY 13503

(Address)

as surety, in consideration of the issuance of the aforesaid permit and intending to be legally bound hereby, are held and firmly bound unto the Department, in the just and full sum of
Seventy One Thousand Seven Hundred and no/100---- (\$ 71,700.00) Dollars;
to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns and successors, individually and/or jointly, firmly by these presents:

NOW THE CONDITION OF THIS OBLIGATION is such that if the principal shall faithfully perform all of the requirements of (1) Act 418, (2) the Act of Assembly approved June 22, 1937, P.L. 1987, as amended, known as "The Clean Streams Law" (Act 394), (3) the "Air Pollution Control Act", Act of January 8, 1960, P.L. 2119, as amended, (4) the applicable provisions of the "Dam Safety and Encroachments Act", Act 325 of 1978, P.L. 1375, as amended, (5) the "Coal Refuse Disposal Act", Act of September 24, 1968, No. 318, P.L. 1940, as amended, (6) the applicable provisions of the "Solid Waste Management Act", Act of July 7, 1980, No. 97, as amended, (7) the rules and regulations promulgated thereunder, (8) the provisions and conditions of the permits issued thereunder and designated in this bond, and (9) such amendments or additions to the law as may hereinafter be lawfully made, (all of which are hereinafter referred to as the "law") then this obligation shall be null and void, otherwise to be and remain in full force and effect in accordance with the provisions of the law.

LIABILITY UPON THIS BOND shall be for the amount specified herein. Liability upon this bond shall continue for the duration of surface mining at the operation conducted hereunder and for a period of five (5) years thereafter, unless released in whole or in part by the Department, in writing, prior thereto as provided by the law.

UPON THE HAPPENING OF ANY DEFAULT of the provisions, conditions and obligations assumed under his bond and the declaration of a forfeiture by the Secretary, or his designee, the period for appeal provided by law having expired, the principal and the surety hereby authorize and empower the Attorney General of the Commonwealth of Pennsylvania, or any other attorney of any court of record in Pennsylvania, or elsewhere, by him deputized for the purpose, to appear for and confess judgment against the principal and/or the surety, their successors or assigns, in favor of the Commonwealth for any sum or sums of money which may be due hereunder, with or without defalcation or declaration filed, with interest and cost, with release of errors, without stay of execution AND WITH TEN PERCENT (10%) ADDED FOR COLLECTION FEES, and for the exercise of this power, this instrument, or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. This power shall be inexhaustible.

FURTHER, the principal and the surety agree that their liability hereunder shall not be impaired or affected by, (a) any renewal or extension of the time for performance of any of the provisions, conditions or obligations upon which this bond is conditioned, or (b) any forbearance or delay in declaring this bond to be forfeited or in enforcing payment on this bond. The surety hereby waives any right to cover or perform the obligations of the principal upon the principal's default, provided however, that the Department may authorize, in writing, the surety to cover such defaulted obligations if the Department determines that it is in their interest to do so.

FURTHER, the Department reserves the right to require additional bonding from the principal, for any reason, which shall be a supplement to and augment the bond liability provided herein. The Department may release, in writing, a portion of the amount of liability provided in this bond for partial completion of the provisions, conditions and obligations assumed by the principal herein, as may be authorized by the law, and such amount released shall be a credit upon the total amount of this bond. Nothing herein shall limit or preclude the Department from seeking any liability or remedy, in addition to the forfeiture of this bond, which may be authorized or provided by law;

The principal and surety further agree that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing from the principal and/or the surety to the Commonwealth, with costs and collection fee upon filing information in writing in the court where such judgment shall be entered.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals, intending to legally bound hereby, this 15th day of July, 19 85

ATTEST OR WITNESS

Surface Mine Operator

Gurosik Coal Co., Inc.

(Print Name)

By: X

President

By: Sharon Caylor Gurosik

(Title)

Secretary

(Seal)

SURETY: Utica Mutual Insurance Co.

(Print Name)

ATTEST OR WITNESS:

By: Whitman Chappie

(Title) Attorney-in-Fact

By: _____

(Title)

(Seal)

Approved as to legality and form:

John Wm. Carroll

WBC 8/6/85

Deputy Attorney General/Chief Counsel/Assistant Counsel

Approved for the Department:

Sharon Caylor Gurosik

8/7/85

1. The subject company and its agent is duly licensed in the Commonwealth to write Fidelity & Surety Insurance. ☒ yes ☐ no

2. The bond is within the 10% limitation of capital & Surplus as per Section 661 (40 P. S. 832). ☒ yes ☐ no

3. The signature appears to be in the original. ☒ yes ☐ no

Pennsylvania Insurance Dept.

Harrisburg, PA

Date 7/16/85

RECEIVED
1985 JUL 29 PM 1:10
BUREAU OF MINING & RECLAMATION
LICENSING & BONDING
1985 AUG -9 PM 1:24
BUREAU OF MINING & RECLAMATION
LICENSING & BONDING

UTICA MUTUAL INSURANCE COMPANY

NEW HARTFORD, NEW YORK

No. 259 —

POWER OF ATTORNEY

Know all men by these Presents, the UTICA MUTUAL INSURANCE COMPANY, a New York Corporation, having its principal office in the Town of New Hartford, County of Oneida, State of New York, does hereby make, constitute and appoint

David M. Champe, James Philip Hadden and Joseph R. Imler
of Ebensburg, Pennsylvania

its true and lawful Attorney(s)-in-fact in their separate capacity if more than one is named above to make, execute, sign, seal and deliver for and on its behalf as surety and as its act and deed (without power of redelegation) any and all bonds and undertakings and other writings obligatory in the nature thereof (except bonds guaranteeing the payment of principal and interest of notes, mortgage bonds and mortgages) provided the amount of no one bond or undertaking exceeds ONE MILLION Dollars (\$ 1,000,000.00).

The execution of such bonds and undertakings shall be as binding upon said UTICA MUTUAL INSURANCE COMPANY as fully and to all intents and purposes as if the same had been duly executed and acknowledged by its regularly elected officers at its Home Office in New Hartford, New York.

This Power of Attorney is granted under and by authority of the following resolution adopted by the Directors of the UTICA MUTUAL INSURANCE COMPANY on the 27th day of November, 1961.

"Resolved, that the President or any Vice-President, in conjunction with the Secretary or any Assistant Secretary, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly acknowledged by the regularly elected Officers of the Company in their own proper persons.

"Now Therefore, the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney by a facsimile, and any such Power of Attorney bearing such facsimile signatures or seal shall be valid and binding upon the Company."

In Witness Whereof, the UTICA MUTUAL INSURANCE COMPANY has caused these presents to be signed by its Authorized Officers, this 10th day of February, 1982.

UTICA MUTUAL INSURANCE COMPANY

John P. Sullivan
Secretary



J.B. Riffe
President

STATE OF NEW YORK }
COUNTY OF ONEIDA } ss:

On this 10th day of February, 1982, before me, a Notary Public in and for the State of New York, personally came J. B. RIFFLE and JOHN P. SULLIVAN to me known, who acknowledged execution of the preceding instrument and, being by me duly sworn, do depose and say, that they are President and Secretary respectively of UTICA MUTUAL INSURANCE COMPANY; that the seal affixed to said instrument is the corporate seal of UTICA MUTUAL INSURANCE COMPANY; that said corporate seal is affixed and their signatures subscribed to said instrument by authority and order of the Board of Directors of said Corporation.

In Testimony Whereof, I have hereunto set my hand at New Hartford, New York, the day and year first above written.



Rosemary Wadas
Notary Public

STATE OF NEW YORK }
COUNTY OF ONEIDA } ss:

I, John D. Yonkers Assistant Secretary of the UTICA MUTUAL INSURANCE COMPANY do hereby certify that the foregoing is a true and correct copy of a Power of Attorney, executed by said UTICA MUTUAL INSURANCE COMPANY, which is still in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the said Corporation at New Hartford, New York, this 15th day of July, 1985.

John D. Yonkers
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION



COAL SURFACE MINING PERMIT

NO. 33830117

Permittee: Gurosik Coal Company, Inc.
800 Brandy Camp Road
Kersey, PA 15846

Municipality: Pine Creek
County: Jefferson
Name of Operation: King Mine

This Permit Approves the Following Type of Operation:

- | | |
|--|--|
| <input type="checkbox"/> Anthracite | <input checked="" type="checkbox"/> Bituminous |
| <input checked="" type="checkbox"/> Surface Mine | <input type="checkbox"/> Surface Mine (coal refuse reprocessing) |
| <input type="checkbox"/> Auger Mine | <input type="checkbox"/> Coal Refuse Disposal |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Coal Preparation/Processing Facility |

This approval is subject to the attached LIMITS OF AUTHORIZATION, MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS AND REQUIREMENTS and to:

- ☒ PART A EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS and MANDATED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONDITIONS AND REQUIREMENTS
- ☒ PART B SPECIAL CONDITIONS OR REQUIREMENTS
- ☒ PART C AUTHORIZATION TO MINE

The permit is for 31.2 acres of which 18.8 acres are planned to be affected. Permittee may conduct surface coal mining activities only on that area of the permit outlined on the Authorization to Mine and accompanying maps contained in Part C of this permit. Initial authority to conduct mining activities is granted for an area of 28.1 acres described in Part C of this permit. Additional authority to conduct mining activities may be granted by written approval of the Department and attached to Part C of this permit. Permittee is prohibited from conducting coal mining activities on that portion of the permit area which has not been authorized for mining by the Department, in writing, and shown on the bond approval and mining authorization map(s) contained in Part C of this permit.

This permit is hereby issued in accordance with the provisions of the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945 (P.L. 1198, No. 418), as amended, 52 P.S. §§1396.1 et seq., The Clean Streams Law, Act of June 22, 1937 (P.L. 1987, No. 394), as amended, 35 P.S. §§691.1 et seq., The Air Pollution Control Act, Act of January 8, 1960 (1959 P.L. 2119, No. 787), as amended, 35 P.S. §§4001 et seq., and the regulations promulgated pursuant to these Acts. This permit is also issued in accordance with the following statutes and regulations if marked:

- ☐ Coal Refuse Disposal Control Act, Act of September 24, 1968 (P.L. 1040, No. 318), as amended, 52 P.S. §§30.51 et seq., and the regulations promulgated pursuant to this Act.
- ☐ Dam Safety and Encroachments Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. §§693.1 et seq., and the regulations promulgated pursuant to this Act.
- ☐ Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), 35 P.S. §§6018.101 et seq., and the regulations promulgated pursuant to this Act.

Permittee is hereby authorized to conduct coal mining activities as described in the approved permit application and in accordance with the laws and regulations and terms and conditions as referenced above. A violation of any provision of these laws and regulations and terms and conditions is a violation of this permit.

Original Permit Issuance Date: September 3, 1985
Permit Renewal Date: January 17, 2002
Permit Reissuance Date: July 27, 1989
Permit Expiration Date: September 3, 2005

By: Javed I. Mirza
Javed I. Mirza
District Mining Manager
Knox District Office

EXHIBIT

C

LIMITS OF AUTHORIZATION

1. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights.
2. Nothing herein contained shall be construed to be an intent on the part of the Department to approve any act made or to be made by the permittee which is inconsistent with the permittee's lawful powers or with existing laws of the Commonwealth regulating coal mining activities and the practice of professional engineering. This permit shall not be construed to sanction any act otherwise forbidden by federal or state law or regulation, or by local ordinance, nor to preempt any duty to obtain state or local assent required by law for the coal mining activity.
3. The permittee's failure to comply with the laws of the Commonwealth and the rules and regulations of the Department regarding coal mining activities, or failure to comply with the terms and conditions of this permit, may result in an enforcement action, in permit termination, suspension, revocation and reissuance, or modification, or in denial of a permit renewal application. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee of any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under the Acts pursuant to which this permit is issued or any other applicable provision of law.
4. The permittee is responsible for complying with local ordinances adopted pursuant to the Municipalities Planning Code, and all zoning ordinances in existence before January 1, 1972. Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under federal, state, or local laws.

**MANDATED COAL MINING ACTIVITY PERMIT CONDITIONS
AND REQUIREMENTS**

(under 25 Pa. Code Chapter 86)

1. Except to the extent that the Department otherwise directs in this permit that specific actions be taken, the permittee shall conduct coal mining activities as described in the approved application. 86.41(1)
2. The permittee shall allow the authorized representatives of the Commonwealth, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have access to areas in which coal mining activities will or are being conducted. 86.41(2)
3. The permittee shall affect by coal mining activities only those lands specifically approved in the permit for which a bond has been filed with the Department in accordance with Subchapter F (relating to bonding and insurance requirements). 86.41(3)
4. The permittee shall take all possible steps to prevent an adverse impact to the environment or public health and safety resulting from noncompliance with terms or conditions of this permit, including:
 - a. Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
 - b. Providing warning, as soon as possible after learning of the noncompliance, to a person whose health and safety is in imminent danger due to the noncompliance. 86.42(1)
5. The permittee shall conduct the activities in accordance with measures specified in this permit as necessary to prevent environmental harm or harm to the health or safety of the public. 86.42(2)

PART A

COAL SURFACE MINING PERMIT NO. 33830117
NPDES PERMIT NO. PA0601829

Permittee Name: Gurosik Coal Company, Inc.
800 Brandy Camp Road
Kersey, PA 15846

Issuance Date: September 3, 1985
 Renewal Date: January 17, 2002
 Reissuance Date: July 27, 1989
 Expiration Date: September 3, 2005

Operation Name: King Mine
 Municipality: Pine Creek

County: Jefferson

Type of Operation: ☐ Anthracite ☒ Bituminous

☒ Surface Mine
☐ Auger Mine
☐ Other:

☐ Surface Mine (coal refuse reprocessing)
☐ Coal Refuse Disposal
☐ Coal Preparation/Processing Facility

Discharge to (Receiving Waters) Unnamed tributary of Five Mile Run to Five Mile Run to Mill Creek to Redbank Creek to the Allegheny River.

I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. MINE DRAINAGE TREATMENT FACILITIES

Outfall Numbers
1TB

Latitude
41° 08' 16"

Longitude
78° 57' 07"

Based on the hydrologic data and anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

DISCHARGE LIMITATIONS*

<u>Discharge Parameter</u>	<u>Average Monthly</u>	<u>Maximum Daily</u>	<u>Instantaneous Maximum</u>
Fe	3	6	7
Mn	2	4	5
TSS	35	70	90

MONITORING REQUIREMENTS

<u>Measurement Frequency</u>	<u>Sample Type</u>
2/mo.	Grab
2/mo.	Grab
2/mo.	Grab

pH not less than 6.0 standard units nor greater than 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

*Unless otherwise indicated, discharge limitations are concentrations and expressed in mg/l and the total (dissolved plus suspended fraction) is applicable for each parameter.

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken during a discharge at the following location(s):

At the outfall listed above.

B. EROSION AND SEDIMENTATION CONTROL FACILITIES

<u>Outfall Numbers</u>	<u>Latitude</u>	<u>Longitude</u>
1A	41° 08' 16"	78° 57' 11"

Based on the hydrologic data and anticipated characteristics and flows described in the permit application and its supporting documents and/or revisions, the following effluent limitations and monitoring requirements apply to the above listed outfall numbers.

DISCHARGE LIMITATIONS*

MONITORING REQUIREMENTS

<u>Discharge Parameter</u>	<u>Average Monthly</u>	<u>Maximum Daily</u>	<u>Instantaneous Maximum</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Fe			7	1/mo.	Grab
Settleable Solids			.5 ml/l	1/mo.	Grab

pH not less than 6.0 standard units nor greater than 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

*Unless otherwise indicated, discharge limitations are concentrations and expressed in mg/l and the total (dissolved plus suspended fraction) is applicable for each parameter.

Samples taken in compliance with the monitoring requirements specified above shall be taken during a discharge at the following location(s):

At the outfall listed above.

NOTE: The above discharge limitations and monitoring requirements are based upon the presumption that the erosion and sedimentation control facilities will only discharge as a result of a "precipitation event." If the discharge occurs during "dry weather flow" conditions, then Group A limitations will apply (as defined in 25 Pa. Code, Chapters 86-90).

C. OTHER DISCHARGES

At a minimum, any other discharge from areas disturbed by mining activities, including areas disturbed by mineral preparation, processing or handling facilities shall comply with the following discharge limitations and monitoring requirements.

DISCHARGE LIMITATIONS*

<u>Discharge Parameter</u>	<u>Average Monthly</u>	<u>Maximum Daily</u>	<u>Instantaneous Maximum</u>
Fe			7
Mn			5
TSS			90

MONITORING REQUIREMENTS

<u>Measurement Frequency</u>	<u>Sample Type</u>
1/mo.	Grab
1/mo.	Grab
1/mo.	Grab

pH not less than 6.0 standard units nor greater than 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

*Unless otherwise indicated, discharge limitations are concentrations and expressed in mg/l and the total (dissolved plus suspended fraction) is applicable for each parameter.

NOTE: The above discharge limitations and monitoring requirements pertain to discharges which may occur unexpectedly, (i.e., were not originally anticipated when this permit was issued). The Department reserves the right to modify these limitations based upon the need to protect water quality in the receiving stream.

II. MANDATED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT CONDITIONS AND REQUIREMENTS

1. CONDITIONS RELATING TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM REGULATIONS

The following permit conditions implement mandatory Federal National Pollutant Discharge Elimination System (NPDES) requirements of 40 CFR Part 122 and also the mandatory state requirements of 25 Pa. Code §§87.102(e), 88.92(e), 88.187(e) or 88.292(e) [as applicable to the operation], 92.31(g), and 95.1(a).

2. DEFINITIONS

- a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. 122.41(m)(1)(i)
- b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. 122.41(m)(1)(ii)
- c. "Average monthly" discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during the month. 122.2
- d. "Maximum daily" discharge limitation means the highest allowable "daily discharge." 122.2
- e. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day. 122.2
- f. "Average" refers to the use of an arithmetic mean, unless otherwise specified in this permit. 122.41(l)(4)(iii)
- g. "Instantaneous Maximum" means the level not to be exceeded at any time in any grab sample.
- h. "Composite Sample" means a combination of individual samples obtained at regular intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates, or the sampling interval (for constant volume samples) is proportional to the flow rates, over the time period used to produce the composite.

The maximum time period between individual samples shall not exceed two hours, except that for wastes of a uniform nature the samples may be collected on a frequency of at least twice per working shift and shall be equally spaced over a 24-hour period (or over the operating day if flows are of a shorter duration).
- i. "Grab Sample" means an individual sample collected at a randomly-selected time over a period not to exceed 15 minutes.
- j. "Measured Flow" means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.
- k. "At Outfall XXX" means a sampling location in outfall line XXX below the last point at which wastes are added to outfall line XXX, or where otherwise specified.

- l. "Estimate" means to be based on a technical evaluation of the sources contributing to the discharge including, but not limited to, pump capabilities, water meters and batch discharge volumes.
- m. "Toxic Pollutant" means any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act. 122.2
- n. "Hazardous Substance" means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act. 122.2

3. SELF-MONITORING, REPORTING, AND RECORDS KEEPING

a. Representative Sampling

- (1) Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. 122.41(i)(1)
- (2) Records Retention 122.41(i)(2)

All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records), copies of all reports required by this permit, and records of all data used to complete the application for this permit shall be retained by the permittee for three (3) years. The three-year period shall be extended as requested by the Department or the EPA Regional Administrator.

- (3) Recording of Results 122.41(i)(3)

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

- (i) The exact place, date, and time of sampling or measurements;
- (ii) The person(s) who performed the sampling or measurements;
- (iii) The date(s) the analyses were performed;
- (iv) The person(s) who performed the analyses;
- (v) The analytical techniques or methods used; and the associated detection level; and
- (vi) The results of such analyses.

- (4) Test Procedures 122.41(i)(4)

Unless otherwise specified in this permit, the test procedures for the analysis of pollutants shall be those contained in 40 CFR Part 136, or alternate test procedures approved pursuant to that part.

b. Reporting of Monitoring Results

- (1) Monitoring results obtained each month shall be summarized for that month and reported on a Discharge Monitoring Report (DMR). 122.41(i)(4)(i)

The DMR shall be submitted quarterly within 28 days after the end of the quarter to the appropriate Department District Mining Office. 122.41(l)(4)

- (2) The completed DMR form shall be signed and certified either by the following applicable person (as defined in 40 CFR 122.22(a)) or by that person's duly authorized representative (as defined in 40 CFR 122.22(b)):
- for a Corporation - by a responsible corporate officer;
 - for a Partnership or Sole Proprietorship - by a general partner or the proprietor, respectively;
 - for a Municipality, State, Federal or other public agency - by a principle executive officer or ranking elected official.

Written notification of delegation of DMR signatory authority must be submitted to the Department. 122.41(k)

- (3) If the permittee monitors any pollutant, using analytical methods described in B.3.a(4) above, more frequently than the permit requires, the results of this monitoring shall be incorporated, as appropriate, into the calculations used to report self-monitoring data on the DMR. 122.41(l)(4)(ii)

c. Noncompliance Reporting

- (1) 24-Hour Reporting - The permittee shall orally report to the Department within 24 hours of becoming aware of the following:

- (a) Actual or anticipated noncompliance with any term or condition of this permit which may endanger health or the environment. 122.41(l)(6)(i)
- (b) Actual or anticipated noncompliance with any "maximum daily" discharge limitation which is identified in Part A of this permit as being either: 122.41(l)(6)(ii)(A), 122.41(l)(6)(ii)(C)
 - (i) A toxic pollutant effluent standard established by EPA pursuant to Section 307(a) of the Clean Water Act,
 - (ii) A toxic or hazardous pollutant which, if not adequately treated, could constitute a threat to human health, welfare, or the environment, or
 - (iii) Any pollutant identified as the method to control a toxic pollutant or hazardous substance (i.e., indicator pollutant).
- (c) Any unanticipated bypass which exceeds any effluent limitations in the permit. 122.41(l)(6)(ii)(A), 122.41(m)(3)(ii)

Where the permittee orally reports this information within the above mentioned 24-hour time period, a written submission outlining the above information must be submitted to the Department within 5 days of becoming aware of such a condition, unless this requirement is waived by the Department upon receipt of the oral report. 122.41(l)(6)(i) and (iii)

(2) Anticipated Noncompliance Reporting

- (a) The permittee shall give advance notice to the Department of any planned changes to the permitted activity or facility which may result in noncompliance with permit requirements. 122.41(l)(2)

- (b) Where the permittee knows in advance of the need for a bypass which will exceed effluent limitations, it shall submit prior notice to the Department at least 10 days, if possible, before the date of the bypass.
122.41(m)(3)(i)
- (3) The permittee shall report all other instances of noncompliance which are not reported above, at the time of DMR submission. 122.41(l)(7)
- (4) All of the reports and notifications required above shall contain the following information: 122.41(l)(6)
 - (a) A description of the discharge and cause of noncompliance;
 - (b) The period of noncompliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and
 - (c) Steps being taken to reduce, eliminate, and prevent recurrence of the non-complying discharge.
- d. Specific Toxic Substance Notification Levels - The permittee shall notify the Department as soon as it knows or has reason to believe the following:
 - (1) That any activity has occurred, or will occur, which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge on a routine or frequent basis will exceed the highest of the following "notification levels": 122.42(a)(1)
 - (a) One hundred micrograms per liter;
 - (b) Two hundred micrograms per liter for acrolein and acrylonitrile;
 - (c) Five hundred micrograms per liter for 2, 4-dinitrophenol and 2-methyl -4, 6-dinitrophenol;
 - (d) One milligram per liter for antimony;
 - (e) Five (5) times the maximum concentration value reported for that pollutant in the permit application;
 - (f) Any other notification level established by the Department.
 - (2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels": 122.42(a)(2)
 - (a) Five hundred micrograms per liter;
 - (b) One milligram per liter for antimony;
 - (c) Ten (10) times the maximum concentration value reported for that pollutant in the permit application;
 - (d) Any other notification level established by the Department.

4. MANAGEMENT REQUIREMENTS

a. Compliance Schedules 122.47(a), 122.41(l)(5)

- (1) Where applicable, the permittee will comply with the schedule identified in this permit relative to NPDES discharge requirements.
- (2) The permittee shall submit reports of compliance or noncompliance with, or progress reports as applicable, any interim and final requirements contained in this permit. Such reports shall be submitted no later than 14 days following the applicable schedule date or compliance deadline. 122.47(a)(4)

b. Permit Modification, Termination, or Revocation and Reissuance

- (1) This permit may be modified, terminated, or revoked and reissued during its term for any of the causes specified in 25 Pa. Code, Chapter 92. 122.41(f)
- (2) The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit conditions 122.41(f)
- (3) The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time specified in the regulations that establish those standards or prohibitions. 122.41(a)(1)

c. Duty to Provide Information

- (1) The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. 122.41(h)
- (2) The permittee shall furnish to the Department, upon request, copies of records required to be kept by this permit. 122.41(h)
- (3) Other Information - Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information to the Department. 122.41(l)(8)
- (4) The permittee shall give advance notice to the Department of any planned physical alterations or additions to the permitted facility:

Such notice is required when:

- (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source, or
- (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit, or are not subject to the toxic substance notification requirements of Part B.3.d.(1) above. 122.41(l)(1)

d. Facilities Operation

The permittee shall at all times maintain in good working order and properly operate and maintain all facilities and systems which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes, but is not limited to, adequate laboratory controls including appropriate quality assurance procedures. This provision also includes the operation of backup or auxiliary facilities or similar systems which are installed by the permittee, only when necessary to achieve compliance with the terms and conditions of this permit. 122.41(e)

e. Adverse Impact

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. 122.41(d)

f. Bypassing

(1) Bypassing Not Exceeding Permit Limitations - The permittee may allow a bypass to occur which does not cause effluent limitations to be violated, but only if the bypass is essential for maintenance to assure efficient operation. This type of bypassing is not subject to the reporting and notification requirements of Part B.3.c above. 122.41(m)(2)

(2) Other Bypassing - In all other situations bypassing is prohibited unless all of the following conditions are met: 122.41(m)(4)(i)

(a) A bypass is unavoidable to prevent loss of life, personal injury or "severe property damage"; 122.41(m)(4)(i)(A)

(b) There are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed (in the exercise of reasonable engineering judgment) to prevent bypass which occurred during normal periods of equipment downtime or preventive maintenance; 122.41(m)(4)(i)(B)

(c) The permittee submitted the necessary reports required under Part B.3.c above. 122.41(m)(4)(i)(C)

(3) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above. 122.41(m)(4)(ii)

5. **PENALTIES AND LIABILITY**

a. Duty to Comply 122.41(a), (a)(2), (a)(3)

Failure to comply with the terms or conditions of this NPDES permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(1) The Clean Water Act provides that any person who violates Section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under Section 402, or any requirement imposed in a pretreatment program approved under Section 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The Clean Water Act provides that any

person who negligently violates Section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit under Section 402 of the Act, or any requirement imposed in a pretreatment program approved under Section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates Section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates Section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- (2) Any person may be assessed an administrative penalty by the Administrator for violating Section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

b. Falsifying Information

- (1) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. 122.41(j)(5)
- (2) The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both. 122.41(k)(2)

c. Enforcement Proceedings

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. 122.41(c)

6. **OTHER RESPONSIBILITIES**

a. Right of Entry 122.41(i)

Pursuant to Sections 5(b) and 305 of Pennsylvania's Clean Streams Law and 25 Pa. Code, Chapter 92, and 40 CFR 122, the permittee shall allow the head of the Department, the EPA Regional Administrator, and/or their authorized representatives, upon the presentation of credentials and other documents as may be required by law:

- (1) To enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit; 122.41(i)(1)
- (2) To have access to and copy at reasonable times any records that must be kept under the conditions of this permit; 122.41(i)(2)
- (3) To inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; 122.41(i)(3)
- (4) To sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substance or parameters at any location. 122.41(i)(4)

b. Transfer of Ownership or Control

NPDES discharge permit requirements may not be transferred unless approved by the Department as a permit modification or revocation and reissuance. 122.61(a), 122.41(l)(3)

c. Property Rights

The issuance of this NPDES permit does not convey any property rights of any sort, or any exclusive privilege. 122.41(g)

d. Renewal of NPDES Permits

Application for renewal of this NPDES permit, or notification of intent to cease discharging by the expiration date, must be submitted to the Department at least 180 days prior to the above expiration date (unless permission has been granted by the Department for submission at a later date). 122.41(b)

PART B

COAL SURFACE MINING PERMIT NO. 33830117

SPECIAL CONDITIONS OR REQUIREMENTS

The following special conditions or requirements are hereby incorporated into the permit and represent permit conditions.

1. The operator shall prevent water from accumulating in the pit. Pit water shall be collected and pumped through the approved treatment facility. No drainage shall be discharged from the operation by gravity drains through the lowwall or through the ends of the strip cut.
2. Unless otherwise specified and a variance is approved in writing by the Department, only one pit shall be open on this surface mining permit at any time. The length of open pit shall not exceed 1,500 feet. Rough backfilling and grading shall not be more than 300 feet from the face of the highwall.
3. There shall be no tippie refuse disposed of on this surface mining permit area.
4. There shall be no blasting until Module 16 has been submitted to and approved by this office.
5. If a permit revision to include a lower coal seam is submitted, an overburden analysis will be required.

THE FOLLOWING REVISIONS ARE INCORPORATED INTO THIS PERMIT:

July 27, 1989 :

6. This surface mining permit has been revised to include a bog treatment facility construction proposal.

October 19, 1990 :

7. In accordance with Section 86.55 of the surface mining rules and regulations, Surface Mining Permit No. 33830117 has been renewed for an additional five year term. This renewal is for reclamation only.

January 17, 2002 :

8. In accordance with Section 86.55 of the surface mining rules and regulations, Surface Mining Permit No. 33830117 has been renewed for an additional five year term until September 3, 2005. This renewal is for reclamation only.

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

UTICA MUTUAL INSURANCE COMPANY,)
Plaintiff,)
vs.) No.: 2006-1901-CD
GROSNIK COAL CO., INC., JOHN O.) Civil Indemnity Action
GROSNIK, President and Individually,)
Individually, SHARON GROSNIK, HEPBURNIA)
COAL CORP., DARRELL G. SPENCER, President,)
Individually, Partner and as Administrator)
of the Estate of Dalney F. Spencer, ESTATE)
OF DALNEY F. SPENCER, ESTATE OF RAY L.)
SPENCER, Partner and Individually, MILDRED)
W. SPENCER, Individually and as)
Administratrix of the Estate of Ray L.)
Spencer, SPENCER LAND CO., ROBERT G.)
SPENCER, Partner and Individually, and)
DELORIS B. SPENCER,)
Defendants.)

PROCEEDINGS: Deposition of
JOHN O. GROSNIK
DATE: June 18, 2009
TIME: 9:13 a.m. - 11:57 a.m.
PLACE: Law Offices of Peter Smith, Esquire
30 South Second Street
Clearfield, Pennsylvania 16830
REPORTER: Susanna C. Englert
CSR 1951
Notary Public

ASAP COURT REPORTING
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167 South McKean Street
Kittanning, Pennsylvania 16201
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FAX: (814) 472-8950 - (724) 543-5054
e-mail: ASAP10@windstream.net

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1 APPEARANCES:

2 Appearing on behalf of the Plaintiff:

3 WILLIAM T. GORTON, III, ESQUIRE

4 JENNIFER E. DRUST, ATTORNEY AT LAW

5 Stites & Harbison

6 250 West Main Street, Suite 2300

7 Lexington, Kentucky 40507-1758

9 Appearing on behalf of the Defendants John O.

10 Gurosik, Sharon Gurosik and Gurosik Coal Company:

11 THOMAS G. WAGNER, ESQUIRE

12 Meyer & Wagner

13 115 Lafayette Street

14 St. Mary's, Pennsylvania 15857

16 Appearing on behalf of the Defendants Hepburnia

17 Coal Corp., Spencer Land Co., and the Spencers:

18 LAURANCE B. SEAMAN, ESQUIRE

19 Gates & Seaman

20 2 North Front Street

21 Clearfield, Pennsylvania

23 Also Present:

24 Darrell G. Spencer

25 Timothy Morgan

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1 MR. GORTON: We're here on behalf of

2 Utica Mutual Insurance Company in the matter of

3 Utica Mutual Insurance Company vs. Gurosik Coal,

4 et al., and a number of defendants in this matter,

5 Docket No. 2006-01901-CD.

6 I'd like to address counsel in regards to

7 stipulations, including reserving objections as to

8 form until trial and any comments regarding

9 signing, certification, sealing, filing the

10 deposition.

11 MR. SEAMAN: Excuse me, I thought we were

12 going to have to make objections as to form now,

13 because all other objections are reserved.

14 MR. WAGNER: I agree with that. I think

15 that makes sense. That's for your protection.

16 MR. GORTON: Right. Very good.

18 JOHN O. GROSNIK,

19 having been first duly sworn, testified as

20 follows:

EXAMINATION

23 BY MR. GORTON:

24 Q. Let me introduce myself. I'm Bill

25 Gorton, William Gorton, with the law firm of

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EXHIBIT

D

1 Stites & Harbison, here on behalf of Utica Mutual
2 Insurance Company, who is the plaintiff in this
3 case in an indemnity action on a surface mine
4 reclamation bond and related general agreement of
5 indemnity against all of the defendants.

6 We are here to depose this morning John
7 Gurosik, who is the president of Gurosik Coal
8 Company, and here in your individual capacity.

9 Mr. Gurosik, would you state your name
10 and address for the record?

11 **A. John O. Gurosik, G-U-R-O-S-I-K, 800**
12 **Brandy Camp Road, Kersey, zip, 15846.**

13 **Q.** Mr. Gurosik, how long have you lived
14 there?

15 **A. All my life.**

16 **Q.** Are you currently employed?

17 **A. Self-employed.**

18 **Q.** Self-employed in?

19 MR. SEAMAN: Excuse me, but it's hard to
20 hear. I hate to have to do this, because I know
21 what's going to happen.

22 BY MR. GORTON:

23 **Q.** Mr. Gurosik, you mentioned that you're
24 presently self-employed.

25 In what business?

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1 **A. Lumber.**

2 MR. SEAMAN: I'm sorry, but I couldn't
3 hear you.

4 THE WITNESS: Forestry, lumbering.

5 BY MR. GORTON:

6 **Q.** All right. Let me start in regards to
7 the nature of the deposition. I'm going to be
8 asking you questions. And if you don't understand
9 the question, please ask me to clarify it, and be
10 as frank as you can. If it's a yes or no
11 question, if you would answer "yes" or "no," not
12 uh-huh --

13 **A. Okay.**

14 **Q.** -- those kinds of things, that would make
15 the record clearer later on. I would advise
16 you -- and I'm sure your counsel has advised
17 you -- listen to the question and answer the
18 question. If you don't understand it, I'll
19 clarify it for you. If you find it confusing,
20 I'll try to restate it.

21 If you need to take a break, tell me,
22 we'll take a break, a restroom break, you know,
23 "I'm too hot break," whatever is necessary for
24 you.

25 Today what you're taking is what's called
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1 a deposition. I want to get your testimony. It's a
2 discovery deposition. We want to find out and
3 hear the story related to the relationship
4 Hepburnia, the nature of the business with Gurosik
5 Coal Company, the DEP and, in particular of
6 course, the permits, the bonds, the general
7 agreement of indemnity. You'll be getting
8 questions along those lines.

9 I will remind you --

10 **A. Allow me to make one statement before we**
11 **start this. I'll direct this to both Tim Morgan,**
12 **both Darrell Spencer and their attorney, there is**
13 **absolutely no reason that any of us should be here**
14 **because the water that we're treating on that**
15 **particular site is not on -- it's not generated by**
16 **that site. I had hydrologists out of State**
17 **College come in. They were not even allowed to**
18 **testify in the DEP round table meeting, and I paid**
19 **dearly for that.**

20 **Let's go on.**

21 **Q.** All right. I understand your position in
22 regards to, let's call it the underlying
23 environmental law related to this case. That's
24 another story. Although, that is ultimately what
25 led us to this --

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1 **A. That's right.**

2 **Q.** -- situation. And we might have some
3 questions later on in regards to what led up to
4 this and the practices and behavior of various
5 parties in dealing with it. That may be relevant
6 to where we're going here.

7 Do you agree to give us your full
8 knowledge and testimony in regards to all these
9 relationships?

10 **A. To the best that I can remember. If I'm**
11 **not absolutely sure of what I'm going to say, then**
12 **I'm going to be -- I'm just not going to say**
13 **anything. Fact is fact.**

14 **Q.** You can qualify your answers to the
15 extent you feel necessary. We're trying to get to
16 the bottom and get the whole story here.

17 Tell us a little bit about Gurosik Coal
18 Company, how you got in the business and the
19 nature and extent of the operations.

20 **A. What is it you want to know?**

21 **Q.** Well, how long did you operate it?

22 **A. I'm not just exactly sure how many years**
23 **I operated. That's kind of a mute point for this**
24 **particular situation. Got into it. I was working**
25 **in the woods, broke my leg, multiple breaks,**

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1 couldn't work in the woods, had a small tract of
2 property behind my house that was all mined and
3 open high walls. Started with an old tractor I
4 had and decided to go into the mining business.
5 Not one of the better moves I made in my life.

6 Q. How many mines did you ultimately
7 operate?

8 A. Usually just one site at a time. I think
9 one time I had two sites operatable (sic).

10 Q. How many mines overall during the life of
11 Gurosik Coal Company did you operate?

12 A. Let me see. You're talking different
13 mine sites, different permits?

14 Q. Yes.

15 A. Oh, heck. I'd have to -- under my own
16 name, or subcontracting, or what?

17 Q. In general, then we'll break it down from
18 there.

19 A. I'm not just exactly sure of the number.
20 I could get right down --

21 Q. Less than ten?

22 A. I think so. I don't say that for sure,
23 but I would say so, yes. Let's see. One, two,
24 three, four, five -- yeah, definitely less than
25 ten.

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1 Q. How many as a contract operator out of
2 that?

3 A. One, two -- at least. At least two.

4 Q. And your role was as president?

5 A. That's right.

6 Q. Were you also operating equipment?

7 A. I sure did. Didn't ask my men to do
8 anything I didn't do myself.

9 Q. How many employees did you have?

10 A. That varied. Anything from myself alone
11 to, I think once I might have had 20 or 30
12 employees. It's been a long time ago, and I
13 don't -- those aren't specific numbers.

14 Q. We understand. I'm trying to get a
15 nature of --

16 A. Yeah.

17 Q. -- the nature and extent of Gurosik Coal
18 Company.

19 How long was the company active,
20 ballpark, number of years?

21 A. You mean how long as a corporation
22 intact?

23 Q. Yes. And operating coal.

24 A. Still is. Not sure -- I'm really not
25 sure to put an exact number on it.

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1 Q. Can you?

2 A. I'm not sure.

3 Q. Did you get through a boom and bust
4 cycle?

5 A. No, I think I kind of started when it was
6 on its way down. That's when I got started. I
7 wasn't in there when the high money was there,
8 let's put it that way.

9 Q. Okay. Were you ever a contract operator?
10 Other than the King Mine -- and we'll come to that
11 in a moment -- were you ever a contract operator
12 for Hepburnia Coal Company?

13 A. Yes, I was.

14 Q. What other mines?

15 A. There was a job -- we'll use the term
16 Brookville area. And then there was a site in
17 Kyler Run area.

18 Q. I'm sorry, where?

19 A. Kyler Run.

20 Q. And were those under your permits or
21 theirs?

22 A. Theirs.

23 Q. Were the business relationships in the
24 contract mining operations that you were a
25 contractor miner for Hepburnia similar to the

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1 relationship, on the business side, to the King
2 Mine?

3 A. You're going to have to explain that one.

4 Q. As far as being paid per ton, X dollars
5 per ton of production?

6 A. Not exactly, but close. Dollar and cents
7 wise, it wasn't, you know -- I'm not sure where
8 you're going with that, because there's a
9 difference between contract mining -- there's
10 supposed to be a difference between contract
11 mining and, you know, if the operator owns the
12 mine site.

13 Q. Right. But what I'm saying is, in the
14 business relationship, was it similar?

15 MR. SEAMAN: I'm going to object. I
16 don't know what you mean by "business
17 relationship."

18 THE WITNESS: I don't either. I'm lost
19 there.

20 BY MR. GORTON:

21 Q. All right, let me rephrase it.

22 Were they paying you on a per tonnage
23 basis on the contract mine operations?

24 A. Yes.

25 Q. Were they paying you on a dollars per ton

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1 on the King Mine operation?

2 **A. Yes. That's pretty much standard**
3 **procedure wherever.**

4 **Q.** Were they providing engineering support
5 services in the contract mining operation?

6 **A. Yes. That was their -- it was their**
7 **permit, their engineers. I did all the E&S**
8 **control, maintained it, and they -- you know,**
9 **their engineers was there to lay out ponds and**
10 **stuff and designate where they had to be.**

11 **Q.** Were they providing engineering support
12 services on the King Mine?

13 **A. No. Actually, Lee Simpson up until, I**
14 **think, the mine site was closed, when we inherited**
15 **the other people's water and so on and so forth.**
16 **And as it got towards the end -- let's tell it the**
17 **way it is, financial difficulties, I just gave up**
18 **on -- I shouldn't say gave up. I did -- I put in**
19 **the bog, designed the bog to treat water that**
20 **wasn't mine, nor was it had to do anything with**
21 **the mine or Hepburnia or anybody else. It was an**
22 **adjacent mine site. And I poured more back into**
23 **it than I made on it by far, on multiple treatment**
24 **type situations.**

25 **We started out with a treatment of a**

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1 **small toilet-type situation, they called it. It**
2 **was like a flush system. It would fill up with**
3 **water so full -- this was only needed for a few**
4 **months out of the year, because there was a lot of**
5 **clay on that site. The clay on that site, you**
6 **will get a certain amount of iron, you'll get a**
7 **certain amount of manganese out of clay until it**
8 **resets itself. That was more than sufficient when**
9 **it worked.**

10 **The biggest thing that happened was, we'd**
11 **go out there, put the treatment in it -- which was**
12 **minimal, because it was a minimal -- very minimal**
13 **amount of water, a few gallons a minute, even in**
14 **the rainy season -- and someone -- I have no idea**
15 **who to this day -- would go down right after,**
16 **within 24 hours after you mixed the water, put a**
17 **big limestone chip in, blocked the float and all**
18 **the treatment went down the creek.**

19 **At that point in time, the inspector said**
20 **that he wanted me to put everything underground.**
21 **He wanted me to put an 8 or 10,000 gallon tank**
22 **surrounded by concrete out by the road --**

23 **Q.** Let me stop you there.

24 **A. Okay.**

25 **Q.** That's a lot of engineering detail.

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1 **A. If you want it, I've got it. It's all**
2 **right here (indicating).**

3 **Q.** I'm sure you do. I'm sure you do.
4 Were the engineers of Hepburnia of any
5 support to you?

6 **A. Not at that particular time, no. I mean,**
7 **I'd call them and talk to them, but DEP told me**
8 **what they wanted down in -- and that's what I did.**

9 **Q.** What advice were the folks at Hepburnia
10 giving you when you said you spoke to them about
11 the issue?

12 **A. I just more or less would ask them, you**
13 **know, if they had experience with that type of**
14 **treatment, what was the general cost factor, so**
15 **on, so forth, what was it going to cost down the**
16 **road, if you had to run it for a couple years,**
17 **that sort of thing, because I'd never done it.**

18 **And they were reasonably helpful with it,**
19 **gave me an overall -- it wasn't anything like you**
20 **went for hours or you had meetings or anything**
21 **like that. It was a phone call, was all.**

22 **Q.** Okay. Without getting into any more
23 engineering detail, I mean, we realize that's
24 really the reason we're here is because of that
25 discharge situation.

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1 **A. That discharge is not of that site.**

2 **Q.** I understand. I understand your position
3 on that. I want to change tracks for a moment. I
4 should have done this earlier.

5 We provided a subpoena, and I just want
6 to make sure -- one of the issues in the subpoena,
7 you were supposed to bring with you any of the
8 following:

9 Any and all documents,
10 including correspondence
11 pertaining to the execution of
12 the General Agreement of
13 Indemnity, including, but not
14 limited to application materials,
15 documents identifying the need
16 for additional indemnitors,
17 anything related to the GAI, and
18 anything received from the
19 Pennsylvania DEP --

20 **A. Let's save a lot of time. I don't have**
21 **anything with me.**

22 **Q.** You have no documents?

23 **A. Nothing with me.**

24 **Q.** Do you have documents that would be
25 responsive to this that we do not have?

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17

1 **A. I am not sure, because it's been years**
2 **ago.**
3 **Q. Do you have any written documents between**
4 **you and Hepburnia Coal Company in regards to the**
5 **relationship, either the permit, the leases, the**
6 **contract, the bonding, or the indemnity agreement?**
7 **A. Probably just pretty much, you know, the**
8 **same type of records that they have. We didn't**
9 **have a relationship as such that we, you know --**
10 **it was a lot of, I'll use the term trust, involved**
11 **here because there was no intention of any, you**
12 **know, there wasn't -- I mean, the extensive**
13 **drilling that was done on the site, the testing**
14 **before the site started, there was nothing to, you**
15 **know, indicate that there was ever going to be a**
16 **problem there, and there wasn't a problem there**
17 **until ...**
18 **Q. To answer my question, though, you got no**
19 **written documentation in relationship to --**
20 **A. I could look and see if I could find**
21 **some, but as of with me, no.**
22 **Q. Well, I'm going -- here's the subpoena.**
23 **Let me show it to you. That will be Exhibit 1.**
24 **A. Okay.**
25 **///**

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1 (John O. Gurosik, Exhibit No. 1 marked
2 for identification, attached hereto.)
3 BY MR. GORTON:
4 **Q. Paragraph 2 is what I was talking about.**
5 **Let me just suggest that, to the extent you may**
6 **have anything that reflects the relationship**
7 **between you and the other indemnitors, it could be**
8 **very important to how this matter gets ultimately**
9 **resolved. So to the extent you have documents,**
10 **I'd suggest that you talk with your counsel --**
11 **A. All right, that will be fine.**
12 **Q. -- and find that.**
13 **A. That will be fine.**
14 MR. GORTON: Mr. Wagner, if you could,
15 you know, talk to your client about the importance
16 of that, and how that could be, as we like to say
17 in law, outcome determinative, it would be very
18 helpful.
19 MR. WAGNER: We will have that
20 discussion.
21 BY MR. GORTON:
22 **Q. Where we're going to go now, I want to**
23 **talk about the permitting and bonding, and that**
24 **kind of stuff. Ultimately, we'll get to the**
25 **relationship with you and Hepburnia. We're going**

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1 to go soup to nuts --
2 **A. Okay.**
3 **Q. -- and I'm going to try to do it in an**
4 **orderly fashion.**
5 Give you an example, for the operation,
6 would you agree, this is the permit for the King
7 operation?
8 **A. That's what it states on top of it.**
9 MR. WAGNER: Mr. Gorton, the document
10 you're referring to, is that going to be
11 identified as an exhibit?
12 MR. GORTON: This will be Exhibit No. 2,
13 excuse me. Label it as Coal Service Mining
14 Permit. It's a copy of a Pennsylvania DEP form
15 that authorizes mining and sets the conditions in
16 regards to operations, water discharge
17 requirements and other technical factors related
18 to the site.
19 (John O. Gurosik, Exhibit No. 2 marked
20 for identification, attached hereto.)
21 BY MR. GORTON:
22 **Q. In order to get this permit, or any**
23 **mining permit, from your experience, Mr. Gurosik,**
24 **what do you have to do as far as submittals to the**
25 **agency?**

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1 **A. A lot.**
2 **Q. You're familiar with a permit**
3 **application?**
4 **A. I sure am. Not presently, no, nor do I**
5 **intend to be. It's -- these -- well, you had to**
6 **run your -- well, basically, you -- I hired**
7 **engineers Lee-Simpson.**
8 **Q. Lee-Simpson was your engineer?**
9 **A. And I had two different engineers. I**
10 **can't think of the name of the other people that**
11 **was there, but it was the same, regardless of who**
12 **it is. I mean, you do pre-drilling, you make an**
13 **agreement with the property owner, you get consent**
14 **of the land owner, signed by the property owner,**
15 **you do your -- it used to be, it wasn't quite as**
16 **stringent on water sampling per post-mining**
17 **operation. I understand now it's -- I'm not sure**
18 **what it is now. At the time, I think you had to**
19 **have four seasons, that sort of thing. You did a**
20 **certain amount of overburden analysis. It wasn't**
21 **that, you know -- it wasn't quite as tight as it**
22 **is now, from what I understand. Yeah, I know what**
23 **it took; a lot of money, a lot of time.**
24 **Q. Did you do the exploration drilling --**
25 **A. Yes, I was there.**

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- 1 **Q.** All right.
- 2 **A.** I most certainly was there.
- 3 **Q.** Was Hepburnia involved in that --
- 4 **A.** Drilling.
- 5 **Q.** -- in any way, shape or form?
- 6 **A.** I do not remember anybody from Hepburnia
- 7 there when we did the drilling. We did -- I
- 8 supplied them with the hole drilling on the site.
- 9 **Q.** You mean the coal quality results from
- 10 the drilling?
- 11 **A.** Yeah, the coal quality and the depth,
- 12 the -- we did not, and I want to specify this, in
- 13 that site, that site was bowl shaped on probably
- 14 about 85 percent. The coal came right out of the
- 15 ground, all the way around, with the exception of
- 16 about 15 percent, near the township road.
- 17 There was a Lower Kittanning -- it's an
- 18 area, what they called -- it was Lower Kittanning
- 19 Coal and it was Lower Kittanning split. You did
- 20 not drill into the second seam. The second seam
- 21 would hydro water right out of the ground. There
- 22 was more than an adequate clay seal between the
- 23 first seam and the second seam, as long as you
- 24 didn't disturb that area on, I'll use the term
- 25 Reynoldsville side of the road.

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- 1 On the job Benjamin Coal Company had
- 2 previously -- they were in the process, or tried
- 3 to permit a site behind, I think what was called
- 4 Brookville Wood Products. They had drilled four
- 5 or five holes directly through all seams, this was
- 6 off of my site, and they had drilled into the
- 7 lower seam. And yes, that -- each one of those
- 8 holes was pushing water 365 days out of the year.
- 9 **Q.** Okay. Now --
- 10 **A.** So I was very careful, and instructed the
- 11 drillers, absolutely no drilling within the mining
- 12 site that was going to be mined into that second
- 13 seam of coal.
- 14 **Q.** In dealing with this particular
- 15 operation, did you consult with the engineers, or
- 16 any of the technical staff, or even management at
- 17 Hepburnia, on operational issues to say, "Avoid
- 18 hydrologic consequences, adverse consequences or
- 19 maximize coal production"?
- 20 **A.** They would -- one of foremen would come
- 21 out once in awhile. They were recipients of all
- 22 the coal because the bond -- I mean, the agreement
- 23 was, they got all the coal. And which they did.
- 24 They took all the coal.
- 25 The coal, when we got onto it, had clay

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- 1 slips in it. I mean, it wasn't just a matter of
- 2 cleaning up a block of coal and going in and
- 3 loading it out, it had -- I mean, it was good
- 4 coal, but it had slips in it. It varied, just
- 5 like all coal does. You can have good coal here,
- 6 a hundred feet away, it's not that good. It took
- 7 us a lot more time to clean it up.
- 8 **Q.** Let me come back to the permit for a
- 9 moment, and then we'll move on.
- 10 You'll notice in permit page four, it
- 11 says Coal Mining Surface Permit Number, blank, and
- 12 then NPDES, all letter caps.
- 13 **A.** Page four?
- 14 **Q.** It relates to the water quality
- 15 requirements.
- 16 **A.** Yes.
- 17 **Q.** Would you agree that, ultimately, this is
- 18 the issue that caused the bonds to be forfeited
- 19 because --
- 20 **A.** Absolutely.
- 21 **Q.** -- the DEP felt that your operation
- 22 wasn't meeting these permit requirements?
- 23 **A.** Well, that was wrong. My operation
- 24 met -- in fact, I even resealed the floor. There
- 25 was an 8-, 9-foot barrier of clay on top of what

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- 1 black shale that was there. Black shale went on
- 2 last and was mixed -- there was clay taken off the
- 3 top, put right on the floor, which there was
- 4 already clay on the floor.
- 5 As a matter of fact, we even put lime on
- 6 the floor in there in places.
- 7 **Q.** But --
- 8 **A.** I went over. I went over what they
- 9 required.
- 10 **Q.** I understand that. And that's part of
- 11 the underlying environmental problems and dealing
- 12 with the state in this matter.
- 13 But they forfeited the bonds, would you
- 14 admit, because they felt that you didn't meet the
- 15 requirements of this aspect of the permit, the
- 16 water quality requirements?
- 17 **A.** I assume that's why they did it.
- 18 **Q.** Okay.
- 19 **A.** And it was certainly -- I certainly
- 20 objected to it. Like I say, I had hydrologists
- 21 with very good -- with probably the best
- 22 credentials that you could possibly have, went to
- 23 a DEP meeting. And I mean, she visited the job
- 24 site. She reviewed all the records. Went to DEP,
- 25 they wouldn't even let her finish -- I'm sorry, I

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1 think because she was a woman, they would not even
2 let her finish her statement as to, it was
3 absolutely impossible for that mine site to
4 generate that much water.

5 Q. Did you hire an attorney at that point to
6 deal with the department?

7 A. And the point in that would be? I'm
8 sorry, but I think everybody here that's dealt
9 with the DEP attorney-wise knows at that point --
10 I mean, I've talked to people who spent millions
11 of dollars and walked away with their tail between
12 their legs.

13 When you're dealing with a department
14 that can make the rules up as they go along, it's
15 pretty hard to beat.

16 Q. So you felt that -- it sounds like what
17 you're saying is, you felt it was not
18 worthwhile --

19 A. Oh, it would have been worthwhile. It
20 would have certainly been worthwhile, but I didn't
21 have the resources to do it. I had already
22 exhausted mine in getting people with the
23 credentials that I knew could, you know -- that
24 could put, if you want to use the term "a spin on
25 things," but could go in there and state just

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1 exactly what that site was capable of and not
2 capable of. And like I say, they wouldn't even
3 listen to her.

4 Q. Did anybody advise you that you had
5 appeal rights to the Pennsylvania Environmental
6 Hearing Board to contest DEP actions?

7 A. If they did, I don't remember it.
8 Believe me, I did -- I am, and I still am to this
9 day, I take pride in the jobs I do and I did.
10 That was the only site that blew up in my face.
11 And it didn't. It blew up in my face because they
12 piped the water in from the other job. The pipes
13 are out there. I can prove it.

14 Q. It certainly sounds like you did the best
15 you could do and got caught in a situation dealing
16 with an agency that was taking measures. But you
17 didn't take the final step and challenge them
18 legally --

19 A. Go one step further. On Sundays -- and I
20 have witnesses to this -- the DEP inspector would
21 come out and open the valve on the adjacent
22 property, mining property's pond, six inch pipe,
23 and drain that thing.

24 You know when I went to the DEP with
25 that, you know what I got? "Better leave it

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1 alone." That's what I got. So what do you do?

2 Q. Well, I suppose, to the extent there's
3 legal remedies --

4 A. I'll tell you what. I would be glad,
5 right to this day, to go right straight to federal
6 court with news media there -- I have nothing to
7 lose. I mean, they've hammered me as far as I can
8 be hammered. I'd like somebody to account for
9 that.

10 Q. Let's get back to the bond itself.

11 You agree that one of the requirements of
12 getting your permit is that you have to put up
13 what's referred to as a Surface Reclamation Bond?

14 A. That's right.

15 (John O. Gurosik, Exhibit No. 3 marked
16 for identification, attached hereto.)

17 BY MR. GORTON:

18 Q. I'm handing you Exhibit 3, which is
19 labeled Surface Bond for -- Surety Bond for
20 Surface Mines.

21 Would you agree, this is the bond that
22 was posted for the King Mine?

23 A. It appears to be, yes.

24 Q. In your opinion, what's the purpose of
25 having to post a Surety Reclamation Bond?

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1 A. I think we all know the answer to that.
2 If the mine operator goes, we'll use the term "out
3 of business," or doesn't meet, I suppose if you
4 want to term DEP's criteria, then bonds are
5 forfeited. It's their supposable safeguard in, I
6 guess, supposedly cleaning up the site, or
7 whatever you want to call it.

8 Q. Now, have you had other surety bonds for
9 your other sites?

10 A. Absolutely.

11 Q. Who were your bonding companies in those
12 matters, can you recall?

13 A. No, I can't. I don't -- a lot of it was
14 money, or cashiers checks, or whatever that was
15 put, that was backed up by cash at the banks. I
16 think most of them that I did at the time was
17 through, I believe it was Deposit Bank at the
18 time. And I did have surety bonds backed up by
19 cash, also. I think that -- I believe I had some
20 through Reschini Insurance Agency. I won't state
21 that as an absolute fact, but I think I did.

22 Q. Reschini, is that the agent --

23 A. Indiana.

24 Q. That's --

25 A. Indiana agent. I believe I did, through

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1 them. I'm not sure. Which one, of course,
2 sub-wrote it through somebody else. And were any
3 of those bonds forfeited? Absolutely not. Were
4 there any problems on any of the other jobs?
5 Absolutely not, as there should not have been a
6 problem on this one.

7 Q. Are you familiar with the agencies that
8 wrote these bonds --

9 A. No.

10 Q. -- the Evergreen Agency?

11 A. No. No, I'm not. It's what I have an
12 insurance agent for.

13 Q. If you just hold on a second.

14 Are you familiar with the Bloom Insurance
15 Agency here in Clearfield?

16 A. No.

17 Q. You're not familiar with Evergreen
18 Insurance Agency?

19 A. Doesn't ring a bell right now, let's put
20 it that way. If I was familiar with them, I'd say
21 yes. I'm not, no.

22 Q. All right. It's my understanding that
23 those were the two agencies that were involved in
24 these bonds.

25 A. Okay.

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1 Q. But you have no business relationship
2 with them whatsoever?

3 A. I do not, no, not that I know of.
4 (Discussion held off the record.)

5 THE WITNESS: There's one other thing
6 you're not bringing up here, too, and I think we
7 need to get that on top of the table.

8 After that job site, there was also a gas
9 well drilled there within the job site. Now, that
10 absolutely, positively went through all the water
11 tables that would be more than sufficient to hydro
12 water.

13 BY MR. GORTON:

14 Q. So did you raise that issue with the DEP?

15 A. Yep. Didn't do a thing. I might as well
16 have been -- I'd have probably been a lot more
17 productive if I had been outside, banging my head
18 on a tree.

19 Q. Did you deal directly with Javed Mirza --

20 A. You've got to be kidding me.

21 Q. -- the Knox district manager?

22 A. The only -- how can I say it? The last
23 meeting I was at with that man, which was way
24 before this -- I'll just give you a little insight
25 into this.

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1 When he came aboard, Knox, over there at
2 that office, he immediately requested them to put
3 signs -- and I'm quite sure anybody from Hepburnia
4 here can remember this -- you had to make signs
5 that say topsoil, spoil pile, sub soil, so on and
6 so forth, because the man -- I'm sorry, he was
7 supposed to be the manager, the guy that's
8 supposed to know everything there is to know and
9 advise his people underneath him, could not tell
10 the difference between sub soil and top soil. As
11 a matter of fact, I absolutely had -- a mine
12 inspector told me he was standing on a pile of
13 black shale, at which time he said, "When are they
14 going to spread this pile of top soil."

15 Now, I think that as far as productivity
16 of time, to go and talk to someone like that --
17 outside of the fact that I couldn't get a meeting
18 with him -- would have been pretty much a waste of
19 time.

20 Q. Okay, that seems apparent from your
21 previous testimony also.

22 (John O. Gurosik, Exhibit No. 4 marked
23 for identification, attached hereto.)

24 BY MR. GORTON:

25 Q. We've handed you document No. 4, which is

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1 the Utica Mutual Insurance Company General
2 Agreement of Indemnity --

3 A. Okay. It just looks like 5 or 6 written
4 on top of it.

5 Q. Well, having had experience with other
6 mines and bonding, because bonding is a
7 requirement for the permit, are you familiar with
8 the concept of having to provide a surety company
9 an indemnification in the event that there's a
10 forfeiture?

11 A. I think so.

12 Q. All right. Take a look at the third
13 page, the signatures.

14 You would agree that that's your
15 signature --

16 A. Yep. Yes, it is.

17 Q. -- on behalf of Gurosik Coal company?

18 A. Yep.

19 Q. And individually as John O. Gurosik. I
20 notice your wife is also on it individually.

21 A. Yes.

22 Q. What do you remember -- and this is very
23 important in this particular matter. What do you
24 remember about the relationships of the parties in
25 coming to -- executing this document?

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1 **A. I think it's pretty simple.**
 2 **MR. WAGNER:** Which parties are you
 3 talking about?
 4 **BY MR. GORTON:**
 5 **Q.** Let me back up. You'll notice that there
 6 are many, many people that have signed this
 7 General Agreement of Indemnity, including -- to
 8 make it short -- all the parties that are
 9 defendants in this case; Darrell Spencer, who is
 10 here, and other Spencers, Robert Spencer, et
 11 cetera. But there are also other parties involved
 12 in getting a document like this signed and getting
 13 a surety relationship together, including the
 14 agents. And I understand, in this case, Evergreen
 15 Insurance Company, and -- hold on a second, the
 16 other company here --
 17 **MR. WAGNER:** Bloom.
 18 **BY MR. GORTON:**
 19 **Q.** -- Bloom Insurance Agency.
 20 In your involvement with all these
 21 parties, could you explain how you came to sign
 22 this General Agreement of Indemnity?
 23 **A. Generally explain it?**
 24 **Q.** Yes. I'd like to hear the story as to
 25 how you got to sign this document.

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1 **A. Permitted the property. I did all that.**
 2 **That was my cost. Went through everything you had**
 3 **to do to get a permit on it. At the time, didn't**
 4 **have the money, too many breakdowns. I had**
 5 **multiple breakdowns, didn't have the money to get**
 6 **the bonds. Hepburnia at the time looked at the**
 7 **coal records, said, "Yeah, we'd like to have the**
 8 **coal." And here we are.**
 9 **Q.** Okay. Well, that sure was a shortcut.
 10 That's a short way to get to a longer story. Let
 11 me help you put some more meat on the bones of
 12 that story, if you will.
 13 I understand you spent money -- cash flow
 14 in the mining business is everything, I suppose.
 15 You spent money for engineering. It sounds like
 16 you spent money --
 17 **A. I do it all.**
 18 **Q.** -- for drilling --
 19 **A. Yes.**
 20 **Q.** -- et cetera. It came time, in order to
 21 get your permit, would you agree, you needed to
 22 put up the bond?
 23 **A. That's right.**
 24 **Q.** And in order to get the bond, I assume
 25 that either your bank would require collateral

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1 for --
 2 **A. Cash.**
 3 **Q.** Okay, cash collateral for a CD or some
 4 other financial guarantee to provide the
 5 department, and you didn't have that, and --
 6 **A. Let me correct you there. I would have**
 7 **had it if I would have waited a year or so, for my**
 8 **other bonds to be released. All I wanted to do**
 9 **was finish this job, get it done. And I felt it**
 10 **was a priority to get it done for the simple fact**
 11 **that the other parties that were mining above the**
 12 **job, I wanted this job done. I wanted it**
 13 **documented, the water flows and so on and so forth**
 14 **on it long before they got close enough to, we'll**
 15 **say enhance the water supply a little bit. And I**
 16 **did.**
 17 **That was the only way I could do it. And**
 18 **like I say, it was -- I took the records down. It**
 19 **was all above board. They looked at the coal,**
 20 **said, "Yeah, we could use the coal," at the time.**
 21 **So that's the agreement we entered into.**
 22 **The bonds took place. I went to work. I**
 23 **finished the job in a good workmanship like**
 24 **manner, and here we are.**
 25 **Q.** When you approached Hepburnia, who did

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1 you approach?
 2 **A. I'm not sure just exactly who I talked to**
 3 **at the time.**
 4 **Q.** Robert Spencer?
 5 **A. Not -- I want to say I probably talked to**
 6 **a man by the name -- might have been Butch Sutika,**
 7 **and then he might have talked to them, and then --**
 8 **then we went forward from there.**
 9 **Q.** Who is Butch Sutika?
 10 **A. I'm not just exactly sure what his --**
 11 **what he actually did for them. I want to assume**
 12 **that it had something to do with -- he did a lot**
 13 **of their, I'm going to, you know -- negotiations,**
 14 **coal selling. So he would have been in a position**
 15 **to know whether they could use that particular**
 16 **seam of coal and that quality of coal at the time.**
 17 **Q.** So he was an employee of Hepburnia?
 18 **A. Yes. And their engineers look at it**
 19 **also, the drilling records and everything. So it**
 20 **wasn't just like, walk in and took a handshake**
 21 **agreement and went out the door. Everybody knew**
 22 **where they were at.**
 23 **Q.** All right. So how did the arrangement
 24 work? Let me just ask you that.
 25 You went to them, you said, "Look, I've

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1 got this coal," they looked at the quality and
2 they said, "We could probably use" --
3 **A. Looked at the site. They also was up and**
4 **looked at the site, sent one of their engineers**
5 **up -- it was Bill Manes (phonetic) as a matter of**
6 **fact, looked at the site.**

7 **Q.** I'm sorry?

8 **A. Bill Manes.**

9 MR. SEAMAN: Bill Manes?

10 THE WITNESS: Yeah. I'm not sure. I am
11 quite sure Roger Thurston probably was there a
12 couple times, but I'm very sure that Bill was the
13 first one that looked at it.

14 And, like I say, their people approved
15 it. They said, "We can use the coal." We came to
16 a mutual agreement.

17 BY MR. GORTON:

18 **Q.** Okay.

19 **A. Here we are.**

20 **Q.** Let me go a little further. We've got
21 correspondence that indicates Roger Thurston was
22 the main go-between between you and the insurance
23 companies in order to provide a bond for Gurosik.

24 Do you remember any conversation --

25 **A. No.**

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1 MR. SEAMAN: I object to the form of that
2 question.

3 THE WITNESS: No, I don't.

4 MR. SEAMAN: Excuse me. I object to the
5 form of the question and the assumption that he
6 was main go-between or something.

7 BY MR. GORTON:

8 **Q.** Let me rephrase the question, please.

9 Who were you dealing with at Hepburnia
10 that was providing you with information about
11 obtaining the bonds?

12 **A. I think we just covered that.**

13 **Q.** I'd like to hear it again, please.

14 **A. Like I say, we started with Mr. Sutika,**
15 **which he was, you know -- and then we went forward**
16 **from there. I think he pretty much took care of**
17 **it up to the fact -- whether he went to Darrell,**
18 **whether he went to Bob, or who he went to after**
19 **that, I do not know. All I know is, the agreement**
20 **was made, they said, "Yeah, we'll go the bonds,"**
21 **and there was no reason -- I mean, they used --**
22 **they're -- you know, they needed the coal, and I**
23 **needed the bond.**

24 **Q.** Right.

25 **A. And prior to that, we -- don't think we**

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1 **had too bad a working relationship prior to that.**

2 **Q.** Who delivered to you the General

3 Agreement of Indemnity --

4 **A. Oh, I don't know.**

5 **Q.** -- do you recall?

6 **A. I don't know. I can't remember that.**

7 **Q.** Did they explain to you -- or let me

8 rephrase that.

9 Was it explained to you, by anybody, that
10 the surety wanted other entities to also be on the
11 indemnity agreement besides Gurosik?

12 **A. Let's enhance that a little bit. What do**
13 **we mean by "other entities"? Entities to myself**
14 **is other companies, not people.**

15 **Q.** Either; parties, companies, people.

16 **A. You want to run that by me again.**

17 **Q.** All right. Well, let's go look at the --

18 **A. I mean, I'm not trying to be smart about**
19 **this, but I'm just, you know ...**

20 **Q.** And I'm not trying to be obtuse. I want
21 you to understand that.

22 **A. Yeah.**

23 **Q.** Did anybody, when you look at the General
24 Agreement of Indemnity --

25 **A. Okay, I think I know.**

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1 MR. SEAMAN: How about you let him ask
2 the question, and we'll get an answer? Could we
3 do it that way, please?

4 THE WITNESS: All right. No problem.

5 BY MR. GORTON:

6 **Q.** When you received a copy of the General
7 Agreement of Indemnity and there were discussions
8 about it, did they explain to you why the sureties
9 would require other parties, including individuals
10 or companies --

11 MR. SEAMAN: Excuse me. I object to the
12 form of the question. Who is "they"?

13 MR. GORTON: Anybody.

14 **Q.** Did anybody from Hepburnia, or from an
15 insurance company, explain to you --

16 MR. SEAMAN: I object to the compounding
17 of the question. Why don't you ask one or the
18 other so that we're clear what the answer is.

19 MR. GORTON: All right. Very good.

20 **Q.** Mr. Gurosik, you've got the General
21 Agreement of Indemnity in front of you?

22 **A. Yes.**

23 **Q.** Have you reviewed all the signatures?

24 **A. Yes.**

25 **Q.** Did anybody from Hepburnia explain to you

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1 why the surety companies may want other parties,
 2 including individuals or companies, to sign this?
 3 **A. I'm still not sure what you mean by that.**
 4 MR. SEAMAN: I'm not either.
 5 BY MR. GORTON:
 6 **Q.** Well, let me be candid.
 7 **A. Okay.**
 8 **Q.** Did it become clear to you that your
 9 credit was not good enough, and you needed
 10 additional credit support?
 11 **A. You mean to get the bond?**
 12 **Q.** Yes.
 13 **A. I think that was kind of the idea when I**
 14 **first went to them. If I needed the bond right**
 15 **away, yes, I had to go to them, or someone, to**
 16 **sell the coal to or make an agreement to get the**
 17 **bond.**
 18 **Did I have the money to get the bond at**
 19 **the time? The answer to that was absolutely no.**
 20 **Q.** Did you understand, in reviewing this
 21 indemnity agreement and the indemnity relationship
 22 that to the extent that you failed to perform,
 23 that the other parties on the agreement, including
 24 individuals or companies, would be responsible
 25 under this indemnity agreement?

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1 MR. SEAMAN: I'm sorry, I just didn't
 2 catch the beginning of that question. I'm sorry.
 3 MR. GORTON: I understand.
 4 **Q.** Mr. Gurosik --
 5 **A. We've established that part.**
 6 MR. SEAMAN: Wait until he asks the
 7 question.
 8 I apologize, I really didn't catch the
 9 beginning, who you were saying did what.
 10 MR. GORTON: All right. This is hard
 11 enough without cluttering the record.
 12 MR. WAGNER: Would you want her to read
 13 the question back?
 14 MR. GORTON: Would you read the question
 15 back, the front end of the question?
 16 (Whereupon, the requested portion was
 17 read back by the reporter as follows:
 18 "Question: Did you
 19 understand, in reviewing this
 20 indemnity agreement and the
 21 indemnity relationship that to
 22 the extent that you failed to
 23 perform, that the other parties
 24 on the agreement, including
 25 individuals or companies, would

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1 be responsible under this
 2 indemnity agreement?"
 3 THE WITNESS: You lost me.
 4 BY MR. GORTON:
 5 **Q.** I'll say it very simply.
 6 **A. Okay.**
 7 **Q.** Did you understand that if you failed to
 8 perform, the other parties on this agreement would
 9 have to perform?
 10 MR. SEAMAN: And I object to the form of
 11 that as a conclusion that if he didn't perform,
 12 that other parties would have to. I don't know
 13 that that's a fact.
 14 MR. GORTON: We're really mincing words
 15 here.
 16 MR. SEAMAN: Well, you can ask him what
 17 his understanding is, what would happen if he
 18 didn't do the job.
 19 MR. GORTON: Well, I can ask it the way I
 20 want to ask it, and you can object.
 21 **Q.** Did you understand, in signing this
 22 agreement and in looking at all the other parties,
 23 including individuals and companies, that in the
 24 event Gurosik Coal Company or John Gurosik
 25 individually, or Sharon Gurosik individually did

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1 not provide indemnification to the bonding company
 2 that these other parties would be held accountable
 3 by the bonding company?
 4 **A. Let me clarify this question. Are you**
 5 **asking me if anybody from Hepburnia Coal Company**
 6 **or the bonding company -- let's just leave**
 7 **Hepburnia out of it -- or the bonding company came**
 8 **to me and explained that to me in specifics, that**
 9 **if I didn't correctly do the job, which I did, if**
 10 **I didn't -- if I failed to do whatever, that they**
 11 **would be responsible for the bonds? Is that what**
 12 **we're talking about?**
 13 **Q.** For reimbursing the surety company --
 14 **A. Right.**
 15 **Q.** -- under the General Agreement of
 16 Indemnity.
 17 Did you understand that if you or your
 18 wife did not do it, then --
 19 **A. No.**
 20 **Q.** -- these other --
 21 **A. Did anyone from the insurance company**
 22 **come and say that to me? The answer to that is**
 23 **no.**
 24 **Q.** That wasn't my question.
 25 **A. Well --**

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1 **Q.** Why do you think that the Spencers and
2 Hepburnia and Spencer Land Company, all the other
3 defendants, signed this agreement?

4 **A.** I think we covered that.

5 **Q.** No, I'm asking you.

6 **A.** I couldn't come up with the money for the
7 bond -- it's just that simple -- at that point in
8 time.

9 **Q.** And what would be the consequence if you
10 didn't pay the bonding company, if they had to pay
11 or perform to the Pennsylvania DEP?

12 **A.** I think we pretty much established that
13 here for the last few months or years, or whatever
14 we've been doing this.

15 **Q.** I need to hear it right now, today, from
16 you.

17 **A.** Really? Well, I'm going to repeat what
18 you told me -- or I shouldn't say what you told
19 me -- what I've been told, that some of us are
20 going to have to ante up to the plate here for the
21 money.

22 **Does that answer your question?**

23 **Q.** So would it be fair to say that you
24 understand that if you don't, then other parties
25 on this indemnity agreement may be called to pay?

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1 **A.** Right today I understand that that would
2 be the case possibly, yes.

3 **Q.** Okay. Let's move on.

4 Did you receive any correspondence or
5 write any letters to the agents or to Hepburnia in
6 regards to this indemnity agreement?

7 **A.** No, not that I recall.

8 **Q.** Do you recall having any discussions with
9 anybody at the insurance agency or Hepburnia?

10 **A.** Absolutely not at the insurance agency.
11 We already established that.

12 **Q.** Okay. How about at Hepburnia?

13 **A.** Only what it took -- what they needed,
14 what information they needed from me to get the
15 bonds.

16 **Q.** All right, hold on a second. So you
17 don't have the particular person, other than the
18 gentleman -- I forgot his name.

19 MR. WAGNER: Mr. Sutika.

20 BY MR. GORTON:

21 **Q.** Mr. Sutika, he was the primary contact,
22 and you believe he was the only contact you had
23 with Hepburnia with regards to --

24 **A.** He was the first one I talked to, yes,
25 and pretty much my primary contact at the time,

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1 until he -- well, actually, he did not -- I don't
2 believe he left Hepburnia's employ until this job
3 was almost done, or it might have been done, I'm
4 not sure.

5 **Q.** Let's talk about the business arrangement
6 with Hepburnia for a moment. You mentioned that
7 you had an agreement, they would help you get the
8 bond and they would take all the coal.

9 **A.** Uh-huh.

10 **Q.** Yes?

11 **A.** Yes.

12 **Q.** Can you tell us what the business
13 relationship was, or the payment provisions in
14 that relationship were, was it dollars per ton?

15 **A.** Dollars per ton, that's what it pretty
16 much always is.

17 **Q.** Who paid the royalties to the mineral
18 owner, or the licensed owner?

19 **A.** Hepburnia Coal Company, or someone
20 connected with Hepburnia Coal Company.

21 **Q.** So -- well, I'll come back. You said you
22 did all the engineering through your own outside
23 consultants.

24 **A.** Yes.

25 **Q.** Did Hepburnia ever come out and do any

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1 engineering, certifying ponds or anything like
2 that, for you?

3 **A.** You know, there was only the one -- one
4 set pond, two pumping ponds, and I am just not
5 sure if one of them came out, certified them, or
6 if I had my own engineers certify it. I'm just
7 not sure of that.

8 **Q.** I suppose we could look at the permit
9 files at DEP for that. Let me move on.

10 You mentioned they paid the royalties to
11 the land owner.

12 **A.** Yes, sir.

13 **Q.** Who paid the AML fees to the government?
14 MR. GORTON: AML, all caps.

15 THE WITNESS: Pardon me?

16 BY MR. GORTON:

17 **Q.** I was telling her what AML meant.
18 The Abandoned Mine Land fee --

19 **A.** Yeah.

20 **Q.** -- who paid that?

21 **A.** I'd have to go back in my records and
22 look and see.

23 **Q.** Who paid the premiums on the bonds?

24 **A.** I would assume Hepburnia did, or the
25 monies that was -- well, we'll get into that a

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1 little later.

2 Q. Well --

3 A. Actually, round about, I -- was supposed
4 to have been figured into the coal.

5 Q. Okay. Well, that's my next question.

6 A. Okay.

7 Q. We're already to later.

8 A. That's good.

9 Q. Did Hepburnia hold back any funds on the
10 payment of the coal to pay for any expenses,
11 taxes, fees or otherwise?

12 A. That is what I was told, yes.

13 Q. Can you explain that?

14 A. By "explain that," you mean?

15 Q. Your understanding of the nature of that
16 deal.

17 A. Yes. I was paid to mine it, deliver the
18 coal. We agreed on so much a ton. Hepburnia Coal
19 Company and I -- they absolutely, positively paid
20 the land owner, because I never ever wrote him a
21 check. And I can recall that very well. There
22 was, from what I understood, an interest-bearing
23 escrow account that was supposed to have been set
24 up with a -- how can I say it -- it's like a
25 little card, you know, that so many people could

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1 draw out of it, whatever, which I wasn't one, that
2 was supposed to pay the premiums, and if I
3 defaulted, you know -- or if my company defaulted,
4 I guess I should say, not myself, my company.

5 Q. And was that based on 25 cents a ton, 50
6 cents a ton?

7 A. No, I'm not sure what the amount was.
8 I'm quite sure that I could probably find out.

9 Q. I believe that would be very important to
10 know.

11 A. I'll be more than glad to. Because I did
12 have a conversation with a man that said that he
13 did it part way through the job, so ...

14 Q. Was that a man at Hepburnia Coal Company?

15 A. Yes.

16 Q. Who would that person be?

17 A. Do I need to mention that?

18 MR. WAGNER: You do.

19 THE WITNESS: That would have been Butch
20 Sutika.

21 BY MR. GORTON:

22 Q. So Mr. Sutika mentioned that there was an
23 interest-bearing account held by Gurosik for the
24 benefit of -- held by Hepburnia, excuse me, for
25 benefit of Gurosik Coal Company?

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1 A. That's what I was told not more than
2 about probably less than 24 hours ago. And this
3 was the type of, you know -- this was what was
4 discussed prior to, you know, the bonding.

5 Q. Right. That was part of the quid pro quo
6 for them providing the bond, that they would
7 retain some funds --

8 A. Yes.

9 Q. -- for --

10 A. I think it was standard.

11 Q. All right.

12 A. It wouldn't matter whether it's myself or
13 whoever. I mean, it doesn't matter how good a job
14 you do or whatever. I mean, that would be -- that
15 would most certainly be an upfront type of thing.
16 I mean, you know, there would be no reason for
17 them to come back and backfill and so on and so
18 forth. And if there wasn't, outside of the guy's
19 word or his reputation, what would you have to go
20 by that he was going to complete the job, not just
21 go in there and hog it out and run with the money.

22 Q. Do you have any idea what the balance was
23 in that account?

24 A. No. Never saw it.

25 Q. Were you ever provided an accounting of

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1 it --

2 A. No.

3 Q. -- whatsoever?

4 A. No, I wasn't given that.

5 Q. But it was part of your general
6 understanding in --

7 A. Yes.

8 Q. -- this verbal relationship that this was
9 being established?

10 A. Well, I wanted to clarify that, and so I
11 made a phone call. And I was told that it was
12 taken out. I'm going on what --

13 Q. Sure.

14 A. -- what I was told.

15 Q. I understand.

16 A. Not by my own eyes.

17 Q. Well, then, I would believe such a
18 relationship, where a company is extending their
19 credit, it wouldn't be unusual.

20 MR. SEAMAN: I'd object to that. It's
21 not a question. It's a statement.

22 MR. GORTON: I'll rephrase that.

23 Q. Have you seen that kind of relationship
24 with other companies in the industry?

25 A. Have I actually personally saw it or

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1 witnessed it? I've heard that that took place,
2 but as to my actual personal, no. But I'm sure
3 it's taken place.

4 Q. What kind of production did you get from
5 the operation, do you know, total tonnage?

6 A. I don't remember.

7 Q. Ballpark?

8 A. Nope. I'm not even going to ballpark it.
9 If I don't remember, I'm not throwing numbers out
10 there. I'm not going to do that. We can save
11 ourselves a lot of time here. And I'm just going
12 to tell it the way it is. If I am absolutely sure
13 of an answer, I'll answer it. If I'm not, I'm not
14 going to put something out there. I don't care if
15 it's in front of you or God himself. I'm not
16 going to.

17 Q. I understand. Do you think you're
18 generating 10,000 tons a month?

19 A. I'm not going to answer that because I
20 don't -- I don't remember. And I really don't.

21 Q. How many acres of coal production was it,
22 do you remember that?

23 A. Very small acreage.

24 Q. The permit says 31 acres.

25 A. There wasn't close to 31 acres stripped.

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1 Q. That was the total permit.
2 Was the coal removal two-thirds of that
3 perhaps?

4 A. Once again, I'm not sure. I could go out
5 there and step it off and give you just about an
6 exact figure.

7 It was a small portion of it. There was
8 a lot of support area on that job, tremendous
9 amount of support area on that job.

10 Q. Fifty percent perhaps?

11 A. Could have been less than that even.

12 Q. Forty?

13 A. There we go with numbers again. I'm not
14 sure. I'm not going to answer this.

15 Q. We're going to get to a point where it's
16 less than one acre, and we're all going to wonder
17 why we're here.

18 A. Well, in that case, let's go. I've got
19 important things to do.

20 Q. Well, don't we all.

21 How thick was the coal?

22 A. Varied. Varied. Anything from 18 inches
23 to, there might have been a high of 28 to 30. And
24 I already explained previously that there was
25 areas that was completely clear of slips, and then

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1 there were areas that had slips. And they weren't
2 straight slips, they were zig-zaggy slips. And
3 the only way that we could load -- the highest
4 quality coal, we actually went and got a small
5 skid loader in there and cleaned it up. That's
6 the only way we could do it.

7 Q. One thing I'm interested in regard to
8 this escrow fund, and to know how much might be in
9 it, is to know the total coal that went through
10 the operation. And acreage and thickness in the
11 total reserves, and recoverable reserves is a very
12 important number.

13 A. I agree with that, yes. That exact
14 number is not on the top of my head right now, so
15 it's just going to have to hang out there until I
16 have that exact number.

17 Q. Did you have -- let me start over.

18 How much were they paying you per ton?

19 A. I'm not exactly sure of that. I'd have
20 to look at the records.

21 Q. Does \$11 sound accurate?

22 MR. SEAMAN: I'm sorry?

23 BY MR. GORTON:

24 Q. Does \$11 a ton sound accurate?

25 A. I'm not exactly sure. I'd have to go

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1 back over my records and check that to be sure.
2 It wasn't a large amount.

3 Q. I understand. Who did you negotiate the
4 price per ton with?

5 A. I want to say that the price, the
6 negotiated price per ton probably came back to me
7 through Butch Sutika, and possibly -- and I'm sure
8 he didn't do it off the top of his head, because
9 he didn't do that. I'm sure he discussed it,
10 looked at the quality of the coal, looked at what
11 their sales was to see what they could get out of
12 it and determine what they had to have, and what I
13 had to have to survive, and that's how the price
14 was derived.

15 So there could have been multiple -- I'm
16 sure that there were probably multiple parties
17 that was involved in that. I would -- I don't
18 think that any company -- and I can't speak for
19 Hepburnia Coal Company -- that would authorize one
20 single person to make that decision for them, or
21 for their entire company. So I'm just going to
22 assume that there were probably at least two to
23 three parties involved in it. And that's just
24 throwing out a number off the top.

25 Q. Have you had any other business

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1 relationships where you were mining either on your
2 own permit or contract mining for Hepburnia?

3 **A. Yeah. Yes, we did. Yes, we did.**

4 **Contract mining.**

5 **Q.** Was that one of the two operations you
6 mentioned previously?

7 **A. I would assume so, yes.**

8 **Q.** The Brookville, or the Kyler Run mine?

9 **A. Yeah, either one.**

10 **Q.** Both?

11 **A. Yeah. I contract mined on both of them.**
12 **To the best of my knowledge, the Brookville job**
13 **was mined, backfilled, topsoil spread, seeded. I**
14 **assume the bonds were released on that. And the**
15 **same with the area that I did in the Kyler Run.**
16 **Everything that I mined and backfilled -- as a**
17 **matter of fact, they had another contractor in**
18 **there at the time, and it wasn't real pleasant,**
19 **what he left. I helped straighten that up on the**
20 **backfilling and proceeded to mine where they had**
21 **instructed me to. And when I was done, I was**
22 **done.**

23 **Q.** Okay. In any of these discussions,
24 either in the contract mining arrangement or in
25 the King Mine, did you deal specifically with

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1 Spencer Land Company as separate from Hepburnia
2 Coal Company?

3 **A. Now wait a minute. Which one are we**
4 **talking about, King or the contract mining?**

5 **Q.** Either one.

6 **A. Well, about the only way I can answer**
7 **that is, I mean, I dealt with people in Hepburnia,**
8 **whether it be employees or directly with some of**
9 **the owners. And I would say that it probably**
10 **would be up to them whether they were representing**
11 **Hepburnia Coal Company or Spencer Land, you know,**
12 **at the time.**

13 **Q.** So it appeared to you --

14 **A. No one specifically came to the table and**
15 **said -- I mean -- and don't misunderstand me --**
16 **and I'll use Darrell's name because he's here,**
17 **because we had multiple conversations -- at no**
18 **time in my life did I ever go in, sit down and**
19 **talk with that man and he said, "Well, I'm**
20 **representing Hepburnia Coal Company or Spencer**
21 **Land or whatever." That didn't happen. Nor did**
22 **it with his brother Bob, or anybody else that**
23 **represented Hepburnia Coal Company. I mean, it**
24 **was a one-on-one-type conversation. That was it.**

25 **Q.** Have you ever signed any other agreements

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1 or indemnity agreements in which the Hepburnia or
2 Spencer Land Company, or any other defendants in
3 this case, were a part of?

4 **A. You mean bonds?**

5 **Q.** Yes.

6 **MR. WAGNER:** Other than perhaps his wife
7 and Gurosik Coal?

8 **MR. GORTON:** Yes. Excuse me. Let's call
9 them the Hepburnia-related defendants, or to be
10 specific, Larry, let me rephrase it.

11 **Q.** Did you ever sign a General Agreement of
12 Indemnity that included any of the
13 Hepburnia-related companies or individuals or
14 Spencer Land Company --

15 **A. Not.**

16 **Q.** -- officers -- wait, I'm not finished --
17 or any of the Spencer family defendants?

18 **A. The answer is going to be the same.**

19 **Q.** Would you say it again?

20 **A. Outside of this. You mean outside of**
21 **this?**

22 **MR. SEAMAN:** Outside of Exhibit 4?

23 **THE WITNESS:** I'm not sure. I'm sure
24 that we had agreements somewhere --

25 ///

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1 **BY MR. GORTON:**

2 **Q.** No. The question was --

3 **A. -- of some kind.**

4 **Q.** Did you ever sign any other indemnity
5 agreements?

6 **A. Oh, you mean for bonds?**

7 **Q.** Yes.

8 **A. No. There was no need to. This was it**
9 **right here.**

10 **Q.** Okay, that's all I want to know.

11 Did you ever talk to Tim Morgan in
12 regards to the operations while they were active?

13 **A. What operation is?**

14 **Q.** The King Mine.

15 **A. I want to say no, because I -- and I**
16 **mean, I may stand corrected, but I absolutely -- I**
17 **don't believe that it was -- you know, that Tim,**
18 **that was his capacity at the time to, you know --**
19 **I'm just not sure when -- I'm not sure when Tim**
20 **came into the picture, you know, with Hepburnia**
21 **Coal Company. I mean, he was in and out.**

22 **I never -- didn't make it my point to --**
23 **I guess there's only about one way to say it. If**
24 **the guy's capacity at the time, if that was his**
25 **job, I'm sure he would have contacted me. And if**

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1 it didn't have anything to do with me, then what
2 he did for Hepburnia Coal Company was absolutely
3 none of my business.

4 Q. Okay. Who transported the coal from the
5 King Mine to Hepburnia?

6 A. There were a few contract trucks, and
7 there were also some of Hepburnia's contract
8 trucks -- or I don't know whether the trucks were
9 actually owned by Hepburnia or Spencer Land, or
10 whoever it might have. I mean, there was a couple
11 trucks that had Hepburnia on the side of it.

12 Q. Who arranged for the trucking?

13 A. All I would do is call in, say we have a
14 pit of coal on the stockpile and it's ready to
15 load.

16 Q. Who would you call?

17 A. The office. Whoever answered. Could be
18 the secretary.

19 Q. Do you mean the Hepburnia office?

20 A. Yes.

21 Q. Now, you mentioned previously that
22 Hepburnia was making the bond premium payments.

23 Did you ever receive any --

24 A. No.

25 Q. -- copies of communication?

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1 A. No.

2 Q. Invoices?

3 A. No. I only assume that they were making
4 the bond payments. And I think that assumption to
5 be correct because if they weren't, or at least if
6 the money hadn't come from them, I would assume
7 that the bonds -- somebody would have been
8 contacting somebody rather quickly.

9 MR. WAGNER: Can we take a break for just
10 a moment?

11 MR. GORTON: Yes, let's take a
12 five-minute break.

13 (Break taken in the deposition.)

14 BY MR. GORTON:

15 Q. Let's go back on the record.

16 Mr. Gurosik, just so you know where we're
17 going to go from here, I want to talk about the
18 operations, the DEP and the relationship with
19 Hepburnia some more, and then we'll be finished.
20 We should be finished, you know, maybe within a
21 half hour or so, I hope.

22 How long did the King operation last?

23 A. It was a short period of time. It wasn't
24 like it lasted for years and years and years,
25 because it was a small job. The exact time I

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1 don't know. I'd have to look at the records and
2 see.

3 Q. A year, a year and a half perhaps?

4 A. Here we go again.

5 Q. I'm always trying to define a universe
6 for context.

7 A. That's a really big space, if we're
8 talking about the universe. I was there from
9 start to finish, so I know exactly what happened.

10 Q. Did you mine the entire block of coal
11 that was on the permit?

12 A. No. No, we did not.

13 Q. Why not?

14 A. We left. The only place that that coal
15 did not come out of the ground was on the -- where
16 the driveway left the township road was the only
17 place on the entire permit that the coal actually
18 did not come right out of the ground. And by
19 "right out of the ground," I mean it was
20 specifically a bowl-shaped piece of coal. That's
21 the only piece of coal that I ever mined that was
22 like that.

23 But on that one particular site, which
24 was a matter of a few short feet -- we'll use the
25 term maybe 25, 30 feet -- I did not drill it to

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1 prove it, but there was like a channel that ran up
2 in there, right underneath the driveway, right
3 where the driveway for the property left the
4 township road. And it proceeded into the adjacent
5 job at that level.

6 It was my decision to leave that coal in
7 that corner, leave that area undisturbed. And
8 yes, sir, I ran the dozer. It was a D-11, or
9 D-10, which was the worse mistake I ever made in
10 my life -- and we won't even get into that. I
11 packed the corner full of clay, and I do mean I
12 packed it full of clay, back a considerable
13 distance, to make sure there was a good seal, as
14 best seal as I could. And it worked while I was
15 there. But I left that coal in that corner for a
16 seal --

17 Q. What reclamation activities were done, or
18 what activities on the site were done after --

19 A. After mining?

20 Q. Yes. After the earth work was done for
21 what you would call backfilling and grading.

22 A. Now wait a minute. Do you want it prior
23 to the last bit of coal going out? Do you want
24 it --

25 Q. Following.

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1 **A.** -- after the backfilling was done?
 2 **Q.** Yes.
 3 **A.** The backfilling's done, topsoil is
 4 spread. Do you want what happened after that?
 5 **Q.** Yes.
 6 **A.** I built a bog on that site to -- well,
 7 let's go one step -- let's just back up a little
 8 bit.
 9 We've had a very, very, very small seep,
 10 which was only, like I say seasonal, and as I
 11 suggested in the front part of this when we
 12 started -- and I'm sure it's in the records
 13 already -- we used a dump toilet-type situation.
 14 That's what DEP specifically stated that they
 15 wanted to try. And it was more than sufficient
 16 for treating the minimal -- it was a good
 17 suggestion, because what it did, it treated the
 18 water. If it went into a dry spell for months,
 19 and there was no water, then there was no
 20 treatment being discharged into the stream. And
 21 like I say, it worked real well, until people
 22 started to sabotage it.
 23 Want me to keep going?
 24 **Q.** No, you can stop there. I understand.
 25 **A.** Because we already covered that once.

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1 **Q.** When did you first have an interaction
 2 with the Pennsylvania DEP, that there was a
 3 problem related to drainage on the site?
 4 **A.** Exact time and date, I do not recall. I
 5 do recall very specifically -- the man's still
 6 alive. Job site was done. He was happy with it,
 7 you know, the type of treatment we were doing.
 8 Mike Johnson called me and he said,
 9 "John" -- in fact, he called me late one day. And
 10 he said, "John," he said, "I need to meet you on
 11 the site ASAP."
 12 I jumped in my truck and down I went.
 13 And we walked down there. And there is this
 14 ungodly stream of water coming out of the site.
 15 At that point in time, my visual recollection, the
 16 others parties were done. They had stripped right
 17 tight to the road, actually closer than the permit
 18 allows, stripped to the township road. And they
 19 had also raised the township road up three to four
 20 feet.
 21 **Q.** By "other parties," you mean an adjacent
 22 mining company?
 23 **A.** I mean the adjacent mining company. I
 24 could also see where there had been disturbed dirt
 25 right to the edge of our mining site, right to the

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1 edge of where the coal was taken out.
 2 **Q.** What did DEP tell you that you had to do
 3 in regards to that?
 4 **A.** They wanted the water treated like right
 5 now. That's when I started. I mean, we
 6 specifically stated, "This is not our water." I
 7 mean, we hadn't had the water there when the site
 8 was closed up. We didn't have that kind of water
 9 prior to. If there had been that kind of water
 10 there prior to, I cannot visualize anyone that
 11 would have been dumb enough to strip the site. I
 12 certainly wouldn't have.
 13 **Q.** The department issued you a compliance
 14 order, did it not, in regards to that discharge?
 15 **A.** Probably.
 16 **Q.** By a compliance order, I mean they issued
 17 you an order telling you that you had to treat
 18 this water.
 19 **A.** That's right.
 20 **Q.** That's when you realized, I imagine, that
 21 you've got a DEP problem, so to speak.
 22 **A.** Well, I probably realized it prior to
 23 because, like I say, Mike Johnson and I both stood
 24 right there and looked at it. And Mike Johnson
 25 specifically asked me, he said, "John, what's this

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1 down here?" He said, "What, were you out here
 2 digging?" I said, "Absolutely not."
 3 And we'll just -- right to the end of
 4 that, while we're on the subject, the property
 5 owner, who I knew rather well, had a small
 6 backhoe, called me up the next day. He said, "You
 7 might want to go back down to the site." He said,
 8 "Take the DEP inspector with you." He went right
 9 down there and dug up a four-inch drainage line
 10 that was buried from the other site, right to the
 11 edge of my site, that was dumping a full stream of
 12 water, full four-inches of water.
 13 And the part that makes me sick is, I had
 14 proof of all of this. I had it all then. I mean,
 15 there was absolutely no reason for DEP to hang
 16 myself, Hepburnia Coal Company, and/or anybody
 17 else involved for this water, because that water
 18 cannot be generated on that site. Right to this
 19 day, it cannot generate that water. I got hung
 20 with it.
 21 **Q.** And what did you do in response to the
 22 compliance order telling you to treat it?
 23 **A.** Well, we went back and forth. We had
 24 various meetings with DEP. And at that particular
 25 time, the volume of water, if I can recall

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1 correctly, the only thing that was really -- it
2 had a high manganese discharge is what it was,
3 which realistically, it doesn't kill fish, it
4 doesn't do anything, outside, if you're going to
5 wash clothes in it, it turns them brown.

6 Certainly wasn't anybody washing clothes in it.

7 So they didn't know what to do with it,
8 that kind of volume of water. And I went to Knox.
9 We had a meeting. They said they had bogs in
10 other areas that had worked. And I suggested, I
11 said, "Well, okay, we'll build a bog." I said,
12 "I'll build a bog."

13 And our agreement -- and this was right
14 in the Knox office, between myself, the mining
15 inspector, the supervisor was there, the
16 compliance people were all there, and they said,
17 "We'll tell you what we're going to do." They
18 said, "There will be absolutely no" -- in fact,
19 Mike Johnson agreed he would inspect the job every
20 day to make sure the work was going along as we
21 discussed and there would be absolutely nothing
22 written as far as any compliance orders, and/or
23 anything else, until the bog discharged to see
24 what kind of quality it was going to do.

25 Q. Let me clarify a point here for those

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1 that don't understand.

2 A. Okay.

3 Q. A bog is a passive wetland treatment
4 system.

5 A. Yes. This one being a little different
6 than the other one. As a matter of fact, Penn
7 State was actually up there and put a boat out on
8 it to see what I did.

9 What we did with this bog is, I went back
10 down to the level of the pit floor on the lower
11 side of the job, which didn't have to go all that
12 deep, so you maintained warm water. You needed
13 warm water, because, I'm sorry, but shallow bogs
14 freeze over in the winter time. That's the end of
15 their passive treatment, if you want to call it
16 that.

17 So I explained to Mike. He took it back
18 to DEP what I was going to do. Everybody was
19 quite happy when it was done. The water came in.
20 It came in from a lower level, which it was
21 preheated by the earth, kept the bog open
22 throughout the winter. We put hay in. We hauled
23 thousands of tons of liquid manure from a local
24 farm, Don Lowe's (phonetic) farm, as a matter of
25 fact, about two miles east of the job, and

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1 rechanneled the manure in the area with round
2 bales of hay. Then, when the bog discharged, it
3 was discharging green water, which everybody was
4 happy with. The Ph was so high, it was almost
5 like sewage. And the bog, to this day, is still
6 getting bigger and bigger and bigger.

7 Unfortunately, his -- we're not just
8 treating the adjacent mine, we're treating the
9 mine that was above that and so on and so forth,
10 the whole area.

11 (John O. Gurosik, Exhibit No. 5 marked
12 for identification, attached hereto.)

13 BY MR. GORTON:

14 Q. Okay, let me stop you there. I'm going
15 to hand you Exhibit No. 5, which is a letter from
16 DEP. And it appears to be a letter assessing a
17 civil penalty of \$750 per day for violations,
18 along with notification, in the second paragraph,
19 of intent to suspend the permit.

20 Are you familiar with this?

21 A. No, I'm not. I do not remember this at
22 all, not a bit. No, there's no sense in me saying
23 I do, because I don't.

24 Q. Well, let me ask you this --

25 A. This could have been prior to the bog. I

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1 don't know whether it was or not.

2 Q. Do you have a sense that they were just
3 piling on you, so to speak, that they were coming
4 after you to hold somebody responsible for this
5 discharge?

6 A. I'd say that that's a hell of an
7 understatement. I'm not trying to be smart about
8 this. And believe me, I could attach a few more
9 words to it, but it is an absolute understatement.

10 Q. I understand that. Did anybody,
11 including the inspector from DEP, let you know
12 that not dealing with this discharge, in order to
13 get it in compliance with the permit requirements,
14 may ultimately lead to bond forfeiture?

15 A. I built the bog. Don't even remember
16 seeing this one, not at that date.

17 (John O. Gurosik, Exhibit No. 6 marked
18 for identification, attached hereto.)

19 BY MR. GORTON:

20 Q. I'm handing you Exhibit No. 6, Mr.
21 Gurosik, again, which is another letter from the
22 DEP, dated July 26, 2004, which obviously is after
23 the bog --

24 A. Oh, yeah.

25 Q. -- installation?

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- 1 **A. Sure.**
 2 **Q.** Actually, forfeiting the bond.
 3 Do you remember seeing this document?
 4 **A. No, I don't.**
 5 **Q.** Let me take you to the last sentence, or
 6 last paragraph in the letter, page two, where it
 7 says, "Important legal rights are at stake, so you
 8 should show this document to a lawyer at once. If
 9 you can not afford a lawyer, you may qualify for
 10 free pro bono representation."
 11 Did you ever call a lawyer?
 12 **A. Did they send this thing to me certified,**
 13 **because I don't remember seeing it?**
 14 **Q.** The letter does itself state "certified."
 15 **A. Okay, it says certified. Is there any**
 16 **place where I signed for one of these?**
 17 **Q.** Is this your address, 800 Brandy Camp
 18 Road?
 19 **A. That's right. If it's sent certified**
 20 **mail, there should be a receipt signed somewhere,**
 21 **where I signed to get it.**
 22 **Q.** So back to the question -- and I believe
 23 we all know the answer. It does give you a notice
 24 that you should contact a lawyer at once.
 25 Did you ever contact a lawyer about this

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- 1 forfeiture?
 2 **A. Let's go back to the question at hand.**
 3 **Didn't see this. I mean, is there something**
 4 **certified there that I signed, a receipt that says**
 5 **I received this from DEP?**
 6 **Q.** We don't have the DEP records.
 7 **A. I'll be honest, I don't even recognize --**
 8 **that's what I looked at first, was the inspector's**
 9 **name. I don't even recognize that.**
 10 **Q.** By the time they do a forfeiture -- this
 11 comes from Harrisburg.
 12 **A. Okay.**
 13 **Q.** They've gone through, as we've discussed,
 14 the inspections, the compliance notices of
 15 violation, the compliance orders, civil penalties,
 16 ultimately leading to bond forfeiture. So that's
 17 why I had asked you, had anybody given you any
 18 notice verbally, or otherwise, "Mr. Gurosik, you
 19 need to deal with this because it may lead to bond
 20 forfeiture?"
 21 **A. Not that I can remember.**
 22 **Q.** And you did not hire a lawyer to appeal
 23 this forfeiture; is that correct?
 24 **A. Well, if I didn't know it was there, it**
 25 **would be pretty tough to hire a lawyer to do it.**

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- 1 **Q.** So the answer is no?
 2 **A. That's right.**
 3 **Q.** Do you remember, when you ultimately
 4 learned about the bond forfeiture situation, did
 5 you contact anybody at Hepburnia?
 6 **A. I can't remember.**
 7 **Q.** When did you talk to Hepburnia about the
 8 situation that there was a bond forfeiture and
 9 perhaps meeting with the Pennsylvania DEP would
 10 make sense?
 11 **MR. SEAMAN:** I object to the form of the
 12 question. That assumes that he did. You said,
 13 when did he.
 14 **BY MR. GORTON:**
 15 **Q.** Did you meet with the DEP following the
 16 forfeiture, at any time?
 17 **A. I don't remember. You mean on the job**
 18 **site?**
 19 **Q.** On the job, or in their offices, or
 20 otherwise, in order to find a way to possibly
 21 avoid forfeiture.
 22 **A. Well, there's only one way to answer**
 23 **that. I don't think it would have mattered**
 24 **whether I met them, didn't meet them whatever,**
 25 **because I did everything humanly possible within**

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- 1 **my power and within my financial means to stop**
 2 **this prior to, and nothing happened. I mean, all**
 3 **I got was basically a slap in the face. And I'm**
 4 **not dumb enough to turn my head -- that idea of**
 5 **turning your head, all you do is get slapped on**
 6 **the other side a little bit harder.**
 7 **Q.** Did you talk to Mr. Sutika about this
 8 situation?
 9 **A. I kind of doubt that, because I don't**
 10 **think he -- I'm not sure. If you're talking about**
 11 **this date right here (indicating), I don't know**
 12 **when he was or wasn't in the employ of Hepburnia**
 13 **Coal Company. But I'm going to say, at that**
 14 **particular time, he might not have been. I'm just**
 15 **surmising that.**
 16 **Q.** Do you remember talking to Tim Morgan
 17 about this?
 18 **A. Nope. No, I do not.**
 19 **Q.** Let me turn back, and then I'll get on to
 20 some other issues relating to the forfeiture. Let
 21 me turn back the clock a little bit.
 22 Did the relationship between Gurosik Coal
 23 Company and Hepburnia develop problems related to
 24 the King Mine?
 25 **A. I don't know quite how to answer that.**

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1 Q. "Yes" or "no" would be a good start.

2 A. Well, that's a pretty much gone

3 conclusion when you say "yes" "or no." That's a

4 final conclusion. I don't know that. Were we

5 fighting with each other? I would say no. I

6 don't recall any harsh words between us.

7 Q. Were they paying regularly for the coal

8 production?

9 A. At the time of bond forfeiture?

10 Q. No, through the operation.

11 A. During the operation?

12 Q. Yes.

13 A. We got paid on a regular basis.

14 Q. Did they end up owing you money, that you

15 thought that they owed you money at the end of the

16 operation?

17 A. What do you mean by "owing"? You mean

18 for per tonnage for coal that I delivered to them,

19 the actual coal that was delivered?

20 Q. Yes?

21 A. I would assume that they paid me for

22 everything that I delivered. From the King job?

23 Q. Yes.

24 A. Yes. The actual tonnage off of the site

25 that was delivered to them for resale, I would say

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1 that, yes, they paid me for it.

2 Q. So throughout this matter, I've been led

3 to believe that there developed, somewhere along

4 the line, some tension between Gurosik Coal

5 Company and Hepburnia. And I'm asking you to --

6 A. You want to describe "tension"? I mean,

7 I'll tell you what, we're probably going to be in

8 court before this is all said and done, so you

9 know, I need to understand, what do we mean by

10 "tension" here? I mean, was we shooting at one

11 another? No.

12 Q. Well, hopefully not.

13 A. We're all sitting here, so I assume that

14 one of us was a poor shot, if that was the case.

15 Q. Let me back up. I'll get to that in a

16 moment, in regards to the GAI obligations.

17 Do you recall getting a phone call from

18 me sometime in the fall of 2004, saying that I

19 represented Utica Mutual Insurance Company and

20 that we had received notice of a bond forfeiture

21 on Gurosik Coal, and just trying to understand the

22 nature of the situation?

23 A. Did I talk to you?

24 Q. I'm asking you if you remember. I

25 remember. The question is, do you remember.

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1 A. What did I tell you?

2 Q. Well, I'm the one taking the deposition.

3 A. Well, if you remember, you're going to

4 have to go a little further here.

5 MR. SEAMAN: Is your answer to his

6 question, you don't remember?

7 THE WITNESS: -- you mean as to the exact

8 conversation that we might have had?

9 BY MR. GORTON:

10 Q. I just asked if you remember talking to

11 me.

12 A. No, I don't.

13 Q. Do you remember talking to me about the

14 situation, that there had been a bond forfeiture,

15 and that I was counsel to Utica and was trying to

16 understand what the situation was on the ground?

17 A. Did I explain the situation to you at the

18 time --

19 Q. Just --

20 A. -- on the ground? Did I?

21 Q. Well, I will say this --

22 MR. WAGNER: Let me. John, let's be

23 responsive to the question.

24 THE WITNESS: Okay.

25 MR. WAGNER: Do you recall having a

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1 conversation with Mr. Gorton about the bond

2 forfeiture?

3 THE WITNESS: Tom, I can't answer a

4 direct "yes" or "no" to that. I assume maybe I

5 did.

6 MR. WAGNER: If you don't remember, you

7 can say you don't remember.

8 THE WITNESS: I don't remember, not the

9 exact contents or whether I had the conversation.

10 BY MR. GORTON:

11 Q. Well, I remember a conversation with you

12 in the fall of 2004, after I became counsel to

13 Utica on this matter.

14 A. Okay.

15 Q. And calling you --

16 MR. SEAMAN: Excuse me.

17 MR. GORTON: There's a question coming.

18 I'm refreshing his recollection of this call.

19 THE WITNESS: We could have done that

20 back about four or five minutes --

21 MR. SEAMAN: Are you going to become a

22 witness in this?

23 MR. GORTON: I don't know.

24 MR. SEAMAN: Maybe we should be stopping

25 and get somebody else to ask the questions.

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1 BY MR. GORTON:

2 **Q.** Let me hand you a letter. Let me just
3 back up here. The most important thing in a
4 deposition, John, Mr. Gurosik, is candor.

5 **A.** Yes.

6 **Q.** I'm not trying to put you in a box, in a
7 corner. We're just going to get the story on the
8 table so then we can resolve, to the extent that
9 the parties can assist their position, after
10 hearing all the witnesses, can figure out where we
11 go from here. That's what we're trying to do.

12 (John O. Gurosik, Exhibit No. 7 marked
13 for identification, attached hereto.)

14 BY MR. GORTON:

15 **Q.** Let me hand you a letter from me dated
16 November 11?

17 **A.** Letter from you, to me? Okay.

18 **Q.** Do you remember receiving this?

19 **A.** Nope. No. I guess nope doesn't cut it,
20 so I'll say no.

21 **Q.** This was a letter with the attached
22 General Agreement of Indemnity to you --

23 MR. SEAMAN: I'm -- never mind. I'll
24 withdraw my "I'm." Go ahead.

25 THE WITNESS: I'm going to assume that,
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1 looking at this, that probably everybody gets it.
2 It looks like some kind of a form letter. And I'm
3 going to assume that everybody got one.

4 BY MR. GORTON:

5 **Q.** Right. But the question is, did you
6 receive this?

7 **A.** Do I remember reading that letter? No, I
8 don't. I'm not saying I didn't receive it, I'm
9 just saying I do not remember reading that letter.

10 **Q.** The purpose of the letter was, as stated
11 earlier, to advise you of the relationship and
12 that you had signed a General Agreement of
13 Indemnity.

14 Would you agree with that?

15 MR. SEAMAN: The letter speaks for
16 itself.

17 THE WITNESS: Yeah.

18 MR. SEAMAN: I don't think we need to
19 paraphrase or say what it is. The letter speaks
20 for itself.

21 MR. GORTON: I'm trying to get to --
22 well, let me back up.

23 MR. SEAMAN: I know what you're trying to
24 get to, but you're having difficulty getting
25 there.

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1 MR. GORTON: Let's not clutter the record
2 here.

3 **Q.** After you received this letter, did you
4 contact either the Pennsylvania DEP or Hepburnia
5 Coal Company in regards to --

6 **A.** I absolutely do not remember --

7 **Q.** -- in regards to the King Mine?

8 **A.** -- and that's the truth.

9 **Q.** So are we to assume you've received by
10 certified mail --

11 **A.** Whoop, whoop, whoop, whoop. Let's back
12 up. Do you have anything signed, because
13 certified mail is signed to pick it up, where I
14 signed for this.

15 **Q.** I didn't finish the question,
16 Mr. Gurosik.

17 **A.** Okay.

18 **Q.** Do you have any recollection of receiving
19 letters from the department, including notices of
20 violation, compliance orders, suspensions of
21 permit, forfeiture of bond, and a letter from the
22 counsel of the bonding company, indicating that
23 there were problems at the King Mine and the bonds
24 would be, and were forfeited?

25 **A.** Well, that's a lot.

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1 MR. WAGNER: Do you have any recollection
2 of any of those?

3 THE WITNESS: You mean the actual
4 paperwork coming to me? No. I mean, I'm not
5 saying that -- somewhere in there, I'm sure I was
6 made aware that the bonds were going to be
7 forfeited, maybe. You know, I didn't look at it.
8 And I'll tell you what, if we would have spent --
9 or if the insurance companies and everybody
10 involved would have spent just about one-fifth the
11 money that they've spent on this, and got behind a
12 certain party -- who we're all familiar with -- we
13 wouldn't be having this situation right now. And
14 I'll tell you what, I have no problem with going
15 out on that job site right now -- in fact, I'll
16 tell you what happened. I actually threatened DEP
17 that I was going to move a backhoe in that was
18 capable of digging in excess of 20 feet deep, to
19 prove that the water was coming from the other
20 site after we had -- after an adjacent party had
21 already dug up the pipes, where they piped the
22 water into that site. And they wouldn't let me do
23 it.

24 BY MR. GORTON:

25 **Q.** Well, rather than get back into the --

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- 1 **A. I think that's the issue.**
 2 **Q. -- the issues --**
 3 **A. That is the issue.**
 4 **Q. I'm asking the questions, though.**
 5 **A. Okay.**
 6 **Q. Did you realize you had a legal problem**
 7 **with the Pennsylvania DEP?**
 8 **A. Possibly.**
 9 **Q. Did you realize you may have a legal**
 10 **problem with Utica Mutual Insurance Company**
 11 **regarding indemnification?**
 12 **A. Possibly.**
 13 **Q. What did you plan to do about it?**
 14 **A. That's a good question.**
 15 **Q. Did you do anything about it?**
 16 **A. By doing anything, what do you mean did I**
 17 **do --**
 18 **Q. Did you contact any of the other**
 19 **indemnitors?**
 20 **A. I think we probably maybe -- maybe -- and**
 21 **I'm going to say we might have had a conversation**
 22 **back and forth as to the situation.**
 23 **I'll absolutely guarantee you, this isn't**
 24 **going to be done until it's done, because I've**
 25 **been railroaded by DEP for the last time.**

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- 1 **Q. Well, I understand.**
 2 **A. No, I don't think you do. I'll tell you**
 3 **what, my reputation, my word as a gentleman is at**
 4 **stake. And again, like I say, my reputation is at**
 5 **stake. I am not -- that job was done with --**
 6 **absolutely there couldn't have been any better**
 7 **workmanship done on that job than what was done.**
 8 **Q. Did you meet with DEP and Hepburnia at**
 9 **any meetings together after --**
 10 **A. No --**
 11 **Q. -- the forfeiture?**
 12 **A. -- absolutely not.**
 13 **Q. Did you discuss the forfeiture and site**
 14 **conditions with any of the technical or managerial**
 15 **staff at Hepburnia?**
 16 **A. I don't remember.**
 17 **MR. SEAMAN: Are you talking about after**
 18 **forfeiture?**
 19 **MR. GORTON: Yes, I am.**
 20 **THE WITNESS: I doubt that.**
 21 **BY MR. GORTON:**
 22 **Q. Did Hepburnia do any upgrades on the**
 23 **passive treatment system, or what you call the**
 24 **bog?**
 25 **A. I have no idea.**

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- 1 **Q. Hold on a second. We're almost finished.**
 2 **Did anybody inform you that Hepburnia**
 3 **might have met with the Pennsylvania DEP on this**
 4 **site?**
 5 **A. On the site, did you say?**
 6 **Q. About the site.**
 7 **A. Now, by "informed," I assume that you**
 8 **mean had conversations with them, so on and so**
 9 **forth. Did anybody inform me of that?**
 10 **Q. Yes.**
 11 **A. Prior to or after?**
 12 **Q. After forfeiture.**
 13 **A. No.**
 14 **Q. How about prior to --**
 15 **A. Yeah.**
 16 **Q. -- forfeiture?**
 17 **A. I shouldn't say -- let me rephrase that.**
 18 **Q. What's your recollection? That's all we**
 19 **need.**
 20 **A. Okay. There was a certain mine**
 21 **inspector -- who we won't get into the guy's name**
 22 **right now -- he didn't actually meet with me per**
 23 **se. I just happened to run into him. And I was**
 24 **told Hepburnia had called him. And bear in mind,**
 25 **I do not have this firsthand. I am repeating what**

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- 1 **the mine inspector told me. He said that they had**
 2 **called in. They said they was tired of messing**
 3 **with the site, or whatever they was doing with it,**
 4 **and take the bonds. That's the story.**
 5 **Q. From your understanding, what was**
 6 **Hepburnia doing to, quote, mess with the site?**
 7 **A. I have no idea. I would assume they were**
 8 **monitoring it, you doing, whatever it was,**
 9 **quarterly or yearly monitoring reports. I assume**
 10 **they were doing that. I have no reason to believe**
 11 **they weren't.**
 12 **Q. That goes back to the operations. Were**
 13 **they, as part of the --**
 14 **A. No, it doesn't. That's after the**
 15 **operations is over. That's after the site was**
 16 **backfilled. We did it for quite some time. I**
 17 **built the bog. The bog was functioning quite**
 18 **well.**
 19 **Q. And Hepburnia was doing the**
 20 **post-reclamation site monitoring?**
 21 **A. I want to say the last -- and I don't**
 22 **know this for a fact. I'm just assuming that**
 23 **prior to bond forfeiture, if we want to use that**
 24 **term, that time, I'm going to assume that they**
 25 **were probably checking the water, or responding**

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1 **to. And that's an assumption. I do not know that**
2 **as a fact.**

3 **Q.** All right. After the lawsuit from Utica,
4 which we refer to as the indemnity action, has
5 there been any discussion between you and
6 Hepburnia?

7 **A.** No.

8 **Q.** You did cross claim them --

9 **A.** Pardon me?

10 **Q.** -- in this matter? You have sued
11 Hepburnia in a cross claim; is that correct?

12 **A.** No.

13 MR. WAGNER: That's correct.

14 THE WITNESS: Oh, okay. We did then, I
15 guess. I didn't know.

16 BY MR. GORTON:

17 **Q.** That goes to the tension between the
18 companies.

19 **A.** Oh, okay. Well, all right.

20 **Q.** So to the extent there is tension or
21 conflict between the companies, is it fair to say
22 that it's related to the obligations under the
23 indemnity agreement, in other words, who's going
24 to pay?

25 **A.** I suppose my attorney would be more apt

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1 **to answer that than myself.**

2 **Q.** I'm just looking for your understanding.

3 **A.** Want to repeat the question?

4 MR. GORTON: Would you read the question
5 back, please.

6 (Whereupon, the requested portion is read
7 back by the reporter as follows:

8 Question: So to the extent
9 there is tension or conflict

10 between the companies, is it fair
11 to say that it's related to the
12 obligations under the indemnity
13 agreement, in other words, who's
14 going to pay?"

15 THE WITNESS: I suppose if you want to
16 assume -- if you want to describe it as tension, I
17 guess.

18 MR. GORTON: Okay, let me take a
19 three-minute break here.

20 (Break is taken in the deposition.)

21 BY MR. GORTON:

22 **Q.** Just a final matter. I just want to ask
23 you, is there anything that you have thought of
24 through this deposition, now that we've refreshed
25 your recollection about the relationships and

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1 stirred up some memories, that you think we ought
2 to know about the relationship between Gurosik
3 Coal and Hepburnia and the other indemnitors that
4 would help clarify the relationships or further
5 tell the story about this matter?

6 **A.** I think I can, if I recall something,
7 I'll relay it to you through Tom. But as far the
8 other indemnitors, there's only a few people on
9 there that I recognize, you know. So there
10 wouldn't be anything I'd have to say to them.

11 **Q.** And did you have any discussions with the
12 ones you do recognize?

13 **A.** Pertaining to what?

14 **Q.** The indemnification relationship.

15 **A.** Not to my knowledge. If you're talking
16 verbal discussions, not recently, no.

17 **Q.** All right. Well, as a reminder, under
18 the subpoena, we've requested documents. It
19 appears there might be some somewhere related to
20 the arrangements, contracts, agreements between
21 Gurosik and Hepburnia that would be helpful to us.

22 **A.** Okay.

23 **Q.** So I'd like you to talk to your counsel
24 about that and see if you can be responsive.

25 **A.** Okay.

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1 **Q.** The fact that they do not exist or they
2 do, but not maybe. Maybe is not the answer.

3 **A.** All right.

4 **Q.** We're finished.

5 **A.** Off the record?

6 MR. WAGNER: Not yet.

7 - - -

8 EXAMINATION

9 BY MR. SEAMAN:

10 **Q.** Mr. Gurosik, my name is Larry Seaman, and
11 I represent all the Spencer defendants.

12 **A.** Okay.

13 **Q.** And all of the individuals. Okay?

14 **A.** Okay.

15 **Q.** And as a part of this process, I have the
16 opportunity now to be able to ask you a few
17 questions.

18 **A.** Run with the picture. I don't know what
19 it's going to because I think we pretty much
20 covered it all.

21 **Q.** There was an awful lot covered, you're
22 absolutely right.

23 You said that the coal was good coal.

24 **A.** No, actually I didn't. And I think, if
25 you get into, you'll see. There were portions of

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1 it was good coal, just as there is on any site.
 2 You have -- very few sites have a straight run of
 3 good coal or all bad coal from one side to the
 4 other, just the same as a timber job. Some of the
 5 pockets of coal in there was good, some of them
 6 was average, mediocre.

7 Q. You were paid, irregardless of the
 8 quality of the coal, whatever you agreed upon
 9 number of dollars per ton was; is that right?

10 A. We were paid, and it was done over a
 11 drilling-type situation. And it was also done --
 12 if you're asking, was I paid; yes, I was paid by
 13 the ton for what they produced. There was no --

14 Q. You said you got paid for all the coal?

15 A. Yeah.

16 Q. I'm just saying, were you paid regardless
 17 of the quality of the coal?

18 A. Well, as I can recall, when you go in on
 19 a particular site like that -- and this is before
 20 the site's opened up, before the coal is mined,
 21 before anybody knows what the bottom end is going
 22 to be, or the top end, we kind of agreed on a
 23 tentative price, I think, at the time, and it more
 24 than compensated for the ups and downs in the
 25 quality.

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1 Q. Okay. So it was the same price for all
 2 the coal?

3 A. Straight across the board, yes.

4 Q. And when you say, "we agreed," you're
 5 talking about you and Butch Sutika? Butch was the
 6 one you communicated with?

7 A. I communicated with Butch because Butch
 8 was there. He pretty much at the time handled
 9 that sort of thing. But as I said before, I doubt
 10 that he made those decisions without --

11 Q. You said that.

12 A. Yeah.

13 Q. You don't know.

14 A. Yeah.

15 Q. Again, you've done some assuming here
 16 when it comes to Hepburnia.

17 A. Yeah.

18 Q. You don't want to do any assuming when it
 19 comes to yourself. And I understand that.

20 A. Yeah.

21 Q. I understand that. But the person who
 22 communicated with you was Butch Sutika?

23 A. On?

24 Q. As to coal.

25 A. On a general rule, yeah. On an average.

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1 On an overall average.

2 Q. Was he the one that communicated with you
 3 on the price of the coal that you would be paid
 4 per ton?

5 A. Yes. I mean, that's where it actually
 6 started, yes. I believe that's what I said
 7 before.

8 Q. Who did you approach first about the fact
 9 that you were unable to get the required bonding
 10 for the mining permit?

11 A. I think we got that in there someplace,
 12 don't we? You say who did I approach first? I'm
 13 not just exactly positively sure of the exact
 14 people that was there, but I'm sure that Butch, I
 15 would have talked to him first, then it would have
 16 went forward from there.

17 Q. By going forward, Butch would have talked
 18 to somebody from Hepburnia?

19 A. Yeah. The only reason for that is, Butch
 20 is the one I saw most of the time whenever I
 21 picked up a check. If there was a problem with
 22 the quality of the coal, he was usually the one
 23 that called me, you know, to take care of it. On
 24 any site. That didn't matter whether it was on
 25 this site or on a contract site.

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1 Q. When you started talking, or answering
 2 questions about the payment of the premiums for
 3 the bonds --

4 A. Yes.

5 Q. -- I thought maybe you started to say
 6 something about that, what Hepburnia paid was
 7 subtracted from the -- from your royalty --

8 A. No.

9 Q. -- would that be fair?

10 A. I do not --

11 Q. Let me ask you, was that like an advance,
 12 that they would pay the premium on the bond, then
 13 they would deduct it from what they would be
 14 paying you on the coal?

15 A. I'm not sure how it was done. I'm not
 16 sure it was done. I mean, when I got the price
 17 for this contract mining -- well, I shouldn't say
 18 it was contract mining. Let me rephrase that. It
 19 wasn't contract mining.

20 When I got the price that we agreed on as
 21 an average that we would -- you know, that
 22 Hepburnia would pay for the coal, or pay me for
 23 the mining of the coal, it was kind of prefigured
 24 into that, you know, what everything that was
 25 going to have to come out the royalties and so on

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1 so forth. I did not pay the royalties. Hepburnia
2 paid the royalties. I didn't do any of that.

3 Q. The royalties came out, the premiums for
4 the bond came out --

5 A. I don't know that for sure. I want to
6 assume, because the price that they came back to
7 me and said, "Can you mine this for that," and you
8 know, "Can you live with this," you know, "Is this
9 a good enough price?" And it seemed like a fair
10 price at the time, but that -- it absolutely did
11 take care of the, you know -- the royalties was
12 out of it. They paid the royalties. I did not
13 pay the royalties. And I would just assume that
14 everything else that had to be taken care of was
15 prefigured out of that. At least that's what I
16 was told anyways (sic).

17 Q. On one of these exhibits, if you can look
18 at Exhibit No. 5, please.

19 A. There are some really crappy numbers
20 here, not showing up.

21 Q. There appears, on the right-hand side of
22 the first page, to be what looks like a round
23 stamp.

24 Do you see that?

25 A. Yes, I do.

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1 Q. Can you read the name that's inside that?

2 A. Charles P. Leach Agency.

3 Q. Does that ring any bells with you?

4 A. No, sir. I mean, I've heard the name
5 mentioned before, but it doesn't -- doesn't ring
6 any bells, no.

7 Q. Not an insurance agency that you ever
8 dealt with?

9 A. No. Not personally, I don't believe, no.

10 Q. Who was the agency that you said that you
11 had dealt with, the insurance agency on bonds that
12 you had had to obtain on your own on other jobs?

13 A. I'm not sure of the exact insurance
14 agency. The broker was Reschini.

15 Q. How do you spell that?

16 A. R-E-S-C-H-I-N-I. And I cannot recall
17 exactly, at the time, that we either backed those
18 bonds up with CDs or cash.

19 Q. And you've testified that you didn't have
20 the cash at this time to do that for the King job.

21 A. That's right. That's what it was.
22 There's no other way to tell it.

23 Q. That's when you went and approached
24 Hepburnia?

25 A. Yes, sir, that's what happened. So

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1 that's the way it happened.

2 Q. I just want to be sure. I think you
3 testified to this, but I want to make sure that it
4 was covered.

5 Exhibit 4, which is the General Agreement
6 of Indemnity, if you could locate that one. On my
7 page three, there are several signatures.

8 MR. WAGNER: That's No. 4.

9 THE WITNESS: Your page three.

10 BY MR. SEAMAN:

11 Q. I hope it's page three of yours, too.
12 But the third page.

13 A. Here we go. Got you. We've been here
14 before already today.

15 Q. I just want to make sure that the two
16 signatures of John O. Gurosik, that's your
17 signature, correct?

18 A. I already testified that it was, yes.

19 Q. Sharon Gurosik, that's your wife's
20 signature?

21 A. I would say yes. I'm not -- I would
22 say --

23 Q. I'm sorry? Is that your wife's
24 signature?

25 A. Hell no. It looks close to be her

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1 signature, but no, I do not -- I've been married
2 for 30 some years. It's been a real good
3 marriage, but I don't run around checking my
4 wife's signatures. I doubt she's ever signed
5 anything in front of me half a dozen times in my
6 life.

7 Q. Do you have any reason to believe it's
8 not her signature?

9 A. No, I have no reason to believe it's not.

10 Q. And Exhibit 3, the third page, again,
11 there are two signatures.

12 Is this first signature yours, sir?

13 A. Not on that page, it isn't. Third page,
14 fourth page, whatever it is. Fifth page.

15 Q. I'm sorry, fourth page.

16 A. There we go. We're doing better.

17 Is that first signature mine? Yes, it
18 is.

19 Q. And is the second signature your wife's?

20 A. I will assume that it is.

21 Q. Do you have any reason to believe that
22 it's not?

23 A. I don't think so.

24 Q. And you signed that as president, is that
25 correct --

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- 1 **A. That's right.**
 2 **Q.** -- of Gurosik Coal Company, Inc.?
 3 **A. That's right.**
 4 **Q.** Is that the proper name of the company,
 5 Gurosik Coal Company, Inc.?
 6 **A. That's right.**
 7 **Q.** Is that company still in existence?
 8 **A. Yes, sir. Subchapter S Corporation.**
 9 **Q.** And your wife signed as secretary; would
 10 that be correct?
 11 **A. Yes.**
 12 **Q.** Is she still secretary of the
 13 corporation?
 14 **A. No, hasn't been for years. I take care**
 15 **of all of it, everything.**
 16 **Q.** When did she not become the secretary?
 17 **A. Well, it's probably been some time ago.**
 18 **Q.** Approximately.
 19 **A. Haven't a clue. Don't know. Don't**
 20 **remember.**
 21 **Q.** Not last year?
 22 **A. No.**
 23 **Q.** This was signed in 1985.
 24 **A. I would assume that she would have been,**
 25 **yes.**

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- 1 **Q.** Okay. Who were the shareholders, at that
 2 time, of Gurosik Coal Company, Inc.?
 3 **A. Probably myself.**
 4 **Q.** Were you the sole shareholder, sir?
 5 **A. I want to say -- I'd have to check the**
 6 **books to be sure of that, before I make that**
 7 **statement.**
 8 **Q.** Okay. I'm going to ask your counsel to
 9 have you do that --
 10 **A. That's not a problem. I can do that.**
 11 **Q.** -- and respond whether or not you did. I
 12 don't want to have to recontact anybody.
 13 **A. That's not a problem.**
 14 **Q.** So you're going to check to see --
 15 **A. Yep.**
 16 **Q.** -- and your counsel will respond to me in
 17 writing --
 18 **A. Absolutely.**
 19 **Q.** -- whether or not you were the sole
 20 shareholder.
 21 **A. Absolutely.**
 22 **Q.** If you were not the sole shareholder,
 23 then I would like to be provided with the names of
 24 the shareholders --
 25 **A. Yes.**

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- 1 **Q.** -- the other shareholders, and the number
 2 of shares that each person held.
 3 **A. Okay.**
 4 **MR. WAGNER:** Why would that be relevant
 5 to this proceeding?
 6 **MR. SEAMAN:** To determine who has what
 7 say with what goes on with the corporation.
 8 **MR. WAGNER:** Okay. I'm going to state
 9 for the record that I would object to the disclose
 10 of that information.
 11 **MR. SEAMAN:** So you're telling me you're
 12 not going to provide it?
 13 **MR. WAGNER:** Well, we'll see who it is
 14 first. If it's John and Sharon Gurosik, which --
 15 **THE WITNESS:** There isn't anybody else.
 16 **MR. WAGNER:** -- we'll disclose it. But
 17 if it's anybody else, I will not.
 18 **BY MR. SEAMAN:**
 19 **Q.** Mr. Gurosik, do you recall now whether
 20 you have records someplace that would pertain to
 21 this King job?
 22 **A. Not right at this minute, I don't. I**
 23 **don't recall. I'd have to go back home and look**
 24 **and see.**
 25 **Q.** Since this lawsuit was filed, have you

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- 1 ever made a look or a search for any records?
 2 **A. As pertaining to what, what I was paid,**
 3 **agreements?**
 4 **Q.** Have you made any kind of a search for
 5 any records, any written records, that Gurosik
 6 Coal Company, or you individually would have,
 7 since this lawsuit has been filed?
 8 **A. If I have them, they're in the top drawer**
 9 **of my desk at home, and I'll look at that when I**
 10 **get back.**
 11 **Q.** Would you answer my question?
 12 Since the lawsuit was filed, have you
 13 made any search for any of these records, for
 14 whether they exist or don't exist? Have you ever
 15 done that?
 16 **A. I'll tell you what, I just don't**
 17 **remember. That's the truth. I've done a lot of**
 18 **paperwork, and a lot of stuff under the bridge.**
 19 **Q.** Do you remember answering interrogatories
 20 that were propounded by Mr. Gorton on behalf of
 21 the plaintiff, questions, written questions, and
 22 you have to provide answers?
 23 **A. I've had meetings with my counsel.**
 24 **Q.** Do you remember that you had to provide
 25 Answers to Interrogatories?

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- 1 **A. We went over something, yeah.**
 2 **Q.** Do you recall that you were also
 3 requested to produce documents?
 4 **A. No, I don't. To be honest with you, I**
 5 **really don't. I'm not saying Tom didn't say that.**
 6 **I just don't. You're saying in the last couple**
 7 **years?**
 8 **Q.** Yes, sir. So you don't recall making any
 9 response that there were no records, that you have
 10 no records?
 11 **A. I didn't say that I didn't have any. I**
 12 **said that I don't recall.**
 13 **Q.** I'm asking you, do you recall responding
 14 that you had no records?
 15 **A. I think we just answered that question.**
 16 **Q.** I'll show you a document, which we will
 17 have marked as Exhibit 8.
 18 (John O. Gurosik, Exhibit No. 8 marked
 19 for identification, attached hereto.)
 20 BY MR. SEAMAN:
 21 **Q.** I want you to take a look at that,
 22 please.
 23 Did you get a chance to look at that,
 24 Mr. Gurosik?
 25 **A. I said I didn't have any.**

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- 1 **Q.** Did you see your signature on what's
 2 called a certification?
 3 **A. I sure did.**
 4 **Q.** And in response to request No. 11,
 5 request No. 12, and request No. 13, the response
 6 that you gave was, "This defendant currently has
 7 no documents in his possession."
 8 Is that correct? Is that the response
 9 you gave?
 10 **A. Yep.**
 11 **Q.** So what's your testimony today, did you
 12 ever make a search for these documents or not?
 13 **A. Yeah, I searched for them.**
 14 **Q.** You didn't find any?
 15 **A. No, sir.**
 16 **Q.** So why should we assume today, or presume
 17 that you might have some?
 18 **A. Well, I kind of misunderstood your**
 19 **question. I didn't know whether you meant -- I am**
 20 **sure there are maybe a few old inspection reports**
 21 **records from the inspectors laying around from**
 22 **clear way back when, which actually really have no**
 23 **relevance to this because it would have been**
 24 **during the mining site.**
 25 **As far as the type of documents, I don't**

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- 1 **think we really actually clarified what type of**
 2 **documents. If I said no, then it's no.**
 3 **Q.** Okay. I'm just trying to find out for
 4 sure what it is, whether you have documents,
 5 whether you know you have documents, whether you
 6 know you don't have documents.
 7 **A. Well, if I signed that and said I didn't,**
 8 **then I don't.**
 9 **Q.** Okay. And did you just also testify that
 10 you do have some old inspection reports?
 11 **A. Possibly.**
 12 **Q.** Possibly.
 13 **A. Possibly. Possibly. And I mean, they**
 14 **would be old. They would be during the mining**
 15 **operation, which I say would have absolutely no**
 16 **relevance to any of this.**
 17 MR. GORTON: Let me interject that these
 18 are continuing discovery requests. To the extent
 19 that any would be found, there's an obligation to
 20 produce.
 21 MR. WAGNER: My client will make a
 22 diligent search, and anything that is located, we
 23 will produce it.
 24 THE WITNESS: Yep.
 25 ///

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- 1 BY MR. SEAMAN:
 2 **Q.** You indicated that you had a conversation
 3 with Butch Sutika fairly recently, I believe; is
 4 that correct?
 5 **A. Yes.**
 6 **Q.** And I think you said that was less
 7 than 24 hours ago?
 8 **A. Right.**
 9 **Q.** And did you call him, or did he call you?
 10 **A. I think I called him.**
 11 **Q.** And did you call him from your home?
 12 **A. My office, yes.**
 13 **Q.** Your office?
 14 **A. Yep.**
 15 **Q.** Would you mind giving me that phone
 16 number, please?
 17 **A. 885-6883. Unlisted number.**
 18 **Q.** 885 --
 19 **A. 6883.**
 20 **Q.** -- 6883. 814 area code?
 21 **A. Yes, it is.**
 22 **Q.** Where did you reach Mr. Sutika, was he at
 23 home or at work?
 24 **A. You know, I'm not sure of that, because I**
 25 **called him on his cell phone. I didn't ask him**

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1 **where he was.**

2 **Q.** What time of day was it when you called
3 him?

4 **A.** I want to say, might have been in the
5 morning, possibly. If it wasn't, it was early
6 afternoon.

7 **Q.** What was the purpose of making the call
8 to him?

9 **A.** It was actually on another matter
10 altogether.

11 **Q.** Okay. What was the other matter?

12 **A.** I don't think that that has anything to
13 do with this right here.

14 **Q.** I'm sorry, sir, but it may --

15 **A.** No, it doesn't.

16 **Q.** -- so I'm going to ask you to answer the
17 question.

18 **A.** It didn't have anything to do with the
19 insurance or coal, or anything else. Let's put it
20 that way. It just came into the conversation.

21 **Q.** Okay. Can you tell me what the purpose
22 of your call was?

23 **A.** To return his phone call. That's all I
24 did. I returned his phone call.

25 **Q.** I'm sorry, go ahead.

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1 **A.** There was a message on my cell phone,
2 which it could have been that morning, it could
3 have been three or four days prior to that. But I
4 returned his phone call. That's how it started.

5 **Q.** And when he left the message for you on
6 your phone, did he tell you why he was calling?

7 **A.** No. No, there wasn't a message left. It
8 was just -- his number just came up.

9 **Q.** Did it come up as a missed call or was --

10 **A.** Missed call.

11 **Q.** So there was no message left?

12 **A.** No.

13 **Q.** So when you called him, did you know why
14 you were calling him, what the purpose --

15 **A.** No.

16 **Q.** -- of the call was? What did you first
17 discuss with him before you got into anything
18 dealing with the King job?

19 **A.** I actually don't remember.

20 **Q.** Well, you just told me before that it had
21 nothing to do with this.

22 **A.** Prior to -- the very first part of the
23 conversation, it doesn't have anything to do --

24 **Q.** What was that conversation about?

25 **A.** This is --

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1 **MR. WAGNER:** Just a moment. I want to
2 consult with my client about whether he must
3 respond to that question or not.

4 **MR. SEAMAN:** Go ahead.

5 **MR. WAGNER:** Off the record.

6 (Discussion held off the record.)

7 **BY MR. SEAMAN:**

8 **Q.** Back on the record. Mr. Gurosik, would
9 you please tell me what the first part of your
10 conversation with Mr. Sutika within 24 hours ago
11 was about?

12 **A.** The very first part of the conversation?

13 **Q.** Yes, sir.

14 **A.** I think we just discussed that that's
15 confidential.

16 **MR. WAGNER:** In general detail, you have
17 to tell him what the conversation was about.

18 **THE WITNESS:** It had to do with some
19 other financial stuff that we're taking care of at
20 the present time. It doesn't have anything to do
21 with this whatsoever. I feel that it is
22 confidential, yes.

23 **BY MR. SEAMAN:**

24 **Q.** So what it dealt with was some other --

25 **A.** Yes.

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1 **Q.** -- let me finish the question before you
2 answer. Okay?

3 **A.** Okay.

4 **Q.** It had to do with some other financial
5 transaction between you and Mr. Sutika?

6 **A.** No. No, there was no financial
7 transaction between myself and Mr. Sutika
8 whatsoever. It was just more or less an
9 advice-type situation, which I asked various
10 people their advice about certain matters that I'm
11 taking care of right at the present time.

12 **Q.** So Mr. Sutika was giving you some
13 financial advice; is that correct?

14 **A.** In a way, yes. In a way.

15 **Q.** Was your relationship with Mr. Sutika
16 such that you've had ongoing conversations with
17 him over the years?

18 **A.** Off and on.

19 **Q.** Did Mr. Sutika ever work for you? Was he
20 ever employed by you or any of your companies?

21 **A.** No.

22 **Q.** Did you ever work for, or any of your
23 companies do any work for him --

24 **A.** No.

25 **Q.** -- or any of his companies?

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- 1 **A. No.**
 2 **Q.** Are you aware of some of the companies
 3 that he had?
 4 **A. One. I know he was in the coal business,**
 5 **but I'm not aware -- the name of the company, no,**
 6 **I'm not, not at all.**
 7 **Q.** So then, when you got to the conversation
 8 that dealt with why we're here today, who first
 9 brought that up, you or him?
 10 **A. I did.**
 11 **Q.** Okay.
 12 **A. I did.**
 13 **Q.** Did you ask him a question or did you
 14 tell him something?
 15 **A. No, I asked him a question.**
 16 **Q.** Okay. What did you ask him?
 17 **A. Just exactly what I already testified to.**
 18 **Q.** Can you tell me what you asked him?
 19 **A. Okay. I asked him if he remembered**
 20 **anything about the -- how the bonding, so on and**
 21 **so forth, the agreements were, and how it was**
 22 **taken care of. And he said, "Yes, I do."**
 23 **Q.** Okay.
 24 **A. And that's when he told me, he said, "I**
 25 **was there." He said, "I wasn't there for all the**

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- 1 **jobs," he said, "but this is what I did."**
 2 **Q.** What did he say he did?
 3 **A. Well, he basically -- like I say, most of**
 4 **my checks were handed -- and I use that term**
 5 **handed to, it was either him or one of the**
 6 **secretaries out front that usually gave them to**
 7 **me. And he just -- he reiterated to the fact as**
 8 **to how the bonds and payment was made to the**
 9 **property owner and so on and so forth. And I did**
 10 **ask that question, because I wanted to clarify**
 11 **what I had in my head.**
 12 **Q.** You say "he reiterated." If you
 13 reiterate, that means you've said it before.
 14 **A. Let me rephrase that.**
 15 **Q.** Would you, please.
 16 **A. I do not mean reiterate. What he did**
 17 **was, you know -- his recollection of exactly -- or**
 18 **at least explained to me how it was done. That's**
 19 **the correct term. He explained.**
 20 **Q.** Can you give me the specifics, please, of
 21 what he told you?
 22 **A. Yes, I can. It was very short. He said**
 23 **that, you know -- what I received, which is of**
 24 **record, and he said that was the standard**
 25 **procedure. And he said, "I did deduct that out**

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- 1 **and put it in an account." He said, "I remember**
 2 **taking it out and putting it in an account." He**
 3 **said it was to be put in an interest-bearing**
 4 **account, of which -- and I'm talking about the**
 5 **bonds, because the way they've looked at it -- and**
 6 **I just wanted to clarify it in my mind.**
 7 **You know, when you go into a job site,**
 8 **you drill it, you estimate the tons of coal that's**
 9 **there, you back down from it a little bit so you**
 10 **have the right -- that you don't exceed the**
 11 **tonnage, I guess, is the way to say to it. He**
 12 **said that the bonds were -- he said that there was**
 13 **X number of dollars put into an account, with a**
 14 **card.**
 15 **Q.** With a what?
 16 **A. Well, it's a signature card. That**
 17 **certain people can access that money -- myself not**
 18 **being one -- to cover the bonds with cash --**
 19 **Q.** Did he tell you --
 20 **A. -- and --**
 21 **Q.** I'm sorry. Go ahead.
 22 **A. And at the point in time when the bonds**
 23 **are covered with cash, if I would have defaulted,**
 24 **went out of business or whatever, that money was**
 25 **automatically to be taken, you know, towards the**

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- 1 **backfilling, so on and so forth and -- or in a**
 2 **situation like we have right now.**
 3 **Q.** He told you all of what you've just --
 4 **A. Yes, sir.**
 5 **Q.** -- testified to?
 6 **A. Yes. Yes.**
 7 **Q.** And this was all in this conversation --
 8 **A. Yes.**
 9 **Q.** -- 24 hours ago?
 10 **A. Yes.**
 11 **Q.** Did he tell you that he put the money in
 12 the account?
 13 **A. He told me that he remembered doing it**
 14 **for this particular job, when he was there --**
 15 **while he was still in Hepburnia's employ, I guess**
 16 **is the way to phrase it.**
 17 **Q.** Did you understand that to mean that he
 18 put the money in the account while he was still
 19 working for Hepburnia?
 20 **A. I should say placed the money.**
 21 **Q.** That he placed the money in the account,
 22 would that be what you understood?
 23 **A. No, I don't think you want to use the**
 24 **term "he," because --**
 25 **Q.** That's what I'm trying to find out.

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1 **A. I know. At this particular time, he**
2 **would have been an employee of Hepburnia Coal**
3 **Company, so I would assume that he would be acting**
4 **on their behalf, as an employee.**

5 **Q.** Okay. But did he tell you somebody else
6 put the money in the account, or "I put the money
7 in the account"? What did he say?

8 **A. He said the money was placed in an**
9 **account.**

10 **Q.** Okay. So you don't know, from that, who
11 placed the money in the account?

12 **A. No, no. I mean, he did say that he**
13 **remembers the money being allotted out, if you**
14 **want to use that term.**

15 **Q.** Being what?

16 **A. Allotted, taken out, part of the --**

17 **Q.** Taken out of what?

18 **A. Not necessarily deducted out -- he did**
19 **start to explain how it was done. It wasn't done**
20 **in Hepburnia Coal Company, so I don't know. I**
21 **don't know the particulars of this, because I just**
22 **assumed that everything is being taken care of as**
23 **it should.**

24 **Q.** He said it wasn't being done in Hepburnia
25 Coal Company?

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1 **A. Well, it didn't end up -- Hepburnia Coal**
2 **Company paid me. I assume that Hepburnia Coal**
3 **Company paid the property owner. I never saw any**
4 **of their checks, so I don't know whether it came**
5 **from Hepburnia or Spencer or another division. I**
6 **don't know that for sure, because I didn't see it.**

7 **Q.** Okay.

8 **A. That's it.**

9 **Q.** Did he tell you how that money that was
10 placed in that account was determined, you know,
11 how much would go in each time?

12 **A. Prearranged amount.**

13 **Q.** Based on?

14 **A. Per ton. Per ton. Per ton.**

15 **Q.** A prearranged amount per ton?

16 **A. Prearranged amount per ton, based on the**
17 **actual estimated tonnage, which was, as I already**
18 **explained, was designated a low tonnage that you**
19 **would derive from drilling the job site and the**
20 **acreage to be mined.**

21 **Q.** When you're saying the actual estimated
22 amount --

23 **A. Yeah.**

24 **Q.** -- to me, that means two different
25 things. Actual would be what it was, and

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1 estimated is what you think it's going to be?

2 **A. Estimated amount. We're going to start**
3 **playing with words here.**

4 **Q.** I'm just trying to understand, because
5 you used two words there that are kind of
6 contrary, would you agree?

7 **A. Yeah, I agree with that. But we'll say**
8 **the estimated amount.**

9 **Q.** So the money was placed in the account
10 based upon --

11 **A. Yes.**

12 **Q.** -- estimated amounts of coal to be --

13 **A. No.**

14 **Q.** -- removed?

15 **A. No. No, it wasn't. Now you're tripping**
16 **it up here a little bit.**

17 **Q.** I'm trying to get it clear. I want you
18 to tell me what your understanding is.

19 **A. What I'm trying to do is to give you, as**
20 **it was explained to me, how they determined how**
21 **much had to be taken out, or removed, or figured**
22 **into the price, and that's how it came about. You**
23 **know, you can't just say, we're going to take X**
24 **number of tons out of this thing and pick a figure**
25 **out of the air.**

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1 **You need -- the way it was figured was**
2 **from the drilling records. You take the acres**
3 **that's to be mined and you take an estimate of the**
4 **tonnage of coal, which averages a hundred ton per**
5 **acre. So you're going to use that. You go lower.**
6 **Hundred ton per inch per acre. And if you're**
7 **going to use that, you're going to go low. I**
8 **always like to go on the low side, that way, you**
9 **don't get any surprises.**

10 **Q.** The process you're talking about --

11 **A. Yes.**

12 **Q.** -- is -- correct me if I'm wrong --

13 **A. That's --**

14 **Q.** Let me state what I think I'm getting
15 from you.

16 **A. All right.**

17 **Q.** You correct me if I'm wrong, please.

18 **A. Okay. I will.**

19 **Q.** The process that you're talking about
20 would be one that would have taken place at the
21 time Hepburnia was trying to decide how much to
22 pay you per ton for the coal.

23 **A. Not only to pay me, but to make -- to**
24 **determine --**

25 **Q.** Is that part of it right?

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- 1 **A. That's part of it.**
 2 **Q.** Okay. And I'm correct in that part of
 3 it?
 4 **A. That's part of it.**
 5 **Q.** Go ahead and tell me what the rest of it
 6 is.
 7 **A. It's to come up with a predetermined**
 8 **figure that could be -- that would be taken out,**
 9 **or removed, or taken off the top, however it was**
 10 **done, to be put in this escrow account to cover**
 11 **the bonds.**
 12 **Q.** Did Mr. Sutika ever say anything to you
 13 about what happened to the escrow account?
 14 **A. No. Didn't get that far. In fact, that**
 15 **was pretty much the end of the conversation. I**
 16 **didn't ask him. I doubt that he knew, because he**
 17 **wasn't there.**
 18 **Q.** Did you ever have any other conversations
 19 with Mr. Sutika about this escrow account before
 20 this one you had within the last 24 hours of
 21 today?
 22 **A. No. Not in that detail, no.**
 23 **Q.** Any conversations, that detail or not.
 24 Any conversations with Mr. Sutika about this
 25 escrow account.

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- 1 **A. I can't remember, no. I can't remember**
 2 **whether I did or not, to be honest with you.**
 3 **Q.** Okay. So your testimony would be, "I
 4 can't remember"?
 5 **A. That's right.**
 6 **Q.** If somebody said, "I did," or somebody
 7 said, "I didn't," you can't say that they're
 8 incorrect either way, correct?
 9 **A. Did or didn't what?**
 10 **Q.** If somebody were to say to you, "I had a
 11 conversation with Mr. Gurosik" -- I'm sorry,
 12 "Butch Sutika." Butch Sutika said, "I had a
 13 conversation with Mr. Gurosik seven months ago
 14 about this escrow account," your testimony is, you
 15 don't remember, so you couldn't say?
 16 **A. I'm quite sure that during the mining,**
 17 **maybe prior to the mining, I'm sure this came up,**
 18 **but there was never any really, amount set. The**
 19 **only amount that was set is what is right on those**
 20 **records is what I was supposed to have got paid.**
 21 **Q.** What records?
 22 **A. Hepburnia's records. You have them right**
 23 **in front of you.**
 24 **Q.** Hepburnia's records are the ones that
 25 were supplied in response to a request for

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- 1 production of documents from the plaintiff.
 2 **A. They are wrong in the sense that they --**
 3 **I believe that they do not say that they paid the**
 4 **property owner, which they most certainly did,**
 5 **because I did not handle that.**
 6 **Q.** Have you examined those records?
 7 **A. No. No, I did not. No, I did not.**
 8 **Q.** Have you looked at them at all?
 9 **A. Very briefly.**
 10 **Q.** Did you see anything in there that
 11 indicated that Hepburnia paid King royalties?
 12 **A. There would have to be someplace.**
 13 **Q.** Did you?
 14 **A. No, no.**
 15 **Q.** I'm asking you, today, did you see
 16 anything?
 17 **A. No. I did not look to see that. I**
 18 **didn't. Like I said, I looked at them very**
 19 **briefly.**
 20 **Q.** What's your recollection of the number of
 21 dollars that you were paid per ton by Hepburnia?
 22 **A. I really don't know. I'd have to try to**
 23 **determine that somehow.**
 24 **Q.** How would you try to determine that, if
 25 you were to do so?

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- 1 **A. Probably pick the period of time that I**
 2 **was working on that job and check my deposits that**
 3 **came directly from them. I'm sure it's on my**
 4 **records, what I got from them. You know, if I go**
 5 **back through and dig out. And when I say my**
 6 **records, I mean my income tax statements my**
 7 **accountants would have. It would have to be**
 8 **there.**
 9 **Q.** I'm asking if you will do that for us, if
 10 you will provide that information to your
 11 attorney --
 12 **A. Yeah.**
 13 **Q.** -- so he can provide it to me.
 14 **A. If my accountant has that, I'll be more**
 15 **than happy to provide it.**
 16 **Q.** If your accountant does that?
 17 **A. No, if he has --**
 18 **Q.** You said you can do that, so you will?
 19 **A. Yeah.**
 20 MR. WAGNER: Allow me to interject here.
 21 We're talking about income tax records from 1986
 22 now. So I don't know whether --
 23 THE WITNESS: I don't keep them past
 24 seven or eight years.
 25 ///

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1 BY MR. SEAMAN:

2 Q. I thought you just told me that you could
3 do that.

4 A. No, I didn't say -- I said I could do it
5 if my accountant has it on record. And I assume
6 that they probably do.

7 Q. My request of you is, then, produce
8 whatever documentation you can that you might
9 have --

10 A. All right.

11 Q. -- that would substantiate what you were
12 paid by Hepburnia Coal for the coal that you
13 produced on the King job.

14 A. That I can do, if they have it.

15 Q. And if you have any records that show
16 what you were paid per ton, I'm asking you to
17 produce those, too.

18 A. If that's in there, I'll see that you get
19 it.

20 Q. Mr. Gurosik, when did you stop surface
21 mining at the King job?

22 A. I don't remember. That's a fact.

23 Q. Is there any way you can come up with an
24 approximate year, even just a year?

25 A. Oh, boy. I won't answer yes or no to

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1 that until I see if I can dig it up somewhere. I
2 don't know. I doubt it. I'm quite sure I can
3 call DEP, and it would be in their records, if
4 nothing else.

5 Q. Did you ever receive any inspection
6 reports from DEP that had an indication on it of
7 "mining activity and reclamation completed"?

8 A. I don't remember.

9 Q. You don't remember?

10 A. No.

11 MR. WAGNER: Off the record.

12 (Discussion held off the record.)

13 MR. WAGNER: Back on the record.

14 BY MR. SEAMAN:

15 Q. Am I correct, Mr. Gurosik, that you
16 obtained the release from the property surface and
17 coal owner Cloyd King?

18 A. Yes.

19 Q. And you did that prior to any contact
20 with Hepburnia?

21 A. I'm not sure. I just don't exactly
22 remember that detail.

23 Q. And you engaged Lee Simpson engineers to
24 do the engineering work necessary for you to be
25 able to get your mining permit; is that correct?

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1 A. You know, I'm going to have to check with
2 DEP to see what's actually on the permit, because
3 I had two different engineers, and I'm not sure.
4 I know Lee Simpson did my work prior to that.
5 Whether they did that or not, I'm not sure.

6 Q. Who would the other possible engineer
7 have been?

8 A. I'll tell you what, their name just skips
9 me right now. And it really does. If I knew, I'd
10 say so.

11 Q. Whichever engineer it was, you contacted
12 them to do that?

13 A. Oh, yes, I most certainly did. I had the
14 full expense of everything on that.

15 Q. And you're also required to get a
16 Supplemental C, consent of property owner --

17 A. Yes.

18 Q. -- from the Kings. And you got that
19 yourself, also?

20 A. They issued the permit. Yes, that's the
21 only way you're going to get it.

22 Q. And the only way they issue a permit is
23 if you produced the bonds, the required bonds,
24 right? They won't issue a permit without bonds,
25 will they?

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1 A. They won't issue a mining increment
2 without bond. I don't know about the permit.

3 Q. Then I will rephrase my question. Thank
4 you.

5 A. Okay.

6 Q. You couldn't get the mining permit
7 without producing the required bonds; is that
8 correct?

9 A. To actually go in and do work on the
10 site, no. It has to be bonded before you could do
11 work on the site of any kind, whether it's E&S
12 control mining or whatsoever. And E&S control
13 comes before the mining.

14 Q. Are you telling me that you believe that
15 DEP will issue a mining permit --

16 A. No.

17 Q. -- before --

18 A. I'm not saying that at all.

19 Q. -- before the required bonds are
20 produced?

21 A. I'm not saying that at all. Because they
22 have changed their laws, and I have not followed
23 the law, so I am not familiar with --

24 Q. I'm talking about the laws in effect at
25 the time of the King job. Let me ask the

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1 question.

2 Would DEP have issued you a permit
3 without the required bonds -- excuse me, a mining
4 permit without -- thank you, I liked your look.
5 You caught me.

6 Would DEP have issued you a mining permit
7 without the required bonding?

8 **A. You mean to actually mine on the site?**

9 **Q.** Isn't that what a mining permit's for?

10 **A. Well, there's mining permits, and then**
11 **the mining permits are -- the site is usually in**
12 **increments, depending on the size of site. And**
13 **before you're allowed to bond -- mine on any one**
14 **of those increments, then you need to -- you have**
15 **to have the required bonding to do it.**

16 **Q.** Okay. That's sufficient.

17 Did you ever file any partnership income
18 tax returns with Hepburnia Coal Company?

19 **A. No.**

20 **Q.** Did you ever file any joint venture
21 income tax returns with Hepburnia Coal Company?

22 **A. Not that I'm aware of.**

23 **Let me ask you a question. Did they ever**
24 **file any of the same with me?**

25 **Q.** I'm sorry, but it doesn't work that way.

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1 **A. Well, okay.**

2 **Q.** I don't have to answer your questions.

3 **A. Okay. Well, then we're running.**

4 **Q.** But you got to ask it.

5 **A. Yeah. Sounds like DEP.**

6 **Q.** What's your understanding of an
7 agent-principal relationship?

8 **A. Don't have a clue what you're talking**
9 **about.**

10 **Q.** Okay. Did any agent-principal
11 relationship exist between Gurosik Coal Company
12 and Hepburnia Coal Company?

13 **A. You haven't explained the first question.**
14 **If I didn't understand the first one, it's going**
15 **to be pretty hard to answer this one.**

16 **Q.** I'm asking you if you understand that.

17 **A. No. I don't understand the nature of the**
18 **question.**

19 **MR. GORTON:** I think that calls for a
20 legal conclusion.

21 **THE WITNESS:** Yeah, I think it does.

22 **BY MR. SEAMAN:**

23 **Q.** So we're saying that agent-principal
24 relationship is not a fact but a legal conclusion.
25 Is that what we're saying?

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1 **MR. WAGNER:** You don't have to answer
2 that question.

3 **THE WITNESS:** I'm not answering it.

4 **MR. SEAMAN:** I'll withdraw that.

5 **MR. WAGNER:** The other one is. Okay,
6 that one is beyond the pale.

7 **BY MR. SEAMAN:**

8 **Q.** Did I understand correctly that Gurosik
9 Coal Company was responsible for all of the
10 operational activities at the King job, as far
11 as -- and by operational, I'm talking about mining
12 the coal, removing it, moving the topsoil around,
13 doing the backfilling, then reclamation work.

14 **A. I would assume so.**

15 **Q.** I'm not asking you to assume. I'm asking
16 you, was Gurosik Coal Company responsible for the
17 operational activities on the King job, which
18 include mining the coal, removing the coal, moving
19 topsoil, backfilling and reclamation?

20 **A. I would say yes.**

21 **Q.** Thank you. Was it also necessary for you
22 to work out any type of agreements with the local
23 township for bonding of roads to be able to have
24 the coal hauled out?

25 **A. I don't remember that in detail. The**

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1 **fact that I didn't do the hauling, I'm not sure.**

2 **Q.** So would your answer be, "I don't
3 remember"?

4 **A. I think, at this time, that would be a**
5 **good answer, yes.**

6 **Q.** Would you do me a favor, if your memory
7 ever changes in response to that answer, would you
8 notify your attorney of that so he could notify
9 me?

10 **A. Yeah, we can do that.**

11 **Q.** So if I never hear from anybody again,
12 then you never came up with another answer.
13 That's what I'm going to get?

14 **MR. WAGNER:** I'll object to that
15 statement.

16 **MR. SEAMAN:** That's a continuing.

17 **THE WITNESS:** We need to stick to the
18 hands at matter, or I'm out of here.

19 **MR. SEAMAN:** You're correct. All I'm
20 asking is, if his memory improves or changes, he
21 should notify us. It's a part of discovery.

22 **MR. WAGNER:** It might not occur until the
23 day of trial.

24 **MR. SEAMAN:** Okay. If it does then.

25 **MR. WAGNER:** We may not be able to notify

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1 you then.

2 MR. SEAMAN: You will notify me then?

3 MR. WAGNER: I will.

4 MR. SEAMAN: One way or another.

5 Let me just have a minute. I think we

6 may be done.

7 (Break taken in deposition.)

8 MR. SEAMAN: That's all I have.

9 MR. WAGNER: I have no questions.

10 (Discussion held off the record.)

11 MR. WAGNER: He would like to read the

12 transcript.

13 (At 11:57 a.m. the deposition was

14 concluded. Signature was not waived.)

15

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1 ERRATA

2 I, JOHN O. GUROSIC, have read the

3 foregoing deposition given by me on June 18, 2009,

4 in the case of Utica Mutual Insurance vs. Gurosik

5 Coal Company, et al.

6 This deposition should be corrected as

7 follows:

8 PAGE LINE ERROR/AMENDMENT AND REASON:

9

10

11

12

13

14

15

16

17

18

19

20 Subject to these corrections, my

21 testimony reads as given by me in the foregoing.

22 Signed this _____ day

23 of _____, 2009.

24

25 _____

JOHN O. GUROSIC

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1 COMMONWEALTH OF PENNSYLVANIA)

2)

3 COUNTY OF _____)

4

5 On this, the _____ day of

6 _____, 2009, before me a Notary

7 Public, the undersigned officer, personally

8 appeared JOHN O. GUROSIC, known to me to be the

9 person whose name is subscribed to the within

10 instrument, and acknowledge that JOHN O. GUROSIC

11 executed the same for the purposes therein

12 contained.

13 In witness whereof, I have hereunto set my

14 hand and official seal.

15

16

17

18 My Notary Commission

19 Expires:

20

21 _____

22 Notary Public

23

24

25

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1 COMMONWEALTH OF PENNSYLVANIA)

2)

3 COUNTY OF ARMSTRONG)

4 I, Susanna C. Englert, Notary Public

5 within and for the Commonwealth of Pennsylvania,

6 do hereby certify that before the taking of his

7 deposition, the said deponent, JOHN O. GUROSIC,

8 was by me first duly sworn to testify to the

9 truth, the whole truth, and nothing but the truth,

10 and that the above deposition was recorded in

11 stenotype by me and reduced to typewriting under

12 my direction.

13

14 I further certify that the reading and

15 signing of the transcript of his deposition were

16 not waived by the deponent and by counsel for the

17 respective parties and that the said deposition

18 constitutes a true record of the testimony given

19 by the said deponent.

20

21 I further certify that I am not a

22 relative or employee or attorney or counsel or

23 financially interested directly or indirectly in

24 this action.

25

26 I further certify that the said

27 deposition was taken before me at the time and

28 place specified in the notice.

29

30 IN WITNESS WHEREOF, I have hereunto set

31 my hand and affixed my seal of office at

32 Kittanning, Pennsylvania, on July 8, 2009.

33

34 *Susanna C. Englert*

35

36 SUSANNA C. ENGLERT

37 NOTARY PUBLIC

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40

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45

Notarial Seal
Susanna C. Englert, Notary Public
City of Altoona, Blair County
My Commission Expires Apr. 17, 2010
ASAP COURT REPORTING
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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

vs.

No.: 2006-1901-CD
Civil Indemnity Action

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
Individually, SHARON GUROSIK, HEPBURNIA
COAL CORP., DARRELL G. SPENCER, President,
Individually, Partner and as Administrator
of the Estate of Dalney F. Spencer, ESTATE
OF DALNEY F. SPENCER, ESTATE OF RAY L.
SPENCER, Partner and Individually, MILDRED
W. SPENCER, Individually and as
Administratrix of the Estate of Ray L.
Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, and
DELORIS B. SPENCER,

Defendants.

PROCEEDINGS: Deposition of
TIMOTHY MORGAN

DATE: June 18, 2009

TIME: 1:08 p.m. - 2:34 p.m.

PLACE: Law Offices of Peter Smith, Esquire
30 South Second Street
Clearfield, Pennsylvania 16830

REPORTER: Susanna C. Engbert
CSR 1951
Notary Public

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1-866-38-COURT

1 APPEARANCES:

2 Appearing on behalf of the Plaintiff:

3 WILLIAM T. GORTON, III, ESQUIRE

4 JENNIFER E. DRUST, ATTORNEY AT LAW

5 Stites & Harbison

6 250 West Main Street, Suite 2300

7 Lexington, Kentucky 40507-1758

9 Appearing on behalf of the Defendants John O.

10 Gurosik, Sharon Gurosik, and Gurosik Coal Company:

11 THOMAS G. WAGNER, ESQUIRE

12 Meyer & Wagner

13 115 Lafayette Street

14 St. Mary's, Pennsylvania 15857

16 Appearing on behalf of the Defendants Hepburnia

17 Coal Corp., Spencer Land Co., and the Spencers:

18 LAURANCE B. SEAMAN, ESQUIRE

19 Gates & Seaman

20 2 North Front Street

21 Clearfield, Pennsylvania

23 Also Present:

24 Darrell G. Spencer

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EXHIBIT

E

TIMOTHY MORGAN,

2 having been first duly sworn, deposed as follows:

EXAMINATION

5 BY MR. GORTON:

6 Q. Good afternoon, Mr. Morgan. As you know
7 from this morning, I'm Bill Gorton with the law
8 firm of Stites & Harbison, on behalf of Utica
9 Mutual Insurance Company, the company that wrote
10 the reclamation bonds for the Gurosik Coal King
11 Mine, and who is holding a General Agreement of
12 Indemnity with the names of all the defendants in
13 this matter.

14 For the record, would you please state
15 your name and address?

16 A. Tim Morgan, 361 Pine Top Road, Bigler,
17 Pennsylvania.

18 Q. How long have you lived there, Tim?

19 A. Twelve years.

20 Q. Could you tell us about your current
21 employment?

22 A. I work for Hepburnia Coal Company and
23 Spencer Land Company.

24 Q. In what positions?

25 A. Management, administrative land agent, in

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1 **that capacity.**

2 **Q.** Are you the president of one of those

3 companies?

4 **A.** **I would be secretary and treasurer of**

5 **Hepburnia Coal Company.**

6 **Q.** How long have you worked at Hepburnia?

7 **A.** **Full time, 1993. Prior to that, just**

8 **odds and ends.**

9 **Q.** All right. And your role with Spencer

10 Land Company?

11 **A.** **I would consider myself the land agent.**

12 **Q.** Land agent?

13 **A.** **Yes.**

14 **Q.** Okay. Well, as you heard me tell

15 Mr. Gurosik this morning, the procedure for the

16 deposition is, I'll ask the questions, and I would

17 suggest that you just listen to them carefully and

18 answer the question as succinctly as you can.

19 Do you understand?

20 **A.** **Yes, sir.**

21 **Q.** And reminding you again that you're under

22 oath. If you don't understand a question, as you

23 heard this morning, I will rephrase the question,

24 sometimes multiple times.

25 **MR. SEAMAN:** Depending upon the number of

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1 interjections.

2 **MR. GORTON:** That's right.

3 **Q.** If at any time the question is confusing,

4 please tell me that you're confused, and I'll try

5 to restate it.

6 If you think you need a break, just ask

7 for it, restroom, refreshments, or otherwise, just

8 ask for it, and we'll take a break.

9 **A.** **Okay.**

10 **Q.** We will accommodate you any way we need.

11 Also, if you would answer "yes" or "no" questions

12 with "yes" or "no" answers rather than "uh-huh" or

13 nodding, that makes a clearer record.

14 Could you tell me what you did to prepare

15 for today's deposition?

16 **A.** **Well, we were given information to answer**

17 **back, the questions. I think you call them**

18 **interrogatories.**

19 **Q.** Yes.

20 **A.** **And we reviewed those somewhat. And some**

21 **of the files that we have on the subject. That's**

22 **probably about it.**

23 **Q.** All right. Who did you talk to, other

24 than your counsel?

25 **A.** **Entirely through the whole process?**

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1 **MR. SEAMAN:** No, in preparation.

2 **BY MR. GORTON:**

3 **Q.** In preparation.

4 **MR. SEAMAN:** Good question, though.

5 **THE WITNESS:** Nobody, really. I mean,

6 Darrell and I were talking.

7 **MR. SEAMAN:** With me.

8 **THE WITNESS:** That's right.

9 **BY MR. GORTON:**

10 **Q.** Darrell Spencer and your attorney?

11 **A.** **Yes.**

12 **Q.** You didn't speak to any other officers,

13 or managers, or engineers at Hepburnia?

14 **A.** **Lately?**

15 **MR. SEAMAN:** No, no, in preparation for

16 your deposition.

17 **THE WITNESS:** No, no. Backwards, our

18 engineer, but not lately. We haven't seen him in

19 a couple weeks.

20 **BY MR. GORTON:**

21 **Q.** We'll get to that in a moment.

22 Now, I understand somehow, but I don't

23 really understand the relationships of all the

24 parties, and I know there's many Spencers

25 involved.

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1 **A.** **Yes.**

2 **Q.** And I'm just trying to get a grip on

3 that.

4 Are you related to the Spencers somehow,

5 family relations?

6 **A.** **Not now.**

7 **Q.** Were you?

8 **A.** **I was. I was married, in 1978, to Bob's**

9 **daughter, and we were divorced in -- I forget the**

10 **date. I don't know, '80, '79. I don't know when**

11 **it was.**

12 **Q.** A long time ago?

13 **A.** **Yeah.**

14 **Q.** We heard the names this morning of

15 several people at the company, including Butch

16 Sutika, S-U-T-I-K-A, Roger Thurston, and Michael

17 Potter. That's another name.

18 Could you explain to me, one by one,

19 starting with Roger Thurston, what role they play

20 at the company?

21 **A.** **Roger --**

22 **MR. SEAMAN:** Are you talking about now,

23 or when?

24 **MR. GORTON:** Well, now, and then we'll

25 get into their relationship with the Gurosik

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1 matter, is really what I'm after.

2 MR. SEAMAN: Are they employed by the

3 company now, and if so, in what capacity?

4 THE WITNESS: Mike Potter is the only one

5 employed by our company now. And he's probably

6 been around for a dozen years, in that range, I'd

7 say.

8 Roger Thurston left fifteen years ago,

9 ten years.

10 Butch Sutika probably left twenty years

11 ago, fifteen years ago. I don't know. I'd say in

12 that range. Many, many years ago.

13 BY MR. GORTON:

14 Q. So Roger Thurston and Butch Sutika are --

15 A. **Past employees.**

16 Q. -- long-term past employees?

17 A. **Yes.**

18 Q. When you heard Mr. Gurosik say this

19 morning that Mr. Sutika helped coordinate and

20 arrange the bonding, did that sound accurate to

21 you?

22 A. **Yes.**

23 Q. All right. Is it possible that Roger

24 Thurston could have played a role there?

25 A. **His role would have been, once the bonds**

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1 **were secured, he would probably have prepared the**

2 **submission of the bond and the permit work to DEP.**

3 **That's probably his role.**

4 **The role that Butch would have held would**

5 **have been to go to the bonding company and make**

6 **arrangements for everything.**

7 Q. Okay.

8 MR. SEAMAN: I'm sorry to interrupt. You

9 said "probably." Does that mean you don't know

10 for sure?

11 THE WITNESS: No, I wasn't working then,

12 at that time.

13 MR. SEAMAN: So you know what Butch

14 Sutika did? Are you saying that's also probably?

15 THE WITNESS: I do know some of the

16 things he did.

17 MR. SEAMAN: Do you know, in this

18 particular job, what he did?

19 THE WITNESS: No, not on the King job,

20 no, I don't know.

21 MR. SEAMAN: I just want to caution you.

22 He said you answer the questions that you know the

23 answers to.

24 THE WITNESS: Okay.

25 MR. SEAMAN: If you don't know the

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1 answer, then there's nothing wrong with saying, "I

2 don't know. I'm not sure. I wasn't there then,"

3 or, "I don't know who did what."

4 BY MR. GORTON:

5 Q. In light of everything you heard this

6 morning and my opening remarks, we're trying to

7 get the facts on the table in regards to who did

8 what. There are other documents we've got from

9 the insurance company, what have you, with names

10 on it. I'm just trying to get the story so we

11 know who played roles. It's interesting that

12 these gentlemen are long past employees. For all

13 I knew, they were still employees.

14 But having said that, who are your

15 insurance agents in getting bonds for the company?

16 A. **Bloom Insurance Agency.**

17 Q. They're here in Clearfield, right?

18 A. **Yes.**

19 Q. Now, I understand that these bonds for

20 Gurosik were written by Evergreen, or through

21 Evergreen.

22 Do you know how that happened?

23 A. **No.**

24 Q. Who is your present bonding company?

25 MR. SEAMAN: Company? Not agent,

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1 company?

2 MR. GORTON: Company, yes.

3 THE WITNESS: Rockwood Insurance is the

4 bond holder, I believe.

5 BY MR. GORTON:

6 Q. Okay. Do you have any other bonds

7 written by Utica Mutual Insurance Company?

8 A. **No.**

9 Q. Do you have any other bonds written by

10 Travelers Insurance Company?

11 A. **No. There's somebody that's holding some**

12 **bonds, but I can't recall their name.**

13 Q. Do you have any bonds written by Linden?

14 A. **Yes, that's it.**

15 Q. Linden?

16 A. **Yes. Or their successor.**

17 Q. Do you have any bonds written by INA?

18 A. **No.**

19 Q. The reason I ask that is, all of these

20 companies have bonds in this area that we've dealt

21 with, and I'm just curious who Bloom is dealing

22 with and how that came about.

23 Does Michael Potter now coordinate those

24 efforts, with obtaining bonds for permitting

25 actions that you guys take?

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1 **A. Combination of he and I.**
 2 **Q.** Okay, okay. So you're familiar with the
 3 process?
 4 **A. Somewhat, yes.**
 5 **Q.** You're familiar with the permitting
 6 process?
 7 **A. Not as well as Mr. Potter is. He's**
 8 **intimately knowledgeable about it.**
 9 **Q.** Mr. Potter is the --
 10 **A. Engineer.**
 11 **Q.** -- engineer.
 12 **A. Yes.**
 13 **Q.** You've been with the company since 1993.
 14 So in 16 years, how many permits do you think the
 15 company has received in that time frame, ballpark?
 16 **A. Fifteen, maybe. I don't know for sure.**
 17 **Q.** Basically one permit a year?
 18 **A. One, two. There may be none, one or two.**
 19 **Q.** So you don't get permits and then backlog
 20 them so you've got them in inventory, so to speak?
 21 **A. We have permits that we have not started**
 22 **mining on yet.**
 23 **Q.** Okay.
 24 **A. That may be because of other reasons,**
 25 **sulfur. There's one that has a gas line through**
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1 **the middle of it we haven't been able to get**
 2 **anybody to remove it, and it may fall to us.**
 3 **Q.** You mentioned that you're
 4 secretary/treasurer for Hepburnia Coal Company.
 5 Who are the other officers, and who are
 6 the directors?
 7 **A. The directors are Donald Spencer, Shad**
 8 **Spencer and myself. The officers are Darrell**
 9 **Spencer, president; Shad Spencer, vice president;**
 10 **and myself as secretary/treasurer.**
 11 **Q.** And you said before, you're the land
 12 agent for Spencer Land Company?
 13 **A. Yes.**
 14 **Q.** But you're not an officer?
 15 **A. It's a partnership --**
 16 **Q.** Okay.
 17 **A. -- and the partners are Donald Spencer**
 18 **and Robert Spencer.**
 19 **Q.** Generally, what's your role as land agent
 20 for Spencer Land Company? Can you describe the
 21 activities that you undertake?
 22 **A. Right. It's trying to find properties**
 23 **for mining; managing the properties that we**
 24 **already have, whether it be for gas, or timber, or**
 25 **right-of-ways, or anything that might pop up with**
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1 **the properties we already have, even selling them,**
 2 **leasing.**
 3 **Q.** Do you negotiate royalties?
 4 **A. Yes.**
 5 **Q.** Have you had an opportunity to go back
 6 and review the relationship of Hepburnia with
 7 Gurosik?
 8 **A. I've looked at the files, went to DEP to**
 9 **look at the files. That's what I have done.**
 10 **Q.** Has Hepburnia entered into any other
 11 similar relationships, whereas Gurosik wouldn't
 12 call this one particularly a contract mining
 13 agreement, although, it was akin to it, I suppose,
 14 but where you would enter into an arrangement with
 15 a company, they get the permit, and you handle
 16 other business aspects, including marketing coal
 17 and what have you?
 18 **A. Yes, we have.**
 19 **Q.** So is the Gurosik relationship unusual?
 20 **A. Portions I found of it unusual was the --**
 21 **when John had said that we paid the royalty. And**
 22 **usually, when a company goes out and gets a lease,**
 23 **they're responsible for the royalty. That's what**
 24 **I found odd. But I've never seen the lease**
 25 **agreement between King and Gurosik.**
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1 **Q.** There is no assignment, as far as you
 2 could see in reviewing the records, assignment of
 3 the lease?
 4 **A. No.**
 5 **Q.** Did you know, before you joined
 6 Hepburnia, anything about Gurosik Coal Company?
 7 **A. No.**
 8 **Q.** When did you first become aware of them
 9 and the relationship with Hepburnia?
 10 **A. I knew that he was subcontracting on a**
 11 **job, the King job. I didn't have any firsthand**
 12 **knowledge of him being on there. That was, I**
 13 **think, 1985, 1986.**
 14 **At a later date, John was actually a**
 15 **subcontractor for Hepburnia Coal Company jobs, and**
 16 **it would be our permit and we would have been**
 17 **responsible for getting -- doing everything,**
 18 **except John, as a subcontractor, would have done**
 19 **the mining, prepared the coal for market, then we**
 20 **would have taken over from there. So I guess**
 21 **probably in the nineties.**
 22 **Q.** Were you generally pleased with his work
 23 as a contract miner?
 24 **A. My role didn't include that back then,**
 25 **you know, watching -- I didn't go to the job to**
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1 see what he did or what he didn't do. I would see
2 the results of maybe the coal that came in, and I
3 didn't see any -- I didn't recognize or remember
4 any problems about that. But I wouldn't have any
5 firsthand knowledge of how he mined.

6 Q. Have you heard of any problems, within
7 the company, about the way he operated?

8 A. Yes.

9 Q. What kind of problems?

10 A. Well, this King site, it went from just
11 what we thought would have been a normal mining
12 operation, and it transpired into problems with
13 the water and the reclamation portion of it.

14 Q. Was that during the operation?

15 A. I don't believe so. I think it was -- I
16 shouldn't say -- I don't know. I haven't been to
17 the King site until last year, when Mike Potter
18 and I were driving by, and he said, "That's where
19 the King job was." I said, "Let's go see it."

20 Q. Is that the only operation in which there
21 were problems talked about at Hepburnia?

22 A. The last job that John did for us was
23 Kyler Run, and I don't know what precipitated it,
24 but he just left. He left the job.

25 Q. He walked off the job?

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1 A. It was his equipment, and he moved it off
2 the job. We, as Hepburnia Coal Company, went back
3 in with our own equipment and finished it. I
4 tried to get a hold of John, but he would not
5 respond, so I don't know what happened. If
6 something happened, I never knew what it was. I
7 just know that at one point in time he was mining,
8 he left, and I never got a reason why.

9 Q. So what was the discussion at the
10 company, need I ask, when your contract operator
11 walked off the job?

12 A. Just go finish it. So we did. We
13 finished the job.

14 Q. Were there any penalties imposed on him?

15 A. No, no, nothing. On John?

16 Q. Yes.

17 A. I don't know. All I do know is that we
18 went in, mined more coal and reclaimed it.

19 Q. So when I asked Mr. Gurosik this morning
20 whether there was tension with Hepburnia, he said
21 no, that doesn't sound like it's accurate to me.

22 A. That's your opinion.

23 Q. What's your opinion?

24 A. My opinion is this, that something
25 happened, and it required him to leave. We tried

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1 to find out what the problem was, but there was no
2 response.

3 Q. So as far as you know, he wasn't thrown
4 off the job?

5 A. No, no, no. I mean, we've had other
6 things with John since then, you know. He's
7 crossed our property with timber. We don't know.

8 Q. So you mentioned -- I want to get the
9 dates here. You mentioned you've been with the
10 company since 1993?

11 A. Full-time, yes.

12 Q. Full-time. Were you part-time before
13 that?

14 A. Yeah, I was. I worked in county
15 government, was a county commissioner, and I also
16 did work at Hepburnia Coal Company, Spencer Land
17 Company at the same time.

18 Q. When did that start?

19 A. 1979.

20 Q. So other than your public service, have
21 you been with Hepburnia/Spencer for almost your --

22 A. After I left public service, yes.

23 Q. But even before that?

24 A. Yes.

25 Q. So --

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1 A. Well, about the same -- I started working
2 in, I think it was 1979. That's when I took -- I
3 took office in 1980.

4 Q. Is that a full-time job?

5 A. It could have both been, but I was at the
6 county courthouse most of the time. But if it
7 required me to go do something, I did it early in
8 the morning, in the afternoons. I worked a lot of
9 hours.

10 Q. Okay. So you've got a long history with
11 the company and a long institutional memory, I
12 suppose. Is that correct?

13 MR. SEAMAN: We aren't talking about the
14 memory, are we?

15 THE WITNESS: We're just going over about
16 being 60 years old.

17 BY MR. GORTON:

18 Q. Well, if your memory was working, it
19 would have a long institutional memory, it sounds
20 like.

21 In your own words, as I said to
22 Mr. Gurosik this morning, can you explain what
23 your perceptions are of the relationship between
24 Hepburnia and Gurosik in regards to the King Mine?

25 A. My understanding, he was a -- he had the

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1 permit, he contracted with the land owner for an
2 agreement, he did the mining, he was to do the
3 reclamation, he was to do the one-stop thing.
4 Hepburnia was paying him for coal, and we
5 evidently -- I mean, Hepburnia officers, of which
6 I witnessed some of them, they signed the
7 indemnity agreement.

8 Q. Okay, we'll get to that in a moment. You
9 heard him say this morning, and as a matter of
10 fact, it was a subject of extensive examination
11 from your counsel, about the, let's call it the
12 reclamation escrow account, for lack of a better
13 term. You heard him talk about premiums. He
14 didn't really answer AML fees, but it appeared
15 clear that he didn't pay them?

16 MR. SEAMAN: I object to the form of
17 that.

18 BY MR. GORTON:

19 Q. He didn't answer who paid them.
20 Are you familiar with any of those
21 payments that Hepburnia would have been making on
22 behalf --

23 A. No.

24 Q. Have you reviewed the records at all
25 to --

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1 A. I've looked at some of our records, and I
2 can't say that I have looked at every line item on
3 books, that are this big (indicating) for one
4 year, that we paid any reclamation. I don't
5 believe we would have.

6 I see in there where there was -- there
7 was line items saying King royalty, and then where
8 there is reimbursement, King reimbursement. I'm
9 not positive of how that all worked.

10 Q. Would you agree that Hepburnia paid the
11 premiums on the bonds?

12 A. Yes.

13 Q. And in the discussions with this
14 reclamation escrow account, do you ever do that
15 for any other contractors?

16 MR. SEAMAN: I object to that. I don't
17 think it's been established that they did it.

18 MR. GORTON: He can answer yes or no.

19 MR. SEAMAN: He can't answer yes or no
20 with the way the question was phrased.

21 THE WITNESS: I have no --

22 MR. SEAMAN: Stop, stop, stop. When I
23 object, you stop. Okay?

24 THE WITNESS: Okay.

25 MR. SEAMAN: I object to the form of the

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1 question in that it assumed that such an account
2 was established.

3 MR. GORTON: Let me rephrase it.

4 Q. Does Hepburnia establish reclamation
5 escrow accounts for any of its contractors?

6 A. Yes.

7 Q. How are those structured 1?

8 A. Depends on the agreement we have with the
9 contractor.

10 Q. Would it be something like X dollars --

11 A. You're talking about a subcontractor.
12 You're not talking about a contractor. And that's
13 what John was, he was a contractor.

14 MR. SEAMAN: We need to clarify that,
15 then. Contract miner, subcontract miner, what do
16 you mean?

17 THE WITNESS: I would expect -- and I'm
18 not positive about all this -- that a
19 subcontractor that we would require, or we would
20 create an escrow account, if -- but it has to work
21 two ways. If the other party says, "No, I'm not
22 going to do it," then you don't do it.

23 And a contractor -- we've had contractors
24 through the years, we've never -- we've never
25 created an escrow account for a contractor.

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1 BY MR. GORTON:

2 Q. Why not?

3 A. Because they're responsible for their own
4 mining operation. The only thing different in
5 this case is, John asked for co-signatures from
6 these guys, from the Spencers.

7 Q. So the quid pro quo for such a thing was,
8 John was asking for the use of the Hepburnia and
9 family-related credit to get the bond. So I'm
10 wondering if it would be -- well, even though he
11 was a contractor, based on the fact that there was
12 some risk that the Hepburnia parties were
13 assuming, if it's possible that there was an
14 escrow account established.

15 A. I never saw an agreement we had with
16 John.

17 Q. Have you spoken to your accounting
18 department to determine if there is some account
19 sitting out there that was established for this
20 purpose?

21 A. No.

22 Q. Mr. Gurosik said he couldn't remember the
23 rate he was paid for the coal.

24 Can you remember from anything you
25 reviewed?

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- 1 **A. From just division of the tons mined**
 2 **versus was he paid in royalty, yes.**
 3 **Q.** What would that be?
 4 **A. \$19 a ton.**
 5 **Q.** I know that was back in the market in the
 6 late eighties, but from your experience, does that
 7 sound reasonable at the time?
 8 **A. It all depended on the quality of the**
 9 **coal. Some coal that would be better would**
 10 **probably bring a higher price. They were all**
 11 **negotiated separately, based on other factors,**
 12 **too.**
 13 **Q.** Who would have negotiated those terms?
 14 **A. In '86?**
 15 **Q.** Yes.
 16 MR. SEAMAN: Do you know who it is?
 17 Are you talking specifically about the
 18 King job?
 19 MR. GORTON: Yes.
 20 MR. SEAMAN: Do you know who negotiated
 21 the King job.
 22 THE WITNESS: I do not know who
 23 negotiated it, no.
 24 BY MR. GORTON:
 25 **Q.** What position in the company generally

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- 1 does those negotiations, would it be Mr. Spencer
 2 himself?
 3 **A. Robert Spencer handled a lot of those,**
 4 **but I don't know if he did.**
 5 **Q.** Would you agree that it would have been
 6 senior management, in any case, based on your
 7 experience with the company?
 8 **A. Yes.**
 9 **Q.** I did already ask you who your bonding
 10 agents are here. You said Bloom.
 11 **A. And Rockwood.**
 12 **Q.** Are all your bonds with Rockwood at this
 13 time?
 14 MR. SEAMAN: You already asked that.
 15 MR. GORTON: I said all active mines.
 16 MR. SEAMAN: You already asked that.
 17 MR. GORTON: You're objecting --
 18 MR. SEAMAN: What's the question again.
 19 BY MR. GORTON:
 20 **Q.** Are all active mines now bonded by
 21 Rockwood?
 22 MR. SEAMAN: Go ahead.
 23 THE WITNESS: Yes.
 24 BY MR. GORTON:
 25 **Q.** Do you provide surety credit for any of

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- 1 your other contract operators, in other words, a
 2 situation like with Mr. Gurosik?
 3 MR. SEAMAN: Like with Mr. Gurosik, like
 4 on the King job?
 5 MR. GORTON: On the King job, yes.
 6 THE WITNESS: We don't have any other --
 7 we don't have any arrangement with anybody else
 8 like we had with John, as a contractor, right now.
 9 BY MR. GORTON:
 10 **Q.** Right. But that really wasn't the
 11 question.
 12 The question was, do you provide surety
 13 credit support?
 14 **A. No. For contractors?**
 15 **Q.** Yes.
 16 **A. No.**
 17 **Q.** For subcontractors?
 18 **A. If it's our permit, we have to.**
 19 **Q.** Well, if it's your permit, you have to
 20 bond it?
 21 **A. Yes, yes.**
 22 **Q.** Right.
 23 **A. But we don't provide any help to any**
 24 **other contractor that would be mining on his own**
 25 **permit.**

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- 1 **Q.** And for all your existing contractors,
 2 they're not asking for anything else, they provide
 3 the permit and they take all the risk associated
 4 with it?
 5 **A. Yes.**
 6 MR. SEAMAN: Excuse me a second.
 7 (Discussion held off the record.)
 8 THE WITNESS: We have no contractors.
 9 MR. SEAMAN: Because he said "active."
 10 THE WITNESS: Active.
 11 BY MR. GORTON:
 12 **Q.** What about any of your recent contractors
 13 that are no longer active?
 14 **A. We've never provided any bond support for**
 15 **them.**
 16 **Q.** Okay. In your relationships with
 17 subcontractors, or contractors when you have them,
 18 are they usually in writing?
 19 **A. Most recently, yes.**
 20 **Q.** Were you surprised to hear that there was
 21 no written agreement with Mr. Gurosik?
 22 **A. On the King job?**
 23 **Q.** Yes.
 24 **A. I thought we had something, but we**
 25 **couldn't locate it. If it exists, I don't know**

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1 where it is.

2 Q. The fact that it may not exist, would
3 that be surprising to you?

4 A. Bob did a lot of things like that, that
5 it was -- it was more or less, "Here's what we
6 expect. Can you provide? We'll pay you." It
7 was, if you want to call it a handshake, Bob did
8 that a lot with the contractors back then.

9 Q. Okay.

10 A. And don't lose sight of the fact that
11 John was a lot like our other contractors. We
12 just bought coal from them.

13 Q. But the distinction here is, you also
14 provided surety credit for him.

15 A. Right.

16 Q. So I noticed that you did witness some of
17 the signatures on the General Agreement of
18 Indemnity, so were you familiar generally with the
19 transaction with Mr. Gurosik?

20 A. I was a notary. And I don't know if
21 there was notary documents -- or notarized pages
22 that should have been included in there. That's
23 probably the reason why I did it. I thought there
24 would be something that would have to be
25 notarized. That's probably why they threw it on

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1 my desk and said, "Doesn't this have to be
2 notarized?"

3 Q. Well, it probably had to be witnessed.

4 A. I know it had to be witnessed, but a lot
5 of times, whatever was thrown on my desk, if they
6 thought it had to be notarized, they would just
7 put it there. If it was just witnesses, I would
8 just witness it. But, that's probably how my name
9 got there, because they thought it should be
10 notarized.

11 Q. Right. But my question was, would that
12 experience have caused you to take some interest
13 in this transaction?

14 A. No. No, I -- I would have just signed as
15 a witness, or as a notary, without even reading
16 the document mostly.

17 Q. In reviewing the records -- this is more
18 of a formal question. In reviewing the records of
19 the company, did you come across any corporate
20 minutes, notes, resolutions or other documents
21 that discussed the relationship with Mr. Gurosik
22 for the King Mine?

23 A. Not that we haven't already provided.

24 MR. SEAMAN: He's speaking specifically
25 to corporate minutes.

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1 THE WITNESS: Yeah. We couldn't find
2 any.

3 MR. SEAMAN: You couldn't find any of
4 that stuff.

5 THE WITNESS: We looked. We couldn't
6 find any minutes that said, you know, that we have
7 an agreement or we have this. We looked back in
8 that time frame.

9 BY MR. GORTON:

10 Q. Do you remember any discussions in -- and
11 I understand some of the Spencers are, you know,
12 no longer available to address some of these
13 issues -- but do you remember any conversations,
14 say with Robert Spencer or anybody else, regarding
15 the relationship with Mr. Gurosik on the King
16 Mine?

17 A. Specifically him talking about the King
18 Mine?

19 Q. Yes.

20 A. No. I can recall, "Get a check ready for
21 John," or something like that. I remember him
22 saying those things, but I couldn't have told you
23 for what reason.

24 Q. Who would we talk to or would be aware of
25 if in fact there were proceeds from the sale of

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1 Gurosik's coal to establish collateral for the
2 bond? In other words, this reclamation escrow
3 account we've been talking about.

4 A. At that time?

5 Q. Or at this time.

6 A. Well, I mean, the escrow account
7 established back in 1985, '86?

8 Q. Yes.

9 A. Well, it would have been maybe Butch
10 Sutika, maybe Fred D'Angelo. Those are the two I
11 felt that probably would have known if there was
12 an existence of one.

13 Q. Is Fred D'Angelo still with the company?

14 A. No.

15 Q. When did he leave?

16 A. Maybe 15 years ago. Again, I'm not
17 positive. It's a long time ago.

18 (Discussion held off the record.)

19 BY MR. GORTON:

20 Q. Do you recall yourself having any
21 conversations with anybody from Utica, or the
22 agents that supplied the bonds, in regards to the
23 King Mine?

24 A. No.

25 Q. Even leading up to or after the

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1 forfeiture?

2 **A. Way after the forfeiture. You're talking**
3 **about like a couple years ago. That would be you.**
4 **You were the only one I talked to.**

5 **Q.** What about the agents here at Bloom or
6 Evergreen?

7 **A. I think about the time you called, I**
8 **think we asked if we could have copies of what was**
9 **signed. I think that they sent up these things**
10 **(indicating). That's about the only conversation**
11 **we had. And it was very recent.**

12 **Q.** Were there any discussions with them in
13 regards to the implications of the General
14 Agreement of Indemnity?

15 MR. SEAMAN: "Them" being who?

16 MR. GORTON: The agents.

17 THE WITNESS: Bloom?

18 BY MR. GORTON:

19 **Q.** Yes. Bloom or Evergreen.

20 **A. I'm not sure I talked to anybody from**
21 **Evergreen. And I -- they just sent those up. I'm**
22 **not sure they told us anything other than, "Here**
23 **they are."**

24 **Q.** You recall getting a letter from me --
25 let's pull that letter out -- dated November 10.

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1 I'll give it to you. That will be Exhibit 1. As
2 I said to Mr. Gurosik, I'm just trying to find
3 out --

4 MR. WAGNER: May I suggest we number this
5 different than a 1?

6 MR. SEAMAN: Morgan Exhibit 1.
7 (Discussion held off the record.)

8 (Timothy Morgan, Exhibit No. 1 marked for
9 identification, attached hereto.)

10 BY MR. GORTON:

11 **Q.** Do you recall receiving that letter?

12 **A. Yes.**

13 **Q.** Do you recall the conversation we had
14 prior to that letter?

15 **A. Prior?**

16 **Q.** Prior to.

17 **A. Prior, okay. Well, I know it was around**
18 **the time.**

19 **Q.** Or around the time the letter came out.

20 **A. You and I had a conversation, yes.**

21 **Q.** To figure out what's going on?

22 **A. Right.**

23 **Q.** What was the company's reaction to notice
24 from me on behalf of Utica?

25 MR. SEAMAN: What was the company's

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1 reaction?

2 BY MR. GORTON:

3 **Q.** Hepburnia Coal Company's reaction and
4 that of Spencer Land indemnitors, or any of the
5 other individuals? In other words, what was the
6 discussion about how this was going to be
7 addressed?

8 **A. I thought we felt that John had to own up**
9 **to it. It was his mine.**

10 **Q.** In other words, since he's the permittee;
11 he's responsible for it?

12 **A. Yes.**

13 **Q.** In other words, he was responsible for
14 the issues related to the forfeiture because he
15 was the permittee, is that what the company felt?

16 **A. You have to ask Don how he felt. That's**
17 **how I felt.**

18 **Q.** Did the tenor of the conversation change
19 in light of the fact that the indemnitors included
20 Hepburnia, Spencer Land and others?

21 **A. We knew that was out there.**

22 **Q.** And what was the nature of the discussion
23 in regard to that, did the company -- did
24 Hepburnia engineering staff and management
25 determine, "We need to take a harder look at this

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1 in order to possibly mitigate the exposure?"

2 **A. I wouldn't say that, no. No.**

3 **Q.** Isn't it true you met with the
4 Pennsylvania DEP to discuss it?

5 **A. We went to the DEP to look at records;**
6 **myself, mostly to bring myself up to speed on what**
7 **happened here. And that's basically what we went**
8 **up there for, to look at all their records. We**
9 **did discuss, you know, with them the site. They**
10 **were forthcoming in giving us the information.**

11 **Q.** Who did you speak with at the department?

12 **A. I don't know. I don't know the people**
13 **that well.**

14 **Q.** Mark Odenthal, does that ring a bell?

15 **A. I know he's up there. He may have been**
16 **one of them.**

17 **Q.** Lori Odenthal?

18 **A. I know she's up there, too. I'm not sure**
19 **about if we spoke to her directly on this.**

20 **Q.** Did you talk to them about the
21 possibility of doing some work on the ground in
22 order to address the issues that they were
23 concerned about in lieu of collecting the bond?

24 **A. At that point -- when we went there?**

25 **Q.** Yes.

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1 **A. I can't recall doing that, because we had**
 2 **done a lot of work up to that time, even John, as**
 3 **he explained. He must have done as much as he**
 4 **could. I know that we did things that they, the**
 5 **DEP, requested on the site. I don't know what**
 6 **else we could have done.**

7 **Q.** My question was, did you ask them what
 8 they might want done in order --

9 **A. No, I don't believe we said, "What do you**
 10 **want done?"**

11 **Q.** Because there's been some allegation
 12 that, at one point, somebody from Hepburnia told
 13 the department, "Take the bond."

14 Does that sound familiar to you?

15 **A. Just today. I don't know. Did they say**
 16 **who said that?**

17 **Q.** I think it's in one of the responses --
 18 or the interrogatories.

19 **MR. GORTON:** Do you recall?

20 **MS. DRUST:** No, I don't think it was in
 21 the interrogatory. We could check back.

22 **BY MR. GORTON:**

23 **Q.** I believe it's in the record. But that
 24 wouldn't have been you, would it?

25 **MR. SEAMAN:** My recollection is, he
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1 didn't even want to give the name of the
 2 inspector, and the inspector didn't tell him who
 3 told him, he just said, "Somebody told me."
 4 That's what I remember from Gurosik's testimony
 5 this morning.

6 **MR. GORTON:** There's some other stuff in
 7 the interrogatories.

8 **Q.** What else did Hepburnia do on the site
 9 pre-forfeiture in order to meet environment
 10 compliance requirements on the permit?

11 **A. I don't -- specifically, I can't tell you**
 12 **what they did. I just know we did numerous**
 13 **environmental things with the ground. I know we**
 14 **planted. We put lime addition. We tried to get**
 15 **good vegetation. I don't know if there was any**
 16 **ditches for better flow for the water. I don't**
 17 **know. I'm not sure. I do know about some of the**
 18 **reclamation work we did. I know we did some**
 19 **reclamation work.**

20 **Q.** What about upgrading the passive
 21 treatment system, possibly?

22 **A. Yeah, we may have.**

23 **Q.** What about water monitoring to meet the
 24 sampling requirements for the permit?

25 **A. I don't know.**

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1 **Q.** Laboratory analysis?

2 **A. That would be the same thing.**

3 **Q.** Do you have your own lab?

4 **A. No.**

5 **Q.** Who do you use?

6 **A. We use Mahaffey Labs.**

7 **Q.** I guess it begs the question, why did you
 8 do that if it was John's obligation as the
 9 permittee?

10 **A. There was a mentality at the office that**
 11 **if you -- you saw bonds were forfeited, you -- and**
 12 **DEP tied you into it, you might not get any more**
 13 **bonds, you might not get any more mining permits.**
 14 **That was -- at some point in time, that was the**
 15 **mentality.**

16 **Q.** I understand. So what you're referring
 17 to is, under the Pennsylvania Surface Mining and
 18 Conservation Act, Surface Mine Reclamation
 19 Conservation Act, the possibility of being tied to
 20 the AVS system, where you might be permit blocked
 21 if you're connected to a site in violation; is
 22 that right?

23 **A. Yes. Well, that was the mentality.**
 24 **Where our engineers got that, I'm not certain of.**
 25 **But I know there was a mentality that, you know,**

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1 **let's just -- let's see if we can't fix this.**

2 **Let's see if we can't fix this. It doesn't seem**
 3 **all that bad. Go the extra mile. John wasn't**
 4 **going to, and so we did.**

5 **Q.** I understand. So based on the risk that
 6 you perceived of possibly having Hepburnia tied to
 7 the Gurosik site, you thought you would mitigate
 8 that risk by doing some nominal, or remedial
 9 reclamation-type work.

10 **A. Probably whatever DEP asked us to do.**

11 **Q.** Do you recall a visit by DEP?

12 **A. Do I?**

13 **Q.** Yes.

14 **A. I've never -- no. The only time I ever**
 15 **went to DEP -- our engineers go, but I don't**
 16 **recall any.**

17 **Q.** Who else was with you at the meeting with
 18 DEP?

19 **A. Mike Potter.**

20 **Q.** Okay, Mike. Mike would remember who you
 21 met with?

22 **A. Yeah. He deals with them all the time.**

23 **Q.** Right. Prior to the meeting with DEP,
 24 did your engineers, do you know, take a look at
 25 the effluent quality and determine what might be

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1 the best kind of passive system to put in there?

2 **A. I don't know.**

3 **Q.** Do you have any idea where John got the
4 idea for the design?

5 **A. No. I think he said that he had seen it**
6 **other places, or he had witnessed it somewhere**
7 **else.**

8 **Q.** Now, does Hepburnia have its own passive
9 treatment system on other sites?

10 **A. Hepburnia has no sites where we have bad**
11 **water.**

12 **Q.** Really?

13 **A. Right.**

14 **Q.** That's unusual --

15 **A. Yes, it is.**

16 **Q.** -- in this geography. Good for you.

17 **MR. GORTON:** We're almost done. Let's
18 take two or three minutes.

19 (Break in deposition taken.)

20 **BY MR. GORTON:**

21 **Q.** I'll ask you this generally --
22 housekeeping -- is there anything that I haven't
23 asked that you think would be important for us to
24 know in dealing with this matter?

25 **MR. SEAMAN:** Do I have to kick you?

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1 **THE WITNESS:** Don Spencer knows them.

2 **BY MR. GORTON:**

3 **Q.** Let me ask you this --

4 **MR. SEAMAN:** Do you ever get anybody to
5 answer that question?

6 **MR. GORTON:** Yes. People like to talk.

7 **THE WITNESS:** Well, John did, didn't he?
8 He started right off by telling you what the
9 problem was.

10 **BY MR. GORTON:**

11 **Q.** You went through your history. You've
12 been with Hepburnia for many, many years, even
13 during your position as a commissioner and
14 thereafter, since the seventies through 2009.
15 Obviously, you're a mining professional and know
16 the aspects about it.

17 **Why do you think that the**
18 **Hepburnia-related defendants, including Spencer**
19 **Land and the individuals, would sign a General**
20 **Agreement of Indemnity with the Gurosiks if they**
21 **didn't intend to be bound to the indemnification?**

22 **MR. SEAMAN:** Object to the form of the
23 question. I think that's asking for the ultimate
24 question in this, and I don't see that he should
25 be responding to that. That's asking for a legal

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1 conclusion, and I'm going to object to that and
2 direct him not to answer.

3 **MR. GORTON:** Let me rephrase it, then.

4 **Q.** You've been around the block for many,
5 many, years.

6 Does Rockwood have an indemnity Agreement
7 with Hepburnia?

8 **A. Like these?**

9 **Q.** Just a General Agreement of Indemnity.

10 **A. I believe we signed one on every bond.**

11 **Q.** On every bond?

12 **A. On every bond.**

13 **Q.** That's interesting.

14 **A. I think we do. And we sign it. We sign**
15 **it for Bob and for Don.**

16 **Q.** All right. So you're familiar with the
17 concept of indemnification.

18 **A. Yes. And if that's what we sign. I**
19 **think that's what the letterhead says,**
20 **indemnification.**

21 **Q.** So it's common in the mining permitting
22 business that you don't get your permit without a
23 bond, and you don't get a bond without executing a
24 bond agreement with a surety?

25 **A. I believe that's what we execute. If we**

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1 **had one here, I could tell you what it is. But**
2 **they're all pretty standard.**

3 **Q.** Why do you believe all the defendants in
4 this case signed an indemnity agreement with John
5 Gurosik and his wife?

6 **A. Why do I believe? You know, Bob had a**
7 **relationship with John. Bob Spencer had a**
8 **relationship with John. And John asked him to see**
9 **if he could get his brothers and everybody to do**
10 **it. That's -- it's there. It's out there. It's**
11 **what they signed. John would have had to have**
12 **asked and Bob would have had to asked his brothers**
13 **and the spouses. They signed just whatever their**
14 **husbands signed. They understood that.**

15 **Q.** So it was due to a positive relationship
16 Mr. Spencer had, Bob Spencer had, with John
17 Gurosik?

18 **A. I believe.**

19 **Q.** Where they agreed to extend the
20 Hepburnia-Spencer-land-related individuals surety
21 credit on behalf of Gurosik?

22 **A. We never saw anybody or been around**
23 **anybody that defaulted or had a bond or permit**
24 **that got to that point, you know. I mean, even**
25 **many years later, you know, we didn't think John**

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1 **had a problem. We didn't know this was going to**
 2 **be where it materialized to. Hindsight is**
 3 **perfect. That's it.**

4 MR. GORTON: Okay. Let me take two
 5 minutes with my esteemed colleague in the hall.
 6 (Break taken in the deposition.)

8 EXAMINATION

9 BY MR. WAGNER:

10 Q. Mr. Morgan, my name is Tom Wagner, and
 11 I'm an attorney from St. Mary's, PA. As you know
 12 from attending the previous deposition, I
 13 represent John Gurosik, Gurosik Coal Company and
 14 Sharon Gurosik in this matter. I don't have too
 15 many questions, but they're very important ones.

16 First of all, as the secretary of
 17 Hepburnia Coal Company, do you consider yourself
 18 to be the custodian of the records of that
 19 company?

20 MR. SEAMAN: Excuse me. When you say
 21 "records," there are all sorts of records.

22 BY MR. WAGNER:

23 Q. Corporate records.

24 A. **I try to. I mean, since I've been the**
 25 **secretary, which has only been since 2001, I've**

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1 **tried to, you know, tried -- the minutes we do,**
 2 **company minutes, we try to get them in the book.**

3 Q. As the treasurer of Hepburnia Coal
 4 Company, are you familiar with the financial
 5 records of Hepburnia Coal?

6 A. **Since then, yeah, probably 2000**
 7 **something.**

8 Q. Since 2000?

9 A. **Yes.**

10 Q. Have you had occasion to look back
 11 through records, financial records, of the
 12 company, prior to 2000?

13 A. **Yes.**

14 Q. We all know that the surface mining job
 15 involved in this litigation occurred in 1986.

16 A. **Yes.**

17 Q. The manner in which Hepburnia Coal
 18 Company kept its financial records in 1986, would
 19 that be the same manner in which those records
 20 were kept when you came on board as treasurer in
 21 2000?

22 A. **No.**

23 Q. Things are done differently now?

24 A. **Yes.**

25 Q. Have you had occasion to look back

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1 through the financial records prior to 2000?

2 A. **Yes.**

3 Q. Do you understand how they were kept?

4 A. **Not very well. We have big books.**

5 Q. Your understanding is not very well, or
 6 the records are not kept very well?

7 A. **I couldn't interpret some of them. I'm**
 8 **not an accountant, and I understand our system,**
 9 **but I'm not sure I understood the system we had**
 10 **back then.**

11 Q. Okay. Michael Potter is an engineer for
 12 Hepburnia Coal Company now?

13 A. **I better qualify that. He's not an**
 14 **engineer.**

15 Q. Okay.

16 A. **He's a registered surveyor, but he is our**
 17 **company engineer. He's not an engineer. He's not**
 18 **a PE.**

19 Q. Do you know whether he was working for
 20 Hepburnia Coal back in 1986?

21 A. **He was not.**

22 Q. Do you have any idea who the engineer
 23 was, company engineer, back in 1986?

24 A. **We had one PE, William Manes. And we had**
 25 **another register surveyor, Roger Thurston. Roger**

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1 **basically was in charge of our engineering staff.**

2 Q. Thank you. I think you were asked
 3 whether or not there was a written agreement with
 4 Gurosik Coal Company relating to the King Mine.

5 A. **We never could locate one.**

6 Q. So you don't know whether there's one
 7 because you've not been able to locate it?

8 A. **Right.**

9 Q. So there may or may not have been one?

10 A. **We don't know.**

11 Q. I assume that, in response to the
 12 interrogatories that were served on the company,
 13 that you made a diligent search for that?

14 A. **Yes.**

15 Q. During your direct examination by Mr.
 16 Gorton, you talked about the difference between
 17 contractors and subcontractors, as far as
 18 establishing an escrow reclamation escrow account
 19 is concerned.

20 A. **Yes.**

21 Q. Was it a regular practice of Hepburnia
 22 Coal Company to have a reclamation escrow for
 23 subcontractors?

24 A. **If we had an agreement and that agreement**
 25 **called for it, we created one.**

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1 Q. Okay. Can you distinguish for me the
2 difference between a contractor and a
3 subcontractor?

4 A. **My opinion only, a subcontractor would be**
5 **mining on a Hepburnia Coal Company permit. A**
6 **contractor would be on his own, or somebody else's**
7 **permit.**

8 Q. Now, you say that's your opinion only.

9 A. Yes.

10 Q. What would you base your opinion on?

11 A. **Through the years, we've -- when we've**
12 **bought coal from others and they had their own**
13 **jobs and did everything, we called them**
14 **contractors.**

15 **A subcontractor was someone that was**
16 **doing it strictly on something that we possessed,**
17 **like a permit. That's how I --**

18 Q. When you use the words "through the
19 years," would you be talking about 1986?

20 A. Yes.

21 Q. It would include that year?

22 A. **Well, it would include that year, because**
23 **I've -- through the research of my records, I saw**
24 **we were buying coal from others, and they were --**
25 **we always considered them as contractors.**

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1 Q. And the term "subcontractors," is that a
2 term that you would have used, the company would
3 have used, back in 1986?

4 A. **I'm not sure about that far back, but**
5 **it's what I used. What I've used.**

6 Q. Does the company use that terminology
7 now --

8 A. Yes.

9 Q. -- subcontractors?

10 A. Yes.

11 Q. Has the company used that sort of
12 terminology, or that terminology since you became
13 a full-time employee?

14 A. Yes.

15 Q. And that would have been in 1993 --

16 A. Yes.

17 Q. -- that you became full time?

18 Mr. Morgan, did you assist Mr. Seaman in
19 the preparation of the Answers to Interrogatories
20 in this case?

21 A. Yes.

22 Q. And along with those Answers to
23 Interrogatories, there was a request for
24 production of documents.

25 Would you be remembering that, that there

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1 was such a request?

2 A. **I think the same one John -- he had a**
3 **request also.**

4 Q. Okay. Did you assemble those documents
5 for Mr. Seaman?

6 A. **I would have been one, yes.**

7 Q. Did you look at those documents after you
8 assembled them?

9 A. **I know I made copies. I probably scanned**
10 **through them. Did I sit down and try to interpret**
11 **every one? No.**

12 Q. If I showed you those documents now,
13 would you recognize them as being Hepburnia Coal
14 documents?

15 A. **I think.**

16 Q. I'm going to show you now the Answers to
17 Interrogatories. This is my own copy. But I'm
18 going to pick out one particular page. And it has
19 an entry on it dated 01-31-86. And I've
20 highlighted that entry.

21 MR. GORTON: Would this be Morgan
22 Exhibit 2?

23 MR. WAGNER: I'm sorry?

24 MR. GORTON: Morgan Exhibit 2?

25 MR. WAGNER: Actually, I don't think we

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1 need to copy this into the record.

2 (Discussion held off the record.)

3 MR. WAGNER: We'll mark that as Morgan
4 Exhibit No. 2.

5 (Timothy Morgan, Exhibit No. 2 marked for
6 identification, attached hereto.)

7 BY MR. WAGNER:

8 Q. I'm going to show you that particular
9 page of interrogatories. And there is an entry
10 there dated January 31, 1986. And under the
11 "memo," I see language which I interpret as
12 subcontractor coal King property.

13 A. Yes.

14 Q. Do you have any idea what that language
15 means?

16 A. **Well, I'm glad I told you that was my**
17 **opinion and not our auditor's opinion. That's how**
18 **he put it in here. Now, did he put in every one**
19 **like that? I don't know. But he put it in as a**
20 **subcontractor on this line.**

21 **Now, did he put it on every one of them?**
22 **This should show up numerous, numerous times. I**
23 **don't know. Once you start, it may continue.**
24 **That would be our auditor's opinion, just putting**
25 **that in there.**

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1 **Q.** The document itself, are you suggesting
2 that that is not part of the regular records of
3 the company, but rather is prepared by someone
4 outside of the company?

5 **A.** No, these would have been our records
6 from our internal accountants.

7 **Q.** Okay. Do you have any idea who that
8 person might have been in 1986?

9 **A.** Probably Fred D'Angelo.

10 **Q.** Fred D'Angelo?

11 **A.** Yes.

12 **Q.** So he would have prepared those documents
13 in the ordinary course of the business of
14 Hepburnia Coal?

15 **A.** Yes.

16 **Q.** And why would he have prepared those
17 documents?

18 **A.** You're talking about just the line item?

19 **Q.** Or the documents themselves.

20 **A.** You're talking about -- these are --
21 these are payment slips for -- so that they would
22 have record of the payment of an invoice or
23 something.

24 **Q.** Right.

25 **A.** As you can see here (indicating), it

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1 doesn't have "subcontractor" on this one.

2 **Q.** Right. When I looked through these
3 documents, I interpreted these as some sort of
4 register of payments that were made to various
5 parties by Hepburnia Coal.

6 **A.** Yes.

7 **Q.** Is that correct?

8 **A.** Yes, it is.

9 **Q.** Would that be your understanding of that?

10 **A.** Yes.

11 **Q.** So you don't have an explanation as to
12 why the word "subcontractor" was used in that
13 context?

14 **A.** No. Like I say, it's different in the
15 next one.

16 **Q.** Okay.

17 **A.** So I'm not sure. It's just his
18 interpretation of what it would be.

19 **Q.** Would you have expected that language to
20 continue to appear when payments were made to
21 Gurosik Coal?

22 **A.** It could have. If they started it out
23 that way, it could have continued on. Or they
24 could have changed it. Whatever they keypunched
25 in.

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1 **Q.** If I suggested to you that that's the
2 only entry like that on these payment records,
3 would you be surprised?

4 **A.** I wouldn't know for sure. If they only
5 had it once, you know, it's -- it's just what they
6 may have -- may have been told or may have
7 determined themselves. I'm not sure.

8 **Q.** The further entry to the left -- I'm
9 sorry, to the right of that, says -- there's an
10 amount, 20,213.75, and then it says, Gurosik Coal
11 Company.

12 Would you have any idea what that \$20,000
13 payment was for, based on the records?

14 **A.** No, but it might show up someplace back
15 here (indicating). If you go back, it may show --
16 this check number may show up someplace back in
17 here (indicating). I'm not sure.

18 MR. SEAMAN: By "back in here," you're
19 referring to?

20 THE WITNESS: Further back it may -- it
21 may show up as -- and that's why I said I wasn't
22 familiar with all those. This to me it looks like
23 it would have been a check run, and this was the
24 total amount of checks, and they probably just
25 made a calculation on how many checks they ran at

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1 that particular check run; whereby, back in here
2 (indicating) it was -- I'm not sure what kind of
3 an entry it was -- just to make sure that they
4 could run the checks later on.

5 BY MR. WAGNER:

6 **Q.** Can you tell me, by looking at this
7 entry, or any of the others, when this entry was
8 placed in the records of Hepburnia Coal?

9 **A.** It looks like the check run date was
10 February the 4th, 1986.

11 **Q.** Okay.

12 **A.** It looks to me like these were for
13 payments of something that was entered, or an
14 invoice of January 29th of '86.

15 **Q.** Okay. I'm going to go back toward the
16 beginning of this exhibit and look at a couple of
17 other documents, a couple of other pages from
18 these exhibits.

19 I'm going to look at -- I'm going to mark
20 it as Morgan Exhibit No. 3, and represent to you
21 that this is the very first page that was included
22 in the Answers to Interrogatories from this
23 payment register that we've been talking about.
24 And my interpretation of this is that there are
25 entries under Gurosik Coal Company. The first

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1 entry is dated January 10th of 1986, and shows a
2 payment of \$4,000 as an advance payment to Gurosik
3 Coal Company.

4 Is that how you would interpret that?

5 **A. Yes.**

6 (Timothy Morgan, Exhibit No. 3 marked for
7 identification, attached hereto.)

8 BY MR. WAGNER:

9 **Q.** The legend that is handwritten on the
10 right-hand side, do you have any idea what that
11 means?

12 **A. My guess is that -- it's my guess -- that**
13 **they had a check prepared, and probably the only**
14 **person that would have signed it would have been**
15 **Bob or Carl, I believe back then. So they may**
16 **have -- because they're all through there,**
17 **handwritten. I'm not certain of what that meant,**
18 **but in my opinion, it was done, and then they went**
19 **in and put it in there so they would have track --**
20 **record of it.**

21 **Q.** So are you suggesting that the check was
22 written and not entered --

23 **A. In the normal course --**

24 **Q.** -- in the normal course of business, then
25 the company came back later and added it, added it

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1 to the register?

2 **A. Yes. I think this is the register. So**
3 **they probably -- they probably did it that day,**
4 **and then, when they had a check run, they made**
5 **sure that it showed up so they wouldn't repeat it**
6 **again. Those are difficult. I can't interpret**
7 **everything in there either.**

8 (Timothy Morgan, Exhibit No. 4 marked for
9 identification, attached hereto.)

10 BY MR. WAGNER:

11 **Q.** I'm going to show you another page that
12 I've marked as Morgan Exhibit No. 4. And I'm
13 going to show you two entries on the bottom of
14 that page, and they're dated 2-7-86. And I
15 believe they're identified as "royalty payments."

16 **A. One looks like -- one looks like it's a**
17 **payment for royalty, and looks like it's been**
18 **deducted -- the same amount's been deducted as an**
19 **advance.**

20 **Q.** Can you explain what those two entries
21 mean?

22 **A. No. I'm not sure. Unless they made a**
23 **payment and then turned around and said, "We're**
24 **kind of reversing it because it's going to be**
25 **deducted later." I'm not sure.**

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1 **Q.** If I represent to you that there are
2 similar entries throughout this register --

3 **A. Exactly the same.**

4 **Q.** -- throughout 1986 --

5 **A. Yeah. We've looked at them. I don't**
6 **know what they mean.**

7 **Q.** You don't know what they mean. But they
8 appear to be a payment out and some sort of a
9 credit back?

10 **A. Yeah.**

11 **Q.** Would that be your interpretation?

12 **A. Fred D'Angelo could explain this.**

13 **Q.** Is it Fred D'Angelo?

14 **A. Yes.**

15 **Q.** Do you know where he lives?

16 **A. Curwensville.**

17 **Q.** Is he still alive?

18 **A. Yes.**

19 (Timothy Morgan, Exhibit No. 5 marked for
20 identification, attached hereto.)

21 BY MR. WAGNER:

22 **Q.** I'm going to show you another page I've
23 marked as Morgan Exhibit No. 5, and that entry is
24 dated March 15th of 1986. And on the right side
25 it says -- or my interpretation is, "less a

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1 royalty of \$6 per ton."

2 **A. I interpret it being the same thing we**
3 **just talked about. One is a royalty and then**
4 **there is a deduction for the royalty, or maybe --**
5 **in this case it's backwards, they have the royalty**
6 **deducted, then they have the royalty -- I mean,**
7 **whoever entered it had those two reversed from the**
8 **last one you just showed me.**

9 **Q.** Okay. But they're not the same numbers
10 that we were talking about before, certainly not
11 the same dates, and certainly not the same
12 amounts.

13 **A. No, these would be a different time.**

14 **Q.** Correct.

15 **A. But it's the same process as the last one**
16 **we talked about.**

17 **Q.** They do appear to be royalty payments,
18 though, don't they?

19 **A. Yeah. But I just don't understand why**
20 **they're under the subheading "Gurosik Coal" when**
21 **it appears that it's royalty, then it's deducted**
22 **as royalty.**

23 **Q.** Let me see that. Okay.

24 **A. This would be better explained by the**
25 **accountant who had the system.**

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1 **Q.** Okay. If I represent to you that the
2 entries contained in this payment register are for
3 a period between January of 1986 and November of
4 1986, would that seem correct to you?

5 **A.** I think almost everything was done in
6 1986.

7 **Q.** So does that mean, then, that if the last
8 payment was made sometime in November of 1986, no
9 further payments would have been made to Gurosik
10 Coal Company after that date for coal purchased?

11 **MR. SEAMAN:** Excuse me. I object to the
12 form. It makes it sound like there was coal
13 purchased after that that wasn't paid for.

14 **MR. WAGNER:** That is a good point. Let
15 me rephrase the question.

16 **Q.** Do you know whether Hepburnia Coal
17 Company purchased any coal from the King Mine
18 after November of 1986?

19 **A.** I'm not positive. I could go back. And
20 I think these came in years. I don't think, when
21 I looked through the records, that I saw anything
22 in 1987. I could have missed it, but -- you know,
23 the books are this thick (indicating). And I
24 believe everything got done in '86. Because I
25 think in 1985, we were buying coal from John from

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1 another job.

2 **Q.** Okay. And you testified earlier that in
3 Answers to Interrogatories, you made a diligent
4 search of the Hepburnia Coal records -- not that
5 you're perfect --

6 **A.** I'm not perfect.

7 **Q.** -- but you believe that you found
8 everything that relates to Hepburnia Coal -- I'm
9 sorry, to Gurosik Coal.

10 **A.** I'll be like John. I'll look again.

11 **Q.** It's not a trick question.

12 **A.** In my search, I didn't think that in
13 1987, which we have a book 1987, I think, that
14 there was anything in there. Not from the King
15 job.

16 **Q.** You testified that you thought that the
17 payment that was made to Gurosik Coal Company was
18 \$19 per ton.

19 **A.** I did a little bit of division. That's
20 the one I came up with numerous times. It could
21 have been different. I mean, as many different
22 times we paid, it could have been different. But
23 the ones I did say 19.

24 **Q.** There are ones that actually say \$21 per
25 ton.

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1 **A.** Okay.

2 **Q.** Do you have any reason to know why there
3 would be a difference between 19 and 21?

4 **A.** No.

5 **Q.** Okay. Do you have any idea what
6 participation Hepburnia Coal Company had in the
7 decision to forfeit the bond?

8 **A.** Pardon.

9 **Q.** Let me state that over.

10 Do you have any idea what participation
11 Hepburnia Coal Company had in the decision to
12 forfeit the bond?

13 **MR. SEAMAN:** Excuse me. I have to object
14 to the form of that. I don't believe Hepburnia
15 forfeited the bond.

16 **MR. WAGNER:** Let me rephrase the
17 question.

18 **MR. SEAMAN:** I think DEP forfeited the
19 bond.

20 **BY MR. WAGNER:**

21 **Q.** Did Hepburnia Coal Company ask DEP to
22 forfeit the bond?

23 **A.** I don't ever recall that, no. I don't
24 ever recall that.

25 **Q.** Do you think that did not happen?

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1 **A.** That we asked?

2 **Q.** Yes.

3 **A.** I don't think we would have asked. I
4 could stand corrected, but I don't believe we
5 said, "We don't care if you forfeit the bond or
6 not."

7 **Q.** You were asked about what things
8 Hepburnia may have done at the site to cure the
9 notice of violation from DEP, and you testified
10 that you weren't sure.

11 Is there anyone in your company who would
12 be sure as to what was done at the site?

13 **A.** Roger Thurston would be the best source
14 to explain all the remedial things that Hepburnia
15 did.

16 **Q.** And he's still employed?

17 **A.** No. Although, Roger, once in a while,
18 will certify a pond for us, and we'll pay him.
19 But he's strictly on a per item basis.

20 **Q.** Where is he located?

21 **A.** New Millport.

22 **Q.** Millport?

23 **A.** New Millport.

24 **Q.** Where's New Millport?

25 **A.** Near Kerrmoor, near Lumber City. It

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1 would be RD -- Curwensville, I believe.

2 Q. Curwensville, thank you.

3 (Discussion held off the record.)

4 MR. WAGNER: That's all the questions I
5 have.

6 MR. SEAMAN: Ready for me now?

7 THE WITNESS: Yes, sir.

8 MR. SEAMAN: You're done. You have a
9 right to read this and review it. You also have a
10 right to waive that and say, "I trust that she got
11 it correctly." When you review, you can't look
12 for, "I don't think that's the right answer," or,
13 "I shouldn't have said that," you're only to
14 looking to see if she made any mistakes. You have
15 a right to review it. It's your choice. Mr.
16 Gurosik chose to review it, so you can also, if
17 you'd like.

18 THE WITNESS: What's your advice? What's
19 your best advice?

20 MR. SEAMAN: I'd waive it.

21 THE WITNESS: I'll waive it.

22 (At 2:34 p.m. the deposition was
23 concluded. Signature waived.)
24

25

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1 COMMONWEALTH OF PENNSYLVANIA)

) SS

2 COUNTY OF ARMSTRONG)

3 I, Susanna C. Englert, Notary Public
4 within and for the Commonwealth of Pennsylvania,
5 do hereby certify that before the taking of the
6 deposition, the said deponent, TIMOTHY MORGAN, was
7 by me first duly sworn to testify to the truth,
8 the whole truth, and nothing but the truth, and
9 that the above deposition was recorded in
10 stenotype by me and reduced to typewriting under
11 my direction.

12 I further certify that the reading and
13 signing of the transcript of the deposition were
14 waived by the deponent and by counsel for the
15 respective parties and that the said deposition
16 constitutes a true record of the testimony given
17 by said deponent.

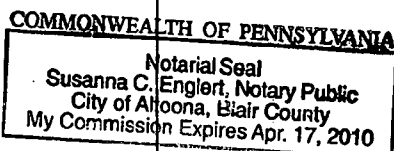
18 I further certify that I am not a
19 relative or employee or attorney or counsel or
20 financially interested directly or indirectly in
21 this action.

22 I further certify that the said
23 deposition was taken before me at the time and
24 place specified in the notice.

25 IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my seal of office at
Kittanning, Pennsylvania, on July 8, 2009.

Susanna C. Englert

21 SUSANNA C. ENGLERT
22 NOTARY PUBLIC
23
24
25



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BURNIA COAL COMPANY

01563

07/06/2000	DAP1037460	BUSINESS AUTO	\$1318.00	\$.00	\$1318.00
08/15/2000	BPA1037460	BUSINESS AUTO	\$1318.00	\$.00	\$1318.00
07/06/2000	CGL381896	COMP GEN LIABILITY	\$857.00	\$.00	\$857.00
07/06/2000	CXL8195C	UMBRELLA LIABILITY	\$848.00	\$.00	\$848.00
08/15/2000	CXL8195D	UMBRELLA LIABILITY	\$848.00	\$.00	\$848.00
07/06/2000	RIM7180E	INLAND MARINE	\$1350.00	\$.00	\$1350.00
08/15/2000	RIM7180F	INLAND MARINE	\$1350.00	\$.00	\$1350.00
07/19/2000	SU1366523	STRIP BOND SENECA	\$400.00	\$.00	\$400.00
07/19/2000	SU38514	STRIP BOND KING	\$4302.00	\$.00	\$4302.00

8/25/2000	190	#	15634	\$12591.00	\$.00	\$12591.00
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HELBURNIA COAL COMPANY
P.O. BOX 1
CRANFORD, PA 16835

COUNTY NATIONAL BANK
CLEARFIELD, PA 16830-0042
60-627/313 - 01

01563

12,591 Dollars and 00 Cents

DATE

AMOUNT

PAY
TO THE
ORDER
OF

BLOOM INSURANCE AGENCY
100 N. SECOND STREET
CLEARFIELD, PA 16830

8/25/2000 190

\$12,591.00

Tom Morgan

⑈015634⑈ ⑆031305278⑆ 1⑈22068⑈0⑈

NOT NEGOTIABLE

EXHIBIT

F

INVOICE

DATE

June 5, 2000

BLOOM INSURANCE AGENCY, INC.

COMPLETE INSURANCE & BONDING SERVICE

Fire, Auto, Bonds, Compensation
Life, Health and Accident, Hospitalization

108 N. 2nd Street

Telephone 765-5557

CLEARFIELD, PENNSYLVANIA 16830

Gurosik Coal Co., Inc.
c/o Hepburnia Coal Co.
P.O. Box I
Gramipan, PA 16838

MORTGAGEE:

RENEWAL DATE	POLICY NUMBER	COMPANY	PROPERTY AND COVERAGE	AMOUNT	PREMIUM
7/15/05	SU-38514	Utica Mutual	Stripping Bond 31.2 acres Pine Creek, Washington & Winslow Twp. KING 366047 ✓ 47-03	\$71,700.00	\$4,302.00

IF NOT WANTED YOU MUST RETURN AT ONCE
TO AVOID AN EARNED PREMIUM CHARGEALL PREMIUMS DUE ON THE
EFFECTIVE DATE OF THE POLICY

URED'S LEDGER LINE: (1) Accounts Receivable (2) Line Record

not being replaced

May 25, 1995

Gurosik Coal Co., Inc.
R.D.#2, Box 42A
Kersey PA 15846

MORTGAGEE: Hepburnia Coal

Co. Accts. Current Sub-Producers Statement

EXPIRATION	POLICY NUMBER	COMPANY	PROPERTY AND COVERAGE	AMOUNT	PREMIUM
7/15/2000	SU38514	Utica Mutual	Stripping Bond 31.2 acres Pine Creek, Washington & Winslow Twp King	\$71,700	\$4,302

ITEM	DEBIT	CREDIT	BALANCE	ITEM	DEBIT	CREDIT	BALANCE
2/21/95		4302.00	Have				
10/24/95							

R. N. CO. PTD. IN U.S.A.—01014

SURED'S LEDGER LINE: (1) Accounts Receive

(2) Fine Record

July 18, 1990

Gurosik Coal Co., Inc.
R.D.#2, Box 42A
Kersey, PA 15846

MORTGAGEE:

Co. Accts. Current

Sub-Products Statement

EXPIRATION	POLICY NUMBER	COMPANY	PROPERTY AND COVERAGE	AMOUNT	PREMIUM
7/15/95	SU38514	Utica Mutual	Stripping Bond 31.2 acres Pine Creek, Washington & Wanslow Twp		\$4,302.

ITEM	DEBIT	CREDIT	BALANCE	ITEM	DEBIT	CREDIT	BALANCE
10/5/90		4302.00	None				

July 22, 1985

BALANCE	DEBIT	CREDIT	DATE	DESCRIPTION
				Gurosik Coal Co., Inc.
				R.D.#2, Box 42A
				Kersey, PA 15846

MORTGAGEE:

Co. Accts. Current Sub-Produrers-Statement

EXPIRATION	POLICY NUMBER	COMPANY	PROPERTY AND COVERAGE	AMOUNT	PREMIUM
7-18-90	SU 38514	Utica Mutual	Stripping Bond 31.2 acres land Pine Creek, Washington & Winslow Twp.		\$3,585.00

ITEM	DEBIT	CREDIT	BALANCE	ITEM	DEBIT	CREDIT	BALANCE
9/25/85		3585.00	None	Customer's Ins.			
				When Assured makes installment payments			
				and the in Assured's Ins.			
				the in bond			

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

vs.

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
Individually, SHARON GUROSIK, HEPBURNIA
COAL CORP., DARRELL G. SPENCER, President,
Individually, Partner and as Administrator
of the Estate of Dalney F. Spencer, ESTATE
OF DALNEY F. SPENCER, ESTATE OF RAY L.
SPENCER, Partner and Individually, MILDRED
W. SPENCER, Individually and as
Administratrix of the Estate of Ray L.
Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, and
DELORES B. SPENCER,

Defendants.

No.: 2006-1901-CD
Civil Indemnity Action

PROCEEDINGS: Deposition of
DARRELL G. SPENCER

DATE: June 18, 2009

TIME: 2:39 p.m. - 3:08 p.m.

PLACE: Law Offices of Peter Smith, Esquire
30 South Second Street
Clearfield, Pennsylvania 16830

REPORTER: Susanna C. Englert
CSR 1951
Notary Public

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DARRELL G. SPENCER

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EXHIBITS

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No. 1	Subpoena	14
No. 2	General Agreement of Indemnity	16
No. 3	Letter Dated 1985	17
No. 4	Handwritten Internal Message	19

**Certified
Copy**

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APPEARANCES:

Appearing on behalf of the Plaintiff:

WILLIAM T. GORTON, III, ESQUIRE

JENNIFER E. DRUST, ATTORNEY AT LAW

Stites & Harbison

250 West Main Street, Suite 2300

Lexington, Kentucky 40507-1758

Appearing on behalf of the Defendants John O.

Gurosik, Sharon Gurosik, and Gurosik Coal Company:

THOMAS G. WAGNER, ESQUIRE

Meyer & Wagner

115 Lafayette Street

St. Mary's, Pennsylvania 15857

Appearing on behalf of the Defendants Hepburnia

Coal Corp., Spencer Land Co., and the Spencers:

LAURANCE B. SEAMAN, ESQUIRE

Gates & Seaman

2 North Front Street

Clearfield, Pennsylvania

Also Present:

Timothy Morgan

EXHIBIT

G

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DARRELL G. SPENCER,

having been first duly sworn, deposed as follows:

EXAMINATION

BY MR. GORTON:

Q. Good afternoon, Mr. Spencer. My name is Bill Gorton. I'm with the law firm of Stites & Harbison, here on behalf of Utica Mutual Insurance Company on this indemnity action that you've been listening to all day long. I won't go into too much detail in regard to the introductions of the case, but I will remind you that you are under oath, and I'm going to ask you questions. If you would just answer them directly. If you have any questions that you think need clarification, I'll clarify them for you. Listen to each question, answer it the best you can. And if you don't hear it, I'll repeat it until you do understand and you do hear it. If you need a break, let us know.

Does that all make sense to you?

A. Yep. Yes.

Q. Would you state your name for the record, and where you live and where you work?

A. Darrell G. Spencer. I live in Gramplan, Pennsylvania. My address is 10 390-92 Mahaffey

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- 1 **Grampian Highway. And I work for Hepburnia Coal**
 2 **Company, since inception, 1954.**
 3 **Q.** 1954. Are you also the president of
 4 Spencer Land Company?
 5 **A.** **It's a partnership.**
 6 **Q.** Partnership.
 7 **A.** **There's two of us left.**
 8 **Q.** All right. So you're one of the
 9 remaining partners of Spencer Land?
 10 **A.** **Yes.**
 11 **Q.** You were president of Hepburnia Coal
 12 Company during this time period in the eighties
 13 dealing with Gurosik Coal, were you not?
 14 **A.** **Yes, I was.**
 15 **Q.** Were you familiar with discussions and
 16 negotiations with him?
 17 **A.** **Not a whole lot. Brother Bob done all**
 18 **those discussions. I was not in -- I was only on**
 19 **the King property one -- twice. So I'm not too**
 20 **familiar with that situation.**
 21 **Q.** But leading up to the mining, was there
 22 much discussion between yourself and your brother
 23 Bob?
 24 **A.** **Oh, we talked about it, sure, certainly.**
 25 **Q.** Now, I heard from Tim a little while

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- 1 ago -- I assume I heard correctly -- that John
 2 Gurosik had a good relationship with your brother.
 3 **A.** **Yes.**
 4 **Q.** And were you aware of any problems in the
 5 relationship that developed between Gurosik and
 6 Hepburnia?
 7 **A.** **No.**
 8 **Q.** Any conflicts regarding payments for
 9 production?
 10 **A.** **No.**
 11 **Q.** Were you involved in any of the
 12 discussions regarding the bonding for Gurosik
 13 Coal?
 14 **A.** **No.**
 15 **Q.** Was all that handled between your
 16 brother --
 17 **A.** **Yes.**
 18 **Q.** -- and Gurosik? And this other
 19 gentleman -- I keep forgetting his name --
 20 **A.** **Sutika.**
 21 **Q.** Sutika?
 22 **A.** **Sutika.**
 23 **Q.** Yes.
 24 **A.** **Butch Sutika. Andrew, really. Andrew.**
 25 **Q.** So the discussions in regard to the bond,

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- 1 in your opinion, would have been between Mr.
 2 Gurosik, Mr. Sutika and your brother Bob?
 3 **A.** **Bob.**
 4 **Q.** Spencer?
 5 **A.** **That's right.**
 6 **Q.** And they probably arranged it, and it was
 7 handled that way?
 8 **A.** **That's right.**
 9 **Q.** So if you were the president of Hepburnia
 10 Coal at that time, what would have been your role
 11 in dealing with contractors or subcontractor
 12 operators?
 13 **A.** **What would my role have been?**
 14 **Q.** Yes, in dealing with them, specifically.
 15 **A.** **As I stated, brother Bob usually done the**
 16 **negotiations. And if he said it was all right to**
 17 **sign these things, we did.**
 18 **Q.** Would you have had interaction yourself
 19 with Sutika?
 20 **A.** **Oh, I worked with him at times, sure.**
 21 **Q.** Did you trust his judgment in dealing
 22 with contractors?
 23 **A.** **Oh, yes.**
 24 **Q.** Did you have involvement with the
 25 engineering staff itself, like Mr. Thurston?

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- 1 **A.** **He was in our basement area. And yeah,**
 2 **we would see him occasionally.**
 3 **Q.** If there was a piece of property that
 4 Spencer Land thought they had obtained or had
 5 rights to mine, how would you handle that, working
 6 with your engineering staff?
 7 **A.** **Well --**
 8 **Q.** In other -- okay, go ahead.
 9 **A.** **Well, they would have it on maps. The**
 10 **engineers would put it on maps, then show it to**
 11 **us. And if we thought that was a viable property,**
 12 **we would have it drilled and go from that point**
 13 **on, see what the coal was worth.**
 14 **Q.** Do you recall if you ever did your own
 15 analysis of the viability of the King Mine?
 16 **A.** **We never did any of our own analysis,**
 17 **always done by Mahaffey Labs.**
 18 **Q.** No, I mean as far as the viability of the
 19 King Mine, did you do your own engineering review?
 20 **A.** **No, not to my knowledge.**
 21 **Q.** So from your knowledge, it was just
 22 taking it on the information that Mr. Gurosik
 23 presented to you.
 24 **A.** **The permit was there. All we done was**
 25 **help him with the bonding.**

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- 1 **Q.** Okay. Do you know Jonn Gurosik and his
2 wife personally at all?
- 3 **A.** **Not really. I know of them, yes.**
- 4 **Q.** How do you know Mr. Gurosik, how did you
5 personally come to know him?
- 6 **A.** **Well, we were working in the area where**
7 **he lives.**
- 8 **Q.** Okay.
- 9 **A.** **Adjoining properties. We got to know**
10 **him.**
- 11 **Q.** You mentioned you really weren't familiar
12 with the King Mine.
- 13 **A.** **No.**
- 14 **Q.** You only visited it once, correct?
- 15 **A.** **Well, twice, I think.**
- 16 **Q.** What was your impression?
- 17 **A.** **Well, it was -- it was a job we were**
18 **getting coal out of, and I thought it was well**
19 **run.**
- 20 **Q.** Were you aware that it had possible water
21 problems?
- 22 **A.** **Later. Not at that time, I didn't.**
- 23 **Q.** Did you understand what that meant, under
24 Pennsylvania environmental laws?
- 25 **A.** **Oh, yeah, yeah, yeah.**

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- 1 **Q.** Were you familiar with the fact that
2 Hepburnia was paying the premiums on this mine?
- 3 **A.** **I believe we did, yes. I believe so.**
- 4 **Q.** The reason I ask you that, we have got
5 documents. There's no point --
- 6 **MR. SEAMAN:** You're right.
- 7 **MR. GORTON:** You want to get out of here,
8 don't you?
- 9 **MR. SEAMAN:** Not as soon as you do.
- 10 **BY MR. GORTON:**
- 11 **Q.** From your experience -- even though I
12 asked Tim this, he may not know because of his
13 institutional memory, or lack thereof -- but was
14 it typical for Hepburnia to consider accommodating
15 companies -- and that's a word that was used in
16 responses in the interrogatories -- to accommodate
17 companies to provide Hepburnia support, in this
18 case, or in any case, surety support for their
19 operations?
- 20 **A.** **I don't know, but what -- we may have**
21 **done that for one or two other occasions. Not on**
22 **a regular basis.**
- 23 **Q.** More for smaller operators?
- 24 **A.** **Yes. Just for the possibility of getting**
25 **the coal, selling end of the coal.**

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- 1 **Q.** Could you tell me who those other
2 companies might have been?
- 3 **A.** **No, I can't. They don't come to mind.**
- 4 **Q.** Well, I guess that goes to the theme that
5 every deal is different, and if you need the coal,
6 you need to do your own deal, and it could include
7 items like that.
- 8 **A.** **Yeah, I would say that's right.**
- 9 **Q.** Now, when word got out that there was
10 going to be a problem with DEP on this, how were
11 you informed?
- 12 **A.** **Well, I think it come back to the office.**
13 **I don't know who informed me of it anymore, but I**
14 **became aware through the office. Whether it was**
15 **engineers or through Butch, I'm not sure.**
- 16 **Q.** As one of the partners in Spencer Land
17 and the president of Gurosik Coal Company, what
18 was your --
- 19 **MR. SEAMAN:** Excuse me. He's not the
20 president of Gurosik Coal.
- 21 **MR. GORTON:** I'm sorry, Hepburnia Coal
22 Company. I'm so glad you're here, Larry.
- 23 **MR. SEAMAN:** Oh, he caught that one.
- 24 **THE WITNESS:** Let's hear that again.
25 What was it?

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- 1 **BY MR. GORTON:**
- 2 **Q.** In your managerial roles in both Spencer
3 Land and Hepburnia, what was your reaction when
4 you heard that there were water problems on this
5 site?
- 6 **A.** **Well, I probably turned to the engineers**
7 **and said, "Let's see what the problem is, what's**
8 **to do to correct this thing." I don't know. I'm**
9 **surmising a little bit, but I think that's what I**
10 **would come up with.**
- 11 **Q.** When it was brought to your attention
12 that this General Agreement of Indemnity was an
13 issue, did that change how you reacted to dealing
14 with it?
- 15 **A.** **I don't think so. Probably again turned**
16 **to the engineers, and, "See what we could do to**
17 **rectify the situation."**
- 18 **Q.** Had you advised the engineering staff or
19 operations people to do any work out there -- let
20 me just finish that -- to do any work on the King
21 Mine?
- 22 **A.** **No.**
- 23 **Q.** Were you aware that they had done some
24 remedial or minor reclamation and upgrading of the
25 site?

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1 **A. I knew they put that bog in that they**
2 **talked about earlier here. I do recall hearing of**
3 **that. I wasn't up there and seen it, but I recall**
4 **they done it.**

5 **Q.** Were you aware of the fact that Tim, Mr.
6 Potter went to visit DEP about the site?

7 **A. Yes, I remember that visit.**

8 **Q.** Did you give them any instructions in
9 dealing with the DEP?

10 **A. No.**

11 **Q.** Like, "Get this taken care of," or "See
12 me"?

13 **A. They know that. They were aware of**
14 **that --**

15 **Q.** They know what to do?

16 **A. -- without my instructions.**

17 **Q.** Did you have anything to do with
18 negotiating the coal contract with Gurosik at all?

19 **A. No.**

20 **Q.** Not at all?

21 **A. Not at all.**

22 **Q.** So if someone asked you the price of
23 coal, you wouldn't know?

24 **A. I wouldn't, no.**

25 **Q.** Are there any corporate minutes, notes or

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1 resolutions from either -- well, from Hepburnia
2 Coal Company itself, board of directors, regarding
3 this matter?

4 **A. I would say there probably is, but I'm**
5 **not sure. I did not look.**

6 **MR. GORTON:** I don't believe we have
7 received anything in that regard, have we.

8 **MS. DURST:** I don't believe so.

9 **MR. SEAMAN:** Off the record.

10 (Discussion held off the record.)

11 (Darrell G. Spencer, Exhibit No. 1 marked
12 for identification, attached hereto.)

13 **BY MR. GORTON:**

14 **Q.** I should have given you this as Exhibit 1
15 earlier, but this is the subpoena we provided.
16 It's an ongoing request for documents having in
17 any way, shape or form to do with this matter.

18 **MR. SEAMAN:** Are we going to call this
19 Exhibit Spencer 1?

20 **MR. GORTON:** Spencer 1.

21 **Q.** In paragraph two, as president, if you
22 could just assure that another look is given for
23 those types of documents and inform your counsel,
24 it would be appreciated.

25 **A. We can look.**

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1 **Q.** Okay. That's all we can ask for.

2 Have you, sir, had any conversations with
3 the insurance agents in regards to the bonds on
4 this matter?

5 **A. No.**

6 **Q.** Were you given a copy of the letter that
7 I sent to Mr. Morgan?

8 **A. I probably seen it. What's the date on**
9 **this, '04?**

10 **Q.** Right.

11 **MR. SEAMAN:** You don't remember that now?

12 **THE WITNESS:** I don't remember. I don't
13 remember.

14 **MR. SEAMAN:** Did you want another one of
15 these marked as an exhibit for this deposition?

16 **MR. GORTON:** I don't think it's
17 necessary. I can refer to the 11/4 letter to
18 Mr. Morgan.

19 **Q.** Well, had you remembered it, I was going
20 to ask you what the discussions were in regard to
21 the letter that now the bonding company was
22 relying on its General Agreement of Indemnity to
23 put the Spencer and Hepburnia-related companies
24 and individuals on notice that we have a legal
25 issue.

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1 **MR. SEAMAN:** Object to the form of the
2 question.

3 **MR. GORTON:** I didn't ask a question. I
4 said "had you."

5 **MR. SEAMAN:** If you were just hoping for
6 an answer, I thought I better object.

7 (Darrell G. Spencer, Exhibit No. 2 marked
8 for identification, attached hereto.)

9 **BY MR. GORTON:**

10 **Q.** Look at the document we'll call
11 Spencer 2, which is the General Agreement of
12 Indemnity. I'll ask you to look at the third
13 page, with your signature, Darrell Spencer.

14 Would you agree that's your signature?

15 **A. I believe so.**

16 **Q.** And do you recognize your brother
17 Robert's signature below it?

18 **A. Yep.**

19 **Q.** And it was witnessed by Roger Thurston.
20 Would you agree with that?

21 **A. Roger Thurston.**

22 **Q.** Roger Thurston.

23 **A. Roger Thurston, yes. That's his address,**
24 **by the way.**

25 **Q.** Oh, there it is. Had you ever had the

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1 experience to be signing an indemnity agreement
 2 that included the signatures of the Guroסים,
 3 other than this one?
 4 **A. I don't believe, no.**
 5 **Q.** Was Roger Thurston under your direct
 6 supervision?
 7 **A. Yes, I believe so. He was our**
 8 **engineer -- our surveyor, not engineer; surveyor.**
 9 **Q.** He was responsible for permitting?
 10 **A. Oh, yes.**
 11 **Q.** Bonding, all the issues,
 12 administrative-related issues?
 13 **A. He worked in our department, in the**
 14 **basement.**
 15 (Darrell G. Spencer, Exhibit No. 3 marked
 16 for identification, attached hereto.)
 17 BY MR. GORTON:
 18 **Q.** I'll give you a document labeled
 19 Spencer 3. It's a letter from Evergreen Insurance
 20 Associates in Ebensburg, to Roger Thurston, and it
 21 says, "Please find enclosed the bond that we
 22 executed for Guroסים. We have also enclosed the
 23 indemnity agreement which should have affixed the
 24 corporate seals of Guroסים." It goes on,
 25 "corporate seal of Hepburnia affixed opposite

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1 Darrell Spencer's signature."
 2 Were you familiar with Mr. Thurston's
 3 relationship with Evergreen Insurance?
 4 **A. No.**
 5 **Q.** The fact that Evergreen was involved in
 6 this matter, is that surprising to you at all?
 7 **A. Yeah. Today is the first I heard of**
 8 **that. I don't recall Evergreen Insurance.**
 9 **Q.** From my understanding, the company that
 10 you used here in town, is it Bloom?
 11 **A. Bloom's Insurance.**
 12 **Q.** There might have been a death of one of
 13 their principals at the time this bond was needed.
 14 Do you remember anything about that?
 15 **A. No.**
 16 **Q.** And hence, due to the need of the bond,
 17 it ended up going to Evergreen.
 18 **A. No.**
 19 **Q.** And do you recall any further discussion
 20 with Roger about the need for signatures or
 21 further witnessing, or anything, in regards to the
 22 indemnity agreement?
 23 **A. No.**
 24 **Q.** In other words, Roger just took care of
 25 it. You told him he had to get things taken care

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1 of, he took care of it?
 2 **A. He done it.**
 3 **Q.** Let me ask you this, was Bill Maines also
 4 under your supervision?
 5 **A. He was a PE for us, yes.**
 6 (Darrell G. Spencer, Exhibit No. 4 marked
 7 for identification, attached hereto.)
 8 BY MR. GORTON:
 9 **Q.** Let me give you what I'll call Spencer 4,
 10 since I've got it here. This is an internal
 11 message, handwritten message, from Bill Maines to
 12 a gentleman named Dave Champe at Evergreen.
 13 **A. I don't recall this. I don't ever recall**
 14 **seeing it.**
 15 **Q.** Well, I guess I present it to you, is it
 16 likely that Bill Maines worked with Roger Thurston
 17 in getting bonds and would respond to him in
 18 taking care of things DEP needed to get the
 19 permits and dealing with the bonds?
 20 **A. They did. They worked together.**
 21 **Q.** That explains that. Thank you.
 22 Mr. Spencer, since 1953 -- is that when
 23 you said the company started?
 24 **A. '54.**
 25 **Q. '54.** How many coal mines do you think

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1 Hepburnia Coal Company has mined?
 2 **A. I don't know.**
 3 **Q.** Hundreds?
 4 **A. Well, maybe not in the hundreds, but**
 5 **upward of that probably.**
 6 **Q.** Close to it?
 7 **A. We have numerous operations back in**
 8 **the -- we had two deep mines. I don't know. It**
 9 **would be a guess. A wild guess. I don't know**
 10 **that.**
 11 **Q.** How many tons of production per year does
 12 the company average?
 13 **A. Right now, I think we put up in the**
 14 **neighborhood of 150,000 ton. We have hit 300,000**
 15 **ton at different years.**
 16 **Q.** What's been your peak year?
 17 **A. Probably '77, or in that area.**
 18 **Q.** That would be 300,000 or more?
 19 **A. In that neighborhood.**
 20 **Q.** Tim mentioned previously that your
 21 present bonding company is Rockwood?
 22 **A. Rockwood.**
 23 **Q.** Have you been involved yourself in any
 24 negotiations with them?
 25 **A. No.**

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1 Q. Who handles that?

2 A. **Tim handles most of that.**

3 Q. Would you have signed an indemnity

4 agreement with them if there was an indemnity

5 agreement?

6 A. **I'm sure I did, if there was one.**

7 Q. Let me just ask you this, as president,

8 or partner in Spencer Land and former president of

9 Hepburnia, having operated a hundred mines, plus

10 or minus, and all the stuff you've done

11 since 1954, I mean, clearly you know what's going

12 on administratively and on the ground.

13 Why, can you tell me plainly, would you

14 have signed the General Agreement of Indemnity

15 with the Gurosik company and Gurosik individuals?

16 A. **Why would I have signed it?**

17 Q. Yes.

18 A. **In order to receive the bond and the**

19 **coal, probably. The long-run range was to get the**

20 **coal, and we provided the bond in order for that**

21 **to happen.**

22 Q. You would have understood that there was

23 some risk?

24 A. **Oh, sure, I understand that. Risk on**

25 **every bond.**

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1 Q. That's right. We're finished. Thank

2 you, Mr. Spencer.

3 A. **You're welcome.**

EXAMINATION

6 BY MR. WAGNER:

7 Q. I just have a couple questions.

8 In the 1980s, Mr. Spencer, what was your

9 role with the company as president? What did you

10 do on a day-to-day basis?

11 A. **Well, my father passed away in 1973. He**

12 **was the president up until that time. And then I**

13 **was named president upon his death. And Bob --**

14 **between Bob and I -- Bob was secretary/treasurer,**

15 **so we separated the duties, and he done one half,**

16 **and I tried to pick up the other half.**

17 Q. What was your half, what did you do?

18 A. **Well, a lot of it was out on the**

19 **operations.**

20 Q. Okay.

21 A. **I was -- I did not spend all my time in**

22 **the office, like he did. He spent 95 percent of**

23 **his time in the office, and the other time, I was**

24 **out on these jobs operating.**

25 Q. As far as the negotiation of contracts to

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1 purchase coal.

2 A. **That was 100 percent Bob.**

3 Q. Did you question Bob as to why your

4 company needed to be involved in the bonding on a

5 project that was Gurosik Coal Company's project?

6 A. **No, I don't believe so.**

7 Q. That didn't cause you some concern?

8 A. **No.**

9 Q. There was some testimony in the other

10 depositions about Mr. Gurosik being -- in Mr.

11 Morgan's deposition -- about Mr. Gurosik being

12 paid \$19 per ton for his coal. And the records

13 that were submitted in answer to interrogatories

14 to show about that same time you were paying other

15 people \$25 per ton, or even \$26.50 per ton.

16 Can you explain why there was a

17 difference?

18 A. **The only thing I could think of would be**

19 **the quality of the coal. Maybe, if somebody had a**

20 **supreme quality of coal, it would go on a separate**

21 **order that demanded more money at the market, then**

22 **maybe his coal was at a lower BTU and maybe just**

23 **went on a different order, steam coal. I don't**

24 **know that. I'm just surmising.**

25 Q. Okay. Mr. Gurosik testified that your

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1 company paid Mr. King the royalty payments that he

2 was due.

3 A. **I believe that was so. I did not see**

4 **that, but I believe that was so.**

5 Q. And the records reflect that that payment

6 was \$6 per ton. Your records show that.

7 Do you think that had any influence on

8 the tonnage price that you were paying for the

9 coal?

10 A. **No, I don't think so. I think that was**

11 **probably negotiated by Mr. Gurosik and Mr. King.**

12 **I don't think we were involved in that.**

13 Q. Now, you testified that you were familiar

14 with the complaints by DEP that there was a

15 problem at the King Mine site, correct?

16 A. **Yeah.**

17 Q. And do you know whether your company ever

18 made a written demand on Gurosik Coal Company to

19 correct the problem?

20 A. **No, I don't.**

21 Q. Do you think it did?

22 MR. SEAMAN: I object. He just answered

23 he didn't know.

24 THE WITNESS: I don't know.

25 MR. WAGNER: That's all the questions I

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1 have.
 2 MR. SEAMAN: Darrell, you want to read
 3 this or waive it?
 4 THE WITNESS: Oh, no, no.
 5 (At 3:09 p.m. the deposition was
 6 concluded. Signature waived.)
 7

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 1-866-38-COURT

1 COMMONWEALTH OF PENNSYLVANIA)
) SS
 2 COUNTY OF ARMSTRONG)
 3 I, Susanna C. Englert, Notary Public
 4 within and for the Commonwealth of Pennsylvania,
 5 do hereby certify that before the taking of the
 6 deposition, the said deponent, DARRELL G. SPENCER,
 7 was by me first duly sworn to testify to the
 8 truth, the whole truth, and nothing but the truth,
 9 and that the above deposition was recorded in
 10 stenotype by me and reduced to typewriting under
 11 my direction.

8 I further certify that the reading and
 9 signing of the transcript of the deposition were
 10 waived by the deponent and by counsel for the
 11 respective parties and that the said deposition
 12 constitutes a true record of the testimony given
 13 by said deponent.

11 I further certify that I am not a
 12 relative or employee or attorney or counsel or
 13 financially interested directly or indirectly in
 14 this action.

14 I further certify that the said
 15 deposition was taken before me at the time and
 16 place specified in the notice.

16 IN WITNESS WHEREOF, I have hereunto set
 17 my hand and affixed my seal of office at
 18 Kittanning, Pennsylvania, on July 8, 2009.

18
 19
 20 *Susanna C. Englert*

21 SUSANNA C. ENGLERT
 22 NOTARY PUBLIC
 23
 24
 25

COMMONWEALTH OF PENNSYLVANIA
 Notarial Seal
 Susanna C. Englert, Notary Public
 City of Altoona, Blair County
 My Commission Expires Apr. 17, 2010

ASAP COURT REPORTING
 1-866-38-COURT

The Law of Performance Bonds

Second Edition

LAWRENCE R. MOELMANN
MATTHEW M. HOROWITZ
KEVIN L. LYBECK
EDITORS



Attach. 1

SURETY'S RIGHTS OF RECOVERY AGAINST PRINCIPALS AND INDEMNITORS UNDER THE GENERAL INDEMNITY AGREEMENT AND COMMON LAW

*Brett D. Divers
Kenneth M. Givens, Jr.
P. Keith Lichtman*

Introduction

General suretyship principles provide that a bond principal owes a duty to the surety to perform all of its obligations to the obligee. When a principal defaults or fails to perform its obligations and causes loss to the surety, the surety has various rights and remedies to recover its losses. These rights exist at common law, in equity, and by contract when the surety has required the principal to sign a general agreement of indemnity. Rights and remedies available to sureties in the event of loss include: equitable rights such as reimbursement, contribution, exoneration, and subrogation, and contractual rights under the indemnity agreement. All protect the surety against ultimate loss but each operates differently.

I. General Indemnity Agreement

The typical surety in today's marketplace requires its principal (and indemnitors) to sign a written indemnity agreement before issuing any bonds. The indemnity agreement often restates the surety's common law rights of contribution, exoneration, and subrogation. The intent of the written indemnity agreement is not to alter those fundamental rights, but to describe how, when, and where the surety can enforce them in the event of default. Thus, the indemnity agreement is the starting point to evaluate indemnitors' obligations to the surety and the surety's rights and remedies against the indemnitors.

Most importantly, the indemnity agreement addresses how the surety will handle the relationship with the indemnitors when the surety receives a claim against the bond. For example, it addresses the right of indemnity against liability, the right of exoneration, the right of the

FILED

SEP 17 2009

William A. Shaw
Prothonotary/Clerk of Courts

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, Partner,
and as Administrator of the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY
L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,
Defendants.

Civ.No. 2006-1901-CD
Civil Indemnity Action

AFFIDAVIT OF SERVICE

I hereby certify that service of a true and correct copy of the Motion for Summary Judgment, identical to that served on the parties on September 15, 2009 and the September 21, 2009 Order were made upon the following, on the 24th day of September, 2009, by certified mail, return receipt requested and postage prepaid:

Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830



Jennifer E. Drust
Supreme Court #: 200434
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241
Counsel for Plaintiff,
Utica Mutual Insurance Company

FILED
mll:20234
SEP 28 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE
COMPANY, Plaintiff

vs.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and
Individually, SHARON GUROSIK,
HEPBURNIA COAL CORP., DARRELL
G. SPENCER, President, Individually,
Partner, and as Administrator of the
Estate of Dalney F. Spencer, ESTATE OF
DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
Individually and as Administratrix of
the Estate of Ray L. Spencer, SPENCER
LAND CO., ROBERT G. SPENCER,
Partner and Individually, AND
DELORIS B. SPENCER, Defendants

:
: No. 06 - 1901 - CD
:
: Type of Case: Civil
:
: Type of Pleading:
: ANSWER TO MOTION FOR
: SUMMARY JUDGMENT

Filed on Behalf of:
HEPBURNIA COAL CORP., DARRELL G.
SPENCER, President, Individually,
Partner, and as Administrator of the
Estate of Dalney F. Spencer, ESTATE
OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
individually and as Administratrix of
the Estate of Ray L. Spencer,
SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually,
and DELORIS B. SPENCER

Counsel of Record for this Party:
Laurance B. Seaman, Esquire

Supreme Court No.: 19620

GATES & SEAMAN, Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

FILED
OCT 09 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,	:	
Plaintiff	:	No. 06-1901-CD
	:	
-vs-	:	
	:	
GUROSIK COAL CO., INC., JOHN O.	:	
GUROSIK, President and Individually,	:	
SHARON GUROSIK, HEPBURNIA COAL CORP.,	:	
DARRELL G. SPENCER, President, Individually,	:	
Partner, and as Administrator of the Estate	:	
of Dalney F. Spencer, ESTATE OF DALNEY F.	:	
SPENCER, ESTATE OF RAY L. SPENCER, Partner:	:	
and Individually, MILDRED W. SPENCER,	:	
Individually and as Administratrix of the	:	
Estate of Ray L. Spencer, SPENCER LAND CO.,	:	
ROBERT G. SPENCER, Partner and	:	
Individually, AND DELORIS B. SPENCER,	:	
Defendants	:	

ANSWER TO MOTION FOR SUMMARY JUDGMENT

AND NOW, come Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER, ("answering Defendants"), by their attorneys, Gates & Seaman, and respond to Plaintiff's Motion for Summary Judgment as follows:

1. The introductory paragraph of Plaintiff's Motion for Summary Judgment constitutes the actual Motion, while the remainder of the document actually constitutes a Brief or Memorandum of Law in support of said Motion. By Order dated September 21, 2009, this Court directed Respondents to file an Answer to the Motion

within twenty (20) days of the date of the Order, and scheduled Argument for October 26, 2009.

2. In answer to the actual Motion, it is denied that answering Defendants executed an enforceable indemnity agreement and that there are no defenses to payment as a matter of law. In answer thereto, it is averred that the General Agreement of Indemnity ("GAI") is not enforceable because it is incomplete and fails to set forth necessary information as to on whose behalf a surety bond was to be written. Additionally, the GAI is unenforceable against answering Defendants because it is vague and ambiguous and by operation of law it is to be construed against the drafter of the Agreement, namely, Plaintiff.

3. It is denied that the corporate Defendants, Gurosik Coal Company, Inc. and Hepburnia Coal Corp. had a mutually-beneficial business arrangement to obtain a surety bond from Plaintiff and enter into the GAI. In answer thereto, it is averred that the GAI is unenforceable as set forth above and the payment by Plaintiff of the surety bond amount to the Pennsylvania Department of Environmental Protection ("DEP") was made under no legal obligation to do so as the bond had expired. In further answer thereto, the averments of answering Defendants' Answer, New Matter and the Cross-Claim against Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik, are incorporated herein by reference.

4. If directed by this Court, answering Defendants will submit a Brief or Memorandum of Law in opposition to Plaintiff's Motion for Summary Judgment.

5. It is clear that there are genuine issues of material fact as to necessary elements of the cause of action which must be submitted to a jury.

6. In a Motion for Summary Judgment, the record is viewed in a light most favorable to the non-moving parties and all doubts as to the existence of genuine issue of material fact must be resolved against the moving party.

7. The moving party has the burden of proof to the satisfaction of a jury and Plaintiff, who will bear the burden of proof at trial, has failed to produce evidence of facts and law essential to its cause of action which, in a jury trial, would require the issues to be submitted to a jury.

WHEREFORE, Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER, pray that this Honorable Court deny Plaintiff's Motion for Summary Judgment.

Respectfully submitted:

GATES & SEAMAN

By: 

Laurance B. Seaman, Esquire, Attorney for Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER

Date: 10/9/2009

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

UTICA MUTUAL INSURANCE COMPANY, Plaintiff :

No. 06-1901-CD

-vs- :

GUROSIK COAL CO., INC., JOHN O. :
GUROSIK, President and Individually, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, Individually, :
Partner, and as Administrator of the Estate :
of Dalney F. Spencer, ESTATE OF DALNEY F. :
SPENCER, ESTATE OF RAY L. SPENCER, Partner :
and Individually, MILDRED W. SPENCER, :
Individually and as Administratrix of the :
Estate of Ray L. Spencer, SPENCER LAND CO., :
ROBERT G. SPENCER, Partner and :
Individually, AND DELORIS B. SPENCER, Defendants:

NOTICE OF SERVICE OF ANSWER TO MOTION FOR SUMMARY JUDGMENT

Take notice that on the 9th day of October, 2009, a true and correct copy of answering Defendants' Answer to Motion for Summary Judgment were mailed by U. S. first class mail, postage prepaid, to:

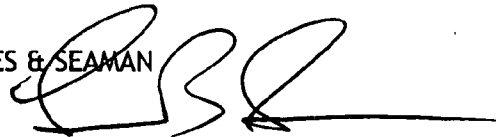
Jennifer E. Drust, Esquire
STITES & HARBISON, PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758

Thomas G. Wagner, Esquire
(Attorney for Defendants Gurosik)
115 Lafayette Street
St. Marys, PA 15857

Peter F. Smith, Esquire
30 South Second Street
Clearfield, PA 16830

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire, Attorney for Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, : Counsel of Record for
Individually, Partner, and as Administrator Defendants Gurosik:
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY Thomas G. Wagner, Esq.
L. SPENCER, Partner and Individually, : 115 Lafayette Street
MILDRED W. SPENCER, Individually and as St. Marys, Pa. 15857
Administratrix of the Estate of Ray L. : (814) 781-3445
Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

FILED NoCC
m/11:23cm
OCT 13 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

RESPONSE TO MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS GUROSIK

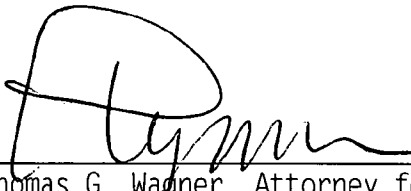
The Defendants, Gurosik Coal Company, Inc., John O. Gurosik, president and individually, and Sharon Gurosik (hereinafter "Defendants Gurosik") submit the following respond to the Motion for Summary Judgment:

1. Plaintiff alleges and argues that the bond on which it made payment was issued pursuant to a General Agreement of Indemnity attached to the Motion as Exhibit "A".
2. Paragraph 17 of the General Agreement of Indemnity fails to identify the bonds to which the General Agreement of Indemnity would apply.
3. The record indicates that the bond in question was requested by and paid for by Defendant Hepburnia Coal Company.
4. There is no evidence in the record to substantiate that the bond in question was requested by or paid for by any of Defendants Gurosik.
5. The General Agreement of Indemnity does not state, as suggested in paragraph 2 of the Motion for Summary Judgment, that the Indemnitors

agreed to reimburse Utica for *inter alia* all claims and expenses incurred as a result of Utica's issuance of surety bonds for the reclamation of service coal mining operations.

6. The record does not support Utica's allegation in paragraph 3 of the Motion for Summary Judgment that Gurosik Coal approached Hepburnia about signing the GAI in order to get a surety bond from Utica.

For the above reasons, Defendants Gurosik maintain that genuine issues of material fact remain in dispute and request that the Motion for Summary Judgment be dismissed.



Thomas G. Wagner, Attorney for
Defendants Gurosik

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

FILED NOCC.
m/11:23cm
OCT 13 2009
William A. Shaw
Prothonotary/Clerk of Courts

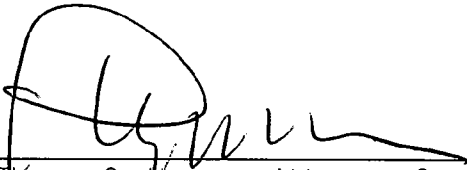
CERTIFICATE OF SERVICE

I certify that on October 9, 2009, I mailed a true and correct copy of the Response to Motion for Summary Judgment on Behalf of Defendants Gurosik, by first class mail, postage prepaid, to the following:

Laurance B. Seaman, Esq.
Two North Front Street
PO Box 846
Clearfield, Pa. 16830

Peter F. Smith, Esq.
PO Box 130
Clearfield, Pa. 16830

Jennifer Drust, Esq.
250 West Main Street, Ste. 2300
Lexington, KY 40507


Thomas G. Wagner, Attorney for
Defendants Gurosik

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

UTICA MUTUAL INSURANCE COMPANY, Plaintiff : CIVIL ACTION - LAW

Vs. : NO. 2006-1901-CD

GUROSIK COAL CO., INC., JOHN O. GUROSIK, :
SHARON GUROSIK, HEPBURNIA COAL CORP., :
DARRELL G. SPENCER, President, :
Individually, Partner, and as Administrator :
Of the Estate of Dalney F. Spencer, :
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY :
L. SPENCER, Partner and Individually, :
MILDRED W. SPENCER, Individually and as :
Administratrix of the Estate of Ray L. :
Spencer, SPENCER LAND CO., ROBERT G. :
SPENCER, Partner and Individually, :
And DELORIS B. SPENCER, :
Defendants :

FILED NO
m/12:4301 CC
OCT 15 2009 (610)
William A. Shaw
Prothonotary/Clerk of Courts

RESPONSE TO MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS GUROSIK

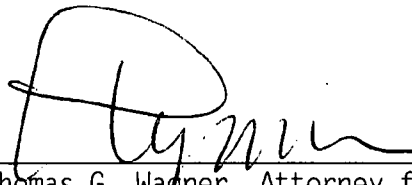
The Defendants, Gurosik Coal Company, Inc., John O. Gurosik, president and individually, and Sharon Gurosik (hereinafter "Defendants Gurosik") submit the following respond to the Motion for Summary Judgment:

1. Plaintiff alleges and argues that the bond on which it made payment was issued pursuant to a General Agreement of Indemnity attached to the Motion as Exhibit "A".
2. Paragraph 17 of the General Agreement of Indemnity fails to identify the bonds to which the General Agreement of Indemnity would apply.
3. The record indicates that the bond in question was requested by and paid for by Defendant Hepburnia Coal Company.
4. There is no evidence in the record to substantiate that the bond in question was requested by or paid for by any of Defendants Gurosik.
5. The General Agreement of Indemnity does not state, as suggested in paragraph 2 of the Motion for Summary Judgment, that the Indemnitors

agreed to reimburse Utica for *inter alia* all claims and expenses incurred as a result of Utica's issuance of surety bonds for the reclamation of service coal mining operations.

6. The record does not support Utica's allegation in paragraph 3 of the Motion for Summary Judgment that Gurosik Coal approached Hepburnia about signing the GAI in order to get a surety bond from Utica.

For the above reasons, Defendants Gurosik maintain that genuine issues of material fact remain in dispute and request that the Motion for Summary Judgment be dismissed.

A handwritten signature in black ink, appearing to read 'T. G. Wagner', is written over a horizontal line.

Thomas G. Wagner, Attorney for
Defendants Gurosik

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

UTICA MUTUAL INSURANCE
COMPANY, Plaintiff

vs.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and
Individually, SHARON GUROSIK,
HEPBURNIA COAL CORP., DARRELL
G. SPENCER, President, Individually,
Partner, and as Administrator of the
Estate of Dalney F. Spencer, ESTATE OF
DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
Individually and as Administratrix of
the Estate of Ray L. Spencer, SPENCER
LAND CO., ROBERT G. SPENCER,
Partner and Individually, AND
DELORIS B. SPENCER, Defendants

No. 06 - 1901 - CD

Type of Case: Civil

Type of Pleading: MOTION FOR
CONTINUANCE

Filed on Behalf of:
HEPBURNIA COAL CORP., DARRELL G.
SPENCER, President, Individually,
Partner, and as Administrator of the
Estate of Dalney F. Spencer, ESTATE
OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
individually and as Administratrix of
the Estate of Ray L. Spencer,
SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually,
and DELORIS B. SPENCER

Counsel of Record for this Party:
Laurance B. Seaman, Esquire

Supreme Court No.: 19620

GATES & SEAMAN, Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

FILED ^{icc}
012:50:37
OCT 22 2009
Atty. Seaman
William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-vs-

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually,
Partner, and as Administrator of the Estate
of Dalney F. Spencer, ESTATE OF DALNEY F.
SPENCER, ESTATE OF RAY L. SPENCER, Partner
and Individually, MILDRED W. SPENCER,
Individually and as Administratrix of the
Estate of Ray L. Spencer, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B. SPENCER,
Defendants

MOTION FOR CONTINUANCE

AND NOW, come Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER ("Spencer Defendants"), by their attorneys, Gates & Seaman, and set forth as follows:

1. Argument on Plaintiff's Motion for Summary Judgment has been scheduled for October 26, 2009 at 11:00 a.m. in Courtroom No. 1.

2. Counsel for all parties have commenced negotiations for a possible settlement of this case, in which event Argument on the Motion for Summary Judgment would not be necessary.

3. William T. Gorton, III, Esquire, Counsel for Plaintiff, and Thomas G. Wagner, Esquire, Counsel for Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik ("Gurosik Defendants") join in a request that said Argument be rescheduled to allow sufficient time for said settlement negotiations to take place.

WHEREFORE, Spencer Defendants respectfully request that Argument scheduled for October 26, 2009 be rescheduled to a date no less than thirty (30) days from October 26, 2009.

Respectfully submitted,

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire, Attorney for Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER

Date: 10/22/2009

Two North Front Street, P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

LA

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-VS-

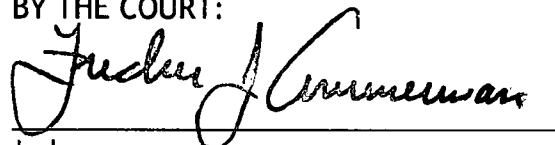
GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually,
Partner, and as Administrator of the Estate
of Dalney F. Spencer, ESTATE OF DALNEY F.
SPENCER, ESTATE OF RAY L. SPENCER, Partner
and Individually, MILDRED W. SPENCER,
Individually and as Administratrix of the
Estate of Ray L. Spencer, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B. SPENCER,
Defendants

ORDER

AND NOW, this 23rd day of October, 2009, upon consideration of the Motion
for Continuance, Argument on Plaintiff's Motion for Summary Judgment is
rescheduled to the 7th day of December, 2009, at 3:00 o'clock
P. M. in Courtroom No. 1 of the Clearfield County Courthouse.

Notice of the entry of this Order shall be provided to all parties by counsel for
the moving party.

BY THE COURT:


Judge

5
FILED *icc*
01/128/511
OCT 23 2009 *Atty Seaman*
William A. Shaw
Prothonotary/Clerk of Courts *(611)*

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-vs-

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually,
Partner, and as Administrator of the Estate
of Dalney F. Spencer, ESTATE OF DALNEY F.
SPENCER, ESTATE OF RAY L. SPENCER, Partner
and Individually, MILDRED W. SPENCER,
Individually and as Administratrix of the
Estate of Ray L. Spencer, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B. SPENCER,
Defendants

AFFIDAVIT OF SERVICE

I hereby certify that service of a true and correct copy of Motion for Continuance and Order was made upon the following, on the 23rd day of October, 2009, by regular first class mail, postage prepaid:

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

William T. Gorton, III, Esquire
STITES & HARBISON, PLLC
250 West Main St., Suite 2300
Lexington, KY 40507

Thomas G. Wagner, Esquire
MEYER & WAGNER
15 Lafayette Street
St. Marys, PA 15857

GATES & SEAMAN
By: 

Laurance B. Seaman, Esquire, Attorney for Defendants,
HEPBURNIA COAL CORP., DARRELL G. SPENCER, President,
Individually, Partner, and as Administrator of the Estate of
Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate of
Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER,
Partner and Individually, and DELORIS B. SPENCER

Date: 10-23-09

FILED NO CC
OCT 29 2009
William A. Shaw
Prothonotary/Clerk of Courts

Ln

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,	)	Civil No. 2006-1901-CD
Plaintiff,	)	Civil Indemnity Action
)	
v.	)	Type of Pleading: Motion for
	)	Continuance
)	
GUROSIK COAL CO., INC.,	)	Filed on Behalf of:
JOHN O. GUROSIK, President and Individually,	)	Plaintiff
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,	)	Attorney for this Party:
and as Administrator of the Estate of Dalney F. Spencer,	)	Peter F. Smith
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY	)	Supreme Court #34291
L. SPENCER, Partner and Individually, MILDRED W.	)	P.O. Box 130
SPENCER, Individually and as Administratrix of the Estate)	)	Clearfield, PA 16830
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.	)	(814) 765-5595
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,	)	William T. Gorton III
Defendants.	)	Supreme Court #53009
	)	Stites & Harbison, PLLC
	)	250 West Main St., Suite 2300
	)	Lexington, Kentucky 40507
	)	(859) 226-2241
	)	Counsel for Plaintiff,
	)	Utica Mutual Insurance
	)	Company

Dated: December 2, 2009

FILED ICC AAA Smith
01/1:486m
DEC 02 2009 (60)

William A. Shaw
Prothonotary/Clerk of Courts

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
Plaintiff,)	
)	
v.	)	Civ.No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
JOHN O. GUROSIK, President and Individually,)	
SHARON GUROSIK, HEPBURNIA COAL CORP.,)	
DARRELL G. SPENCER, President, Individually, Partner,)	
and as Administrator of the Estate of Dalney F. Spencer,)	
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY)	
L. SPENCER, Partner and Individually, MILDRED W.)	
SPENCER, Individually and as Administratrix of the Estate)	
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.)	
SPENCER, Partner and Individually, AND)	
DELORIS B. SPENCER,)	
Defendants.)	

MOTION FOR CONTINUANCE

Plaintiff, Utica Mutual Insurance Company ("Utica"), through counsel, requests a continuance as set forth here:

1. Argument on Utica's Motion for Summary Judgment has been scheduled for December 7, 2009 at 3:00 PM in Courtroom No. 1.
2. Counsel for all parties are continuing negotiations for a possible settlement of this case, in which event Argument on the Motion for Summary Judgment would not be necessary.
3. Laurance B. Seaman, Esquire, Counsel for HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the

Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER ("Spencer Defendants"), and Thomas G. Wagner, Esquire, Counsel for Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik ("Gurosik Defendants") join in a request that said Argument be rescheduled to allow sufficient time for said settlement negotiations to take place.

WHEREFORE, Utica respectfully requests that Argument scheduled for December 7, 2009 be rescheduled to a date no less than sixty (60) days from December 7, 2009.

Respectfully submitted,

William T. Gorton III
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507

(859) 226-2241


Peter F. Smith

Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

LA

ORDER

Notice of the entry of this Order shall be provided to all parties by counsel for the moving

FILED
DEC 07 2009
William A. Shaw
Prothonotary/Clerk of Courts

By The Court,

By The Court,
Judith A. Korman

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, Partner,
and as Administrator of the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY
L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,
Defendants.

Civ.No. 2006-1901-CD
Civil Indemnity Action

FILED
01105741 cc
DEC 09 2009
William A. Shaw
Prothonotary/Clerk of Courts

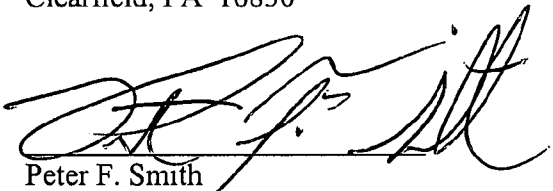
AFFIDAVIT OF SERVICE

I hereby certify that service of a true and correct copy of the Motion for Continuance and proposed Order were made upon the following, on the 7th day of December, 2009, by regular first class mail, postage prepaid and facsimile:

FACSIMILE (814) 834-9076
Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

FACSIMILE (814) 765-1488
Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

December 7, 2009


Peter F. Smith
Supreme Court #: 34291
P.O. Box 130
Clearfield, Pennsylvania 16830
(814) 765-5595
Counsel for Plaintiff,
Utica Mutual Insurance Company

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

UTICA MUTUAL INSURANCE
COMPANY, Plaintiff

vs.

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and
Individually, SHARON GUROSIK,
HEPBURNIA COAL CORP., DARRELL
G. SPENCER, President, Individually,
Partner, and as Administrator of the
Estate of Dalney F. Spencer, ESTATE OF:
DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
Individually and as Administratrix of
the Estate of Ray L. Spencer, SPENCER
LAND CO., ROBERT G. SPENCER,
Partner and Individually, AND
DELORIS B. SPENCER, Defendants

No. 06 - 1901 - CD

Type of Case: Civil

Type of Pleading: MOTION FOR
CONTINUANCE

Filed on Behalf of:
HEPBURNIA COAL CORP., DARRELL G.
SPENCER, President, Individually,
Partner, and as Administrator of the
Estate of Dalney F. Spencer, ESTATE
OF DALNEY F. SPENCER, ESTATE OF
RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER,
individually and as Administratrix of
the Estate of Ray L. Spencer,
SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually,
and DELORIS B. SPENCER

Counsel of Record for this Party:
Laurance B. Seaman, Esquire

Supreme Court No.: 19620

GATES & SEAMAN, Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

FILED 3cc Atty
01/11/40um Seaman
JAN 20 2010 (610)

William A. Shaw
Prothonotary/Clerk of Courts

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

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff

No. 06-1901-CD

-vs-

GUROSIK COAL CO., INC., JOHN O.
GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually,
Partner, and as Administrator of the Estate
of Dalney F. Spencer, ESTATE OF DALNEY F.
SPENCER, ESTATE OF RAY L. SPENCER, Partner
and Individually, MILDRED W. SPENCER,
Individually and as Administratrix of the
Estate of Ray L. Spencer, SPENCER LAND CO.,
ROBERT G. SPENCER, Partner and
Individually, AND DELORIS B. SPENCER,
Defendants

MOTION FOR CONTINUANCE

AND NOW, come Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER,
President, Individually, Partner, and as Administrator of the Estate of Dalney F.
Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and
Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of
Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually,
and DELORIS B. SPENCER ("Spencer Defendants"), by their attorneys, Gates &
Seaman, and set forth as follows:

1. Argument on Plaintiff's Motion for Summary Judgment has been scheduled
for January 22, 2010 at 9:00 a.m. in Courtroom No. 1.

2. Counsel for all parties have reached an agreement for settlement of this
case, which is in the process of being documented for final review by counsel, and
when completed, Argument on the Motion for Summary Judgment will not be

necessary.

3. However, in the meantime, just in case the settlement agreement for some reason is not finalized, rather than cancel the Argument, a rescheduling of the same appears to be more appropriate.

4. William T. Gorton, III, Esquire, Counsel for Plaintiff, and Thomas G. Wagner, Esquire, Counsel for Defendants, Gurosik Coal Company, Inc., John O. Gurosik and Sharon Gurosik ("Gurosik Defendants") join in a request that said Argument be rescheduled to allow sufficient time for completion of the settlement.

WHEREFORE, Spencer Defendants respectfully request that Argument scheduled for January 22, 2010 be rescheduled to a date no less than thirty (30) days from January 22, 2010.

Respectfully submitted,

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire, Attorney for Defendants, HEPBURNIA COAL CORP., DARRELL G. SPENCER, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY L. SPENCER, Partner and Individually, MILDRED W. SPENCER, Individually and as Administratrix of the Estate of Ray L. Spencer, SPENCER LAND CO., ROBERT G. SPENCER, Partner and Individually, and DELORIS B. SPENCER

Date:

1/20/2010

Two North Front Street, P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

FILED

DEC 29 2010

W/11:30/c
William A. Shaw
Prothonotary/Clerk of Courts

2 cent to

ATTY

Shaw

UTICA MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

Civ.No. 2006-1901-CD
Civil Indemnity Action

GUROSIK COAL CO., INC.,
JOHN O. GUROSIK, President and Individually,
SHARON GUROSIK, HEPBURNIA COAL CORP.,
DARRELL G. SPENCER, President, Individually, Partner,
and as Administrator of the Estate of Dalney F. Spencer,
ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY
L. SPENCER, Partner and Individually, MILDRED W.
SPENCER, Individually and as Administratrix of the Estate
of Ray L. Spencer, SPENCER LAND CO., ROBERT G.
SPENCER, Partner and Individually, AND
DELORIS B. SPENCER,

Defendants.

PRAECIPE TO DISCONTINUE (SPENCER DEFENDANTS)

To: William A. Shaw, Clearfield County Prothonotary

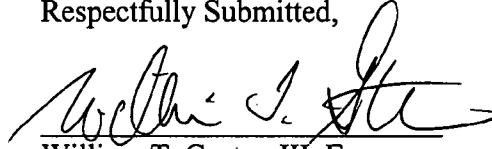
Dear Sir:

As counsel for Plaintiff in the above-captioned matter we appear and request that you mark the docket for this case "Settled, Discontinued and Ended, with Prejudice as to Defendants Hepburnia Coal Corp., Darrell G. Spencer, President, Individually, Partner, and as Administrator of the Estate of Dalney F. Spencer, Estate of Dalney F. Spencer, Estate of Ray L. Spencer, Partner and Individually, Mildred W. Spencer, Individually and as Administratrix of the Estate of Ray L. Spencer, Spencer Land Co., Robert G. Spencer, Partner and Individually, and Deloris B. Spencer."

////

////

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "William T. Gorton III", written over a horizontal line.

William T. Gorton III, Esq.

Supreme Court #: 53009

Stites & Harbison, PLLC

250 West Main Street, Suite 2300

Lexington, Kentucky 40507

(859) 226-2241

Counsel for Plaintiff,

Utica Mutual Insurance Company

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

GUROSIK COAL CO., INC.,

JOHN O. GUROSIK, President and Individually,

SHARON GUROSIK, HEPBURNIA COAL CORP.,

DARRELL G. SPENCER, President, Individually, Partner,

and as Administrator of the Estate of Dalney F. Spencer,

ESTATE OF DALNEY F. SPENCER, ESTATE OF RAY

L. SPENCER, Partner and Individually, MILDRED W.

SPENCER, Individually and as Administratrix of the Estate

of Ray L. Spencer, SPENCER LAND CO., ROBERT G.

SPENCER, Partner and Individually, AND

DELORIS B. SPENCER,

Defendants.

Civ.No. 2006-1901-CD
Civil Indemnity Action

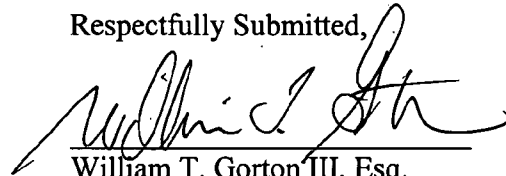
AFFIDAVIT OF SERVICE

I hereby certify that service of a true and correct copy of the Praecipe To Discontinue (Spencer Defendants) was made upon the following, on the 27th day of December, 2010, by certified mail, return receipt requested and postage prepaid:

Thomas G. Wagner, Esq.
Meyer & Wagner
15 Lafayette Street
St. Marys, PA 15857

Laurance B. Seaman, Esq.
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Respectfully Submitted,



William T. Gorton III, Esq.
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241
Counsel for Plaintiff,
Utica Mutual Insurance Company

NO RETURN ENVELOP
TO ATTY.

GALE COPIES TO
ATTY SWITZ

FILED
DEC 29 2011
Notary Public
William A. Shaw
Clerk of Courts

**COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION-LAW**

UTICA MUTUAL INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.	)	Civ. No. 2006-1901-CD
	)	Civil Indemnity Action
GUROSIK COAL CO., INC.,)	
)	
Defendants.)	

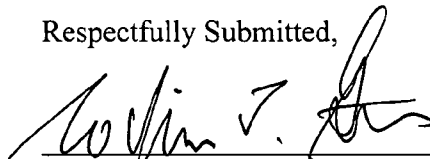
PRAECIPE TO DISCONTINUE

To: Honorable Fredric J. Ammerman

Dear Sir:

As counsel for Plaintiff in the above-captioned matter, I request that you mark the docket for this case "Settled and Discontinued."

Respectfully Submitted,



William T. Gorton III, Esq.
Supreme Court #: 53009
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241
Counsel for Plaintiff,
Utica Mutual Insurance Company

FILED

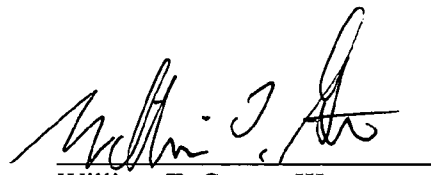
01 11:36am
APR 11 2013

William A. Shaw
Prothonotary/Clerk of Courts

PROOF OF SERVICE

I, William T. Gorton III, hereby certify that a copy of a **PRAECIPE TO DISCONTINUE** was, on April 9, 2013, served upon the following persons by first-class mail, postage pre-paid:

Laurance Seaman
Gates & Seaman
Two North Front Street
P.O. Box 846
Clearfield, PA 16830



William T. Gorton III