

Date: 4/13/2007
Time: 12:09 PM

Clearfield County Court of Common Pleas
Receipt

NO. 1918565
Page 1 of 1

Received of: Bower, Matthew J. (plaintiff) \$ 0.00

Zero and 00/100 Dollars

Case: 2007-00573-CD	Plaintiff: Matthew J. Bower vs. Donald W.	Amount
Civil Complaint - Transfer from Another County		0.00
Total:		0.00

Billable
- no further
filing until
paid

Call Atty Felix on
4-13-07 (UM)

Payment Method: Cash
Amount Tendered:

0.00

Clerk: LMILLER

William A. Shaw, Prothonotary/Clerk of Cou

By: _____
Deputy Clerk

07-573-CD

AMONG THE RECORDS AND PROCEEDINGS enrolled in the Court
of Common Pleas in and for the **COUNTY OF LYCOMING** in the Com-
monwealth of Pennsylvania to No. 06-02386,19....., is
contained the following:

Matthew J. Bower

vs.

Donald W. Cherry et al.

Originals of all case documents are attached)

State of Pennsylvania, }
Lycoming County } ss:

FILED
m/11:50am Billable
APR 13 2007 called 4-13-07

William A. Shaw
Prothonotary/Clerk of Courts

*Certified from the Records of the Court of Common Pleas of Lycoming
County, under my hand and seal of said Court, at the city of Williamsport,*
this 10th day of April 2007

[Signature] Prothonotary

MATTHEW J. BOWER

VS

DONALD W. CHERRY

DENISE CHERRY

CHERRY DONALD W TRUCKING

11/13/2006	COMPLAINT IN A CIVIL ACTION FILED.	John A. Felix
12/15/2006	PRELIMINARY OBJECTIONS FILED.	Dwight L. Koerber, Jr.
12/22/2006	ORDER DIRECTING HEARING FILED.	Judge Kenneth D. Brown
12/22/2006	NOTICE UNDER PRCP 236 ISSUED.	William J. Burd, Proth.
2/15/2007	ORDER RE MOTION FOR CHANGE OF VENUE OR VENIRE FILED.	Judge Kenneth D. Brown
2/15/2007	NOTICE UNDER PRCP 236 ISSUED.	William J. Burd, Proth.

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MATTHEW J. BOWER,

Plaintiff

vs.

DONALD W. CHERRY,
DENISE CHERRY,
DONALD W. CHERRY TRUCKING,
Defendants

* * * * *

JOHN I. BOWER,

vs.

DONALD W. CHERRY,
DENISE CHERRY,
DONALD W. CHERRY TRUCKING,
Defendants

:
: No. 06-02,386
:
:
: CIVIL ACTION - LAW
:
:

: Defendants' Preliminary Objections
:
:

: No. 06-02,387
:
:

: Defendants' Preliminary Objections
:
:

ORDER

AND NOW, this 15 day of February 2007, upon consideration of

Defendants' preliminary objections to plaintiff's complaint, it is ORDERED and DIRECTED as follows:

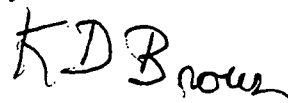
1. The Court DENIES Defendants preliminary objection requesting that the Court dismiss Plaintiff's complaint for failure to comply with a rule of law. Although Plaintiff did not file a notice of appeal from the judgment entered by Magisterial District Judge (MDJ) Carn in accordance with Rule 1002A of the Rules of Civil Procedure for Magisterial District Judges, Plaintiff substantially complied with that section by filing his

complaint within thirty (30) days of the date of that judgment.

2. The Court also DENIES Defendants' preliminary objection seeking to dismiss the complaint against Denise Cherry. Plaintiff's complaint alleges that Mr. and Mrs. Cherry are operating and doing business as Donald W. Cherry Trucking. At the hearing on venue, Defendants' basically asserted Mrs. Cherry was merely an employee of the business and that she had no ownership interest. The court finds that this is a speaking demurrer and thus, it denies the preliminary objection. This ruling is without prejudice to Defendants raising this issue later in the proceedings.

3. The Court GRANTS Defendants' preliminary objection that venue is not proper in Lycoming County, but venue would be proper in Clearfield County, the county in which Defendants' live and conduct their business. Pursuant to Rule 1006(e) of the Pennsylvania Rules of Civil Procedure, the Prothonotary shall transfer the above-captioned cases to Clearfield County with the costs to be paid by Plaintiffs.

By The Court,



Kenneth D. Brown, P.J.

cc: John Felix, Esquire
Dwight L. Koerber, Jr., Esquire
110 N Second St., P.O. Box 1320, Clearfield PA 16830
Prothonotary
MDJ James G. Carn
X Work file

COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA
MOTION COVER SHEET

Caption (may be abbreviated)

Docket No. 06-02386

Matthew J. Bower

Case assigned to Judge KENNETH D. BROWN

vs.
Donald W. Cherry and Denise Cherry, his
wife and Donald W. Cherry Trucking

☐ none
☐ Family Court Hearing Officer

1. Name of filing party: Donald W. Cherry and Denise Cherry, his wife, and Donald W. Cherry Trucking, Defendants

2. Filing party's attorney: Dwight L. Koerber, Jr., Esquire

3. Type of filing: Preliminary Objections

<p>4. The following is/are requested:</p> <p><input type="checkbox"/> Argument</p> <p><input type="checkbox"/> Evidentiary Hearing</p> <p><input type="checkbox"/> Court conference</p> <p><input checked="" type="checkbox"/> Rule to show cause</p> <p><input type="checkbox"/> Entry of uncontested order (attach supporting documentation)</p> <p><input type="checkbox"/> Expedited consideration. State the basis:</p> <p>_____</p> <p>_____</p> <p><input type="checkbox"/> Attach this cover sheet to original motion previously filed on: _____</p> <p>5. Time required: <u>1 1/2 hrs.</u></p>	<p>6. Name and addresses of filing and all counsel of record and unrepresented parties:</p> <p>For Defendants, on Preliminary Objections</p> <p>Dwight L. Koerber, Jr., Esquire LAW OFFICES OF DWIGHT L. KOERBER, JR. 110 N. Second St., P.O. Box 1320 Clearfield, PA 16830</p> <p>For Plaintiff</p> <p>John A. Felix, Esquire 25 W. Third Street, Suite 302 Williamsport, PA 17701</p> <p><input type="checkbox"/> Continued on separate sheet.</p>
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ORDER

1. An 1 argument 1 factual hearing re venue court conference is scheduled for February 9, 2007
1:30 at P m. in courtroom no. 1, Lycoming County Courthouse, Williamsport, PA.
2. Briefs are to be filed by the following dates:
- Filing party _____
- Responding party(ies) _____
3. A rule is issued upon respondent to show cause why the petitioner is not entitled to the relief requested.
4. A response to the motion/petition shall be filed within _____ days.
5. 4 Other _____

K D B
Judge

Dec 21, 2006
Date

cc: ALL PARTIES OR OTHERS TO BE SERVED WITH NOTICE MUST BE DESIGNATED IN "6." ABOVE.

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

Matthew J. Bower,
Plaintiff

Vs.

Donald W. Cherry and
Denise Cherry, his wife, and
Donald W. Cherry Trucking,
Defendants

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Docket Number: 06-02386
Civil Action – Law

Type of Pleading:
PRELIMINARY OBJECTIONS
OF DEFENDANTS

Filed on behalf of Defendants:
Donald W. Cherry and Denise
Cherry, his wife, and Donald W.
Cherry Trucking

Counsel of record for
this party:

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

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

FILED
LYCOMING COUNTY
DEC 15 A 11:13
WILLIAM J. BURD
PROTHONOTARY &
CLERK OF COURTS

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

Matthew J. Bower,
Plaintiff

Vs.

Donald W. Cherry and
Denise Cherry, his wife, and
Donald W. Cherry Trucking,
Defendants

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Docket Number: 06-02386
Civil Action – Law

PRELIMINARY OBJECTIONS OF DEFENDANTS

FILED
LYCOMING COUNTY
DEC 15 A 11:13
WILLIAM J. BURD
PROTHONOTARY &
CLERK OF COURTS

COME NOW Defendants Donald W. Cherry and Denise W. Cherry, his wife, and
Donald W. Cherry Trucking, Defendants, by and through their attorney, Dwight L.
Koerber, Jr., Esquire, and file the within Preliminary Objections to the Complaint filed by
the Plaintiff on or about November 13, 2006, accepted for service November 28, 2006.

**I.
FAILURE TO COMPLY WITH RULE OF LAW**

1. Rule 1028 of the Pennsylvania Rules of Civil Procedure provides that Preliminary Objections may be filed for failure to comply with a rule of law. Pa. R.C.P. 1028(a)(2).
2. The rule of law which the Plaintiff has failed to comply with is Rule 1002 of the Rules of Civil Procedure for Magisterial District Justices, specifically Rule 1002.A.

3. The facts and legal issues involved in this case are the identical facts and legal issues that were involved in a hearing before District Justice Carn, wherein District Justice Carn issued a ruling on October 13, 2006 in favor of Defendant Donald W. Cherry, et al. Attached hereto as Appendix A is a true and correct copy of that judgment and a true and correct copy of the Complaint setting forth the issues involved in that proceeding.

4. There can be no question whatsoever that the issues now raised in the present Complaint are identical to those which were raised in the Complaint before District Justice Carn, in Docket Number CV-0000389-06.

5. If the Plaintiff wanted to contest the judgment of District Justice Carn, as entered October 13, 2006, the only manner in which he could do so was to file a Notice of Appeal, within 30 days of the entry of that judgment. This procedure is firmly established by Rule 1002.A of the Rules of Civil Procedure for Magisterial District Justices.

6. In view of the fact that Plaintiff did not file a Notice of Appeal to the decision of District Justice Carn, within the required 30-day period, that judgment has now become final. Plaintiff cannot relitigate that case by simply filing a new Complaint.

7. Complaint should be stricken for failure to comply with Rule 1002.A of the Rules of Civil Procedure for Magisterial District Justices.

WHEREFORE, Defendants pray that their Preliminary Objections be sustained and that the Complaint be stricken.

II.
DEMURRER AS TO DENISE CHERRY

Paragraphs 1 through 7 are incorporated by reference as though set forth in full.

8. Rule 1028 of the Pennsylvania Rules of Civil Procedure provides that Preliminary Objections may be filed in the form of a demurrer, due to the legal insufficiency of a pleading [Pa. R.C.P. 1028(a)(4)].

9. The Complaint filed herein is legally deficient, as a matter of law, insofar as it attempts to name Denise Cherry as a defendant, inasmuch as there is no documentation, no rule, no factual allegation that would warrant doing so. Indeed, the invoice on which the Complaint is based, identified as Exhibit A to the Complaint, specifically references only Donald W. Cherry Trucking.

10. Plaintiff has alleged that Donald W. Cherry and Denise Cherry are operating and doing business as Donald W. Cherry Trucking, with no invoice, documentation or substantiation to support that.

11. It is Defendants' position that the Complaint as a matter of law is deficient, inasmuch as it does not allege that there was a partnership nor present any basis for presuming that there was a partnership between Donald W. Cherry and Denise Cherry, his wife, thereby showing that the Complaint as a matter of law is deficient to proceed while seeking to name both of them when the sole documentation they are relying upon covers only the name of Donald W. Cherry Trucking.

WHEREFORE, Defendants pray that the Preliminary Objections be sustained and

that the Complaint be dismissed against Denise Cherry, inasmuch as the Complaint is legally insufficient to establish a cause of action against her.

III. IMPROPER VENUE

Paragraphs 1 through 11 are incorporated by reference as though set forth in full.

12. Venue for a Complaint involving individuals is covered by Rule 1006 of the Pennsylvania Rules of Civil Procedure.

13. Venue herein is covered by Pa. R.C.P. 1006(a), which provides that the only county in which an action may be brought is the county in which the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or any other county authorized as law.

14. In paragraph 2 of the Complaint, Plaintiff has alleged that Defendants reside in Morrisdale, Clearfield County, and as such, the only county in which they can be served is Clearfield County. (As a professional courtesy to Plaintiff's counsel, counsel for Defendants agreed to accept service, but he did so in Clearfield County, thereby not altering the fact that Defendants can be served only in Clearfield County).

15. The transaction and occurrence herein is an alleged breach of contract. The trucking services as shown in the face of the Complaint itself involve a pick up in Lindenhurst, New York and a delivery in Salem, Ohio, thereby showing that the

transaction or occurrence clearly did not occur in Lycoming County. While it is alleged that there is a failure to make payment, there was no allegation that the place of payment was Lycoming County, and indeed there could not be such an allegation in view of the testimony already presented before District Justice Carn by the Plaintiff that payment was always made by Donald W. Cherry in Clearfield County.

16. Overall, there is absolutely no tie or connection for the services on which Plaintiff seeks to recover that involve Lycoming County, thereby showing that neither the cause of action nor the transaction or occurrence occurred in Lycoming County.

17. The only county where venue exists is Clearfield County, as that is where the Defendants reside, and that is the location which Exhibit A shows as the point where the billing that they are complaining for which they were not paid was presented.

18. The terms of the Complaint itself show that the initial contact that has been alleged between the parties was sometime in the summer of 2004, but the shipments about which they claim they were not paid occurred during the period October 23 – October 30, 2004. No allegation, representation or factual matter has been presented to show that the transaction or occurrence involving these shipments was in any way associated with Lycoming County.

19. Attached hereto as Appendix B is an Affidavit signed by Donald W. Cherry setting forth the pertinent facts relative to venue.

WHEREFORE, Defendants request that their Preliminary Objections be sustained and that the Complaint be dismissed for improper venue, or, in the alternative, that the

proceeding be transferred to Clearfield County, which is the only county where true venue resides.

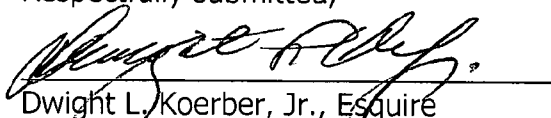
**IV.
REQUEST FOR FACT FINDING PROCESS ON VENUE**

Paragraphs 1 through 19 are incorporated by reference as though set forth in full.

20. In the event that this Honorable Court should determine that there is an unresolved factual question with respect to venue, it is respectfully requested that a date be established for taking depositions so that such evidence can be reviewed and examined by the Court to determine the proper county for venue. The facts alleged in the Complaint are clearly insufficient to establish venue in Lycoming County and for that reason, Defendants request that this case be transferred to the proper county for venue, which is Clearfield County.

WHEREFORE, if a factual question is found to exist with respect to venue, Defendants request that an order be entered setting forth the procedures for depositions so as to establish as a record for a correct factual determination to be made on venue.

Respectfully submitted,



Dwight L. Koerber, Jr., Esquire

Attorney for Defendants:

Donald W. Cherry and Denise Cherry, his wife,
and Donald W. Cherry Trucking

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

Matthew J. Bower,
Plaintiff

Vs.

Donald W. Cherry and
Denise Cherry, his wife, and
Donald W. Cherry Trucking,
Defendants

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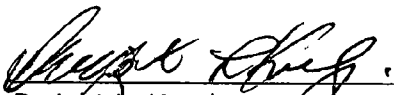
Docket Number: 06-02386
Civil Action – Law

CERTIFICATE OF SERVICE

I certify that on the 6th day of December 2006, the undersigned served a true and correct copy of the foregoing PRELIMINARY OBJECTIONS OF DEFENDANTS in the above-captioned matter by United States First Class Mail upon counsel for Plaintiff as follows:

John A. Felix, Esquire
25 W. Third Street, Suite 302
Williamsport, PA 17701

Respectfully submitted,



Dwight L. Koerber, Jr., Esquire

Attorney for Defendants:

Donald W. Cherry and Denise Cherry, his wife,
and Donald W. Cherry Trucking

APPENDIX A

Attached hereto as Appendix A is a true and correct copy of the Complaint and judgment of District Justice Carn.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **LYCOMING**

CIVIL COMPLAINT

Mag. Dist. No.: **29-1-01**

MDJ Name: Hon.
JAMES G. CARN

Address: **2140 BOYD ST**
WILLIAMSPORT, PA
17701

Telephone: **(570) 322-6159**

PLAINTIFF: NAME and ADDRESS
Matthew Jay Bower
Po Box 3161 Williamsport PA
17701

VS.

DEFENDANT: NAME and ADDRESS
Donald W. Cherry 2557
Donald W Cherry trucking Deercreek Road
Denise Cherry Morrisdale PA

	AMOUNT	DATE PAID
FILING COSTS	\$ <u>113.50</u>	<u> </u> / <u> </u> / <u> </u>
POSTAGE	\$ <u>36.00</u>	<u> </u> / <u> </u> / <u> </u>
SERVICE COSTS	\$ <u> </u>	<u> </u> / <u> </u> / <u> </u>
CONSTABLE ED.	\$ <u> </u>	<u> </u> / <u> </u> / <u> </u>
 TOTAL	\$ <u>149.50</u>	<u> </u> / <u> </u> / <u> </u>

Docket No.: **CV 389-06**
Date Filed: **9/7/06**



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

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ 717.99 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

Money owed for services ~~done~~ for loads
hauled on 10-26-04, 10-28-04 And 10-30-04
~~Defendant~~ at 1123 Louisiana St Williamsport PA
~~contacted~~ Me By Phone to haul loads for him
But never Paid for the last 3 loads hauled

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

Matthew Jay Bower
(Signature of Plaintiff or Authorized Agent)
323-2622 or 220-9019

Plaintiff's Attorney: _____ Address: _____
Telephone: _____

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

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

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

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **LYCOMING**

Mag. Dist. No.: **29-1-01**
MDJ Name: Hon. **JAMES G. CARN**
Address: **2140 BOYD ST**
WILLIAMSPORT, PA
Telephone: **(570) 322-6159** **17701**

ATTORNEY DEF PRIVATE :

DWIGHT L KOERBER JR
110 N 2ND ST
BOX 1320
CLEARFIELD, PA 16830

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF: **BOWER, MATTHEW JAY**
PO BOX 3161
WILLIAMSPORT, PA 17701

VS.
DEFENDANT: **CHERRY, DONALD W, ET AL.**
2557 DEER CREEK RD
MORRISDALE, PA 16858

Docket No.: **CV-0000389-06**
Date Filed: **9/07/06**



THIS IS TO NOTIFY YOU THAT:

Judgment: **FOR DEFENDANT** (Date of Judgment): **10/13/06**

☒ Judgment was entered for: (Name) **DONALD W CHERRY TRUCKING**

☒ Judgment was entered against: (Name) **BOWER, MATTHEW JAY**
in the amount of \$ **.00**

☐ Defendants are jointly and severally liable.

☐ Damages will be assessed on Date & Time _____

☐ This case dismissed without prejudice.

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

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

Amount of Judgment	\$.00
Judgment Costs	\$.00
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$.00
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total	\$ _____

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

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

Date James G. Carn, Magisterial District Judge

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

Date _____, Magisterial District Judge

My commission expires first Monday of January, **2010**

SEAL

APPENDIX B

Attached hereto as Appendix B is an Affidavit signed by Donald W. Cherry.

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

Matthew J. Bower,
Plaintiff

Vs.

Donald W. Cherry and
Denise Cherry, his wife, and
Donald W. Cherry Trucking,
Defendants

*

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Docket Number: 06-02386
Civil Action – Law

AFFIDAVIT ON BEHALF OF DONALD W. CHERRY

1. My name is Donald W. Cherry and I am a sole proprietor in the business under the name of Donald W. Cherry Trucking. My address is 2557 Deer Creek Road, Morrisdale, PA, 16858.

2. At all times I have conducted business as a sole proprietor, operating under the name of Donald W. Cherry Trucking.

3. My wife and I have never been partners and she has never traded and done business under the name of Donald W. Cherry Trucking.

4. The dealings in the past that I had with the Bowers first arose when I spoke to them at a landfill in Salem, Ohio. To my knowledge, I never spoke directly with John Bower after that, but only spoke with his son, Matthew Bower.

5. The Bowers expressed an interest in providing transportation services through the brokerage operation I had, as I was the direct contact that would line up shipments and coordinate loads for a waste generator out of the New York City area named One World Recycling, Inc., of Lindenhurst, New York.

6. I did the billing for the various truckers that I would deal with, but at no time were they ever leased to me. Under the arrangement I followed, I charged one (\$1.00) dollar a ton, which was a very modest fee, which was simply intended to cover the time involved in handling the paperwork for the billing.

7. My company played no role in telling the truckers when to pick up or when to deliver a shipment, but instead they would do all of their coordinations directly with One World Recycling, Inc.

8. With respect to the shipments that are involved in the lawsuit filed in this case, covering the period of October 23 – 30, 2004, I can say with absolutely 100% certainty that I played no role in telling either Matthew Bower or John Bower when to pick up or when to deliver or what shipments to transport. The only dealings I would have with them would be to handle the paperwork when they would present it to me.

9. The Bowers never presented logs to me, never were subjected to drug and alcohol testing through me, never had my placard on the side of their vehicles, and never did anything with me that would suggest that I was controlling their operations, as their actual operations were entirely unrelated to anything involved in my relationship with them. My relationship was strictly one involving the handling of

paperwork all of which was delivered to Morrisdale, Pennsylvania (Clearfield County), and paid out of Morrisdale, Pennsylvania (Clearfield County).

10. In all of my dealings with Matthew Bower or John Bower, I never recall one instance when I called them and spoke with them in Lycoming County. Every once in a while I had some discussions with them on their cell phone, but I had absolutely no idea where they were, with the understanding always being that they were on the road somewhere coordinating what they would be doing. None of these over-the-road contacts occurred during the period of time that pertains to this litigation.

11. I would like to emphasize that there was absolutely no volume commitment that was made to One World Recycling, Inc. covering shipments that either John Bower or Matthew Bower would transport, with all of this being handled only on an individualized basis, when they might have equipment available and when they might furnish their equipment to Lindenhurst, New York in order to be loaded. They handled all of this directly. While the procedures I followed were ongoing procedures, there was absolutely no ongoing contractual commitment.

12. Finally, on an issue that does not involve venue, I wish to emphasize that the underlying arrangement from the very beginning for Matthew Bower, John Bower and all other individual truckers that I used, was that they would get payment when I got paid and only if I got paid. I had no ability to pay them in advance and could never suggest that I would pay them in advance, as there was literally thousands and thousands of dollars in freight revenue that was involved. I could not have even

thought about conducting my business if I had undertaken an arrangement to prepay accounts prior to the time that I was paid. For all the shipments involved in the present litigation, I was never paid and for that reason no payment was made to Matthew Bower or John Bower.

VERIFICATION

I certify that the statements made in the foregoing Affidavit 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.


Donald W. Cherry, III

MATTHEW J. BOWER
PLAINTIFF

: IN THE COURT OF COMMON PLEAS
OF LYCOMING COUNTY, PA

VS

: NO. **06-02386**

DONALD W. CHERRY and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING

:
:
: CIVIL ACTION - LAW

NOTICE TO DEFEND AND CLAIM RIGHTS

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

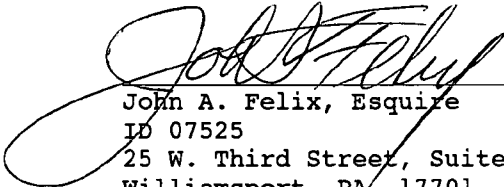
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PROTHONOTARY OF LYCOMING COUNTY
Lycoming County Court House
Williamsport, PA 17701
Telephone No. (570) 327-2251

SUSQUEHANNA LEGAL SERVICES
329 Market Street
Williamsport, PA 17701
Telephone No. (570) 323-8741

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Lycoming 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.


John A. Felix, Esquire
ID 07525
25 W. Third Street, Suite 302
Williamsport, PA 17701

2006 NOV 13 PM 12:14

Att. to Court

PD 16

MATTHEW J. BOWER
PLAINTIFF

: IN THE COURT OF COMMON PLEAS
OF LYCOMING COUNTY, PA

VS

: NO. 06-02386

DONALD W. CHERRY and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING

:
: CIVIL ACTION - LAW

COMPLAINT

1. Plaintiff is Matthew J. Bower, an adult individual with a place address at 1123 Louisa Street, Williamsport, Lycoming County, Pennsylvania.

2. Defendants are Donald W. Cherry and Denise Cherry, his wife operating and doing business as Donald W. Cherry Trucking with offices at 2557 Deer Creek Road, Morrisdale, Clearfield County, Pennsylvania.

3. In the summer of 2004, Defendant contacted Plaintiff at his home at 1123 Louisa Street, Williamsport, Pennsylvania, requesting that the Plaintiff provide hauling services for him.

4. Plaintiff accepted Defendant's offer to haul and made several pickups at a transfer station in Lindenhurst, New York and deliveries to a demolition landfill in Salem, Ohio.

5. In October, 2004, Plaintiff picked up and hauled for the Defendant on October 23, 2004, October 26, 2004, October 28, 2004, and October 30, 2004.

2006 NOV 13 P 12:14

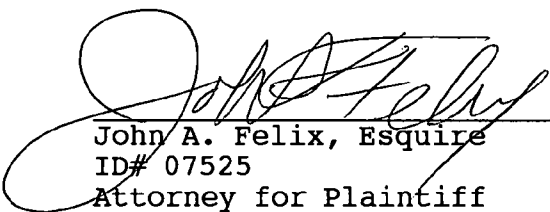
6. Defendant delayed but did pay for services provided on October 23, 2004, but has refused to pay for the last three hauling jobs: (\$2,275.28 - 10/26/04) (\$2,446.61 - 10/28/04) and (\$2,390.10 - 10/30/04) which leaves an unpaid balance of \$7,111.99. (A photocopy of the Load Statement is attached hereto and marked as Plaintiff's "Exhibit Number A".)

7. Plaintiff has fully performed all the conditions of employment in good faith.

8. Defendants have acknowledged that the amounts demanded are due.

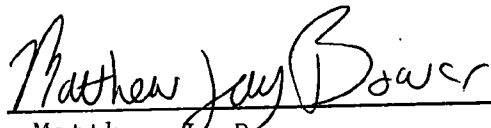
9. Although duly demanded by Plaintiff, the balance of \$7,111.99 has not been paid or any part thereof.

WHEREFORE, Plaintiff demands judgment against the Defendants Donald W. Cherry and Denise Cherry, his wife and Donald W. Cherry Trucking in the amount of \$7,111.99 plus interest and costs.



John A. Felix, Esquire
ID# 07525
Attorney for Plaintiff
25 W. Third Street, Suite 302
Williamsport, PA 17701
(570) 327-5640

I verify that the facts set forth in the foregoing Pleadings are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 P.C.S., Section 4904 relating to unsworn falsification to authorities.


Matthew S. Bower

Dated: Nov 9, 2006

2557 Deer Creek Road
Morrisdale, PA 16858
Phone: (814) 345-5992 • Fax: (814) 345-6751

Driver:

[illegible]

X _____ %

7111.99

"EXHIBIT A"

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

MATTHEW J. BOWER,
Plaintiff

v.

DONALD W. CHERRY, III and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING,
Defendant

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Docket No. 07-573-CD

Type of Pleading:
ANSWER AND NEW MATTER
OF DEFENDANT

Filed on Behalf of:
Defendant:
DONALD W. CHERRY, III and
DENISE CHERRY

Counsel of Record for
This Party:

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

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

NOTICE TO PLEAD:
You are hereby given twenty
(20) days to file a responsive
pleading to New Matter.

FILED 3cc AHK
9/3:57am Koerber
JUN 04 2007
(U)

William A. Shaw
Prothonotary/Clerk of Courts

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

MATTHEW J. BOWER,
Plaintiff

v.

DONALD W. CHERRY, and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING,
Defendant

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Docket No. 07-573-CD

ANSWER AND NEW MATTER OF DEFENDANT

COME NOW, Defendants Donald W. Cherry and Denise Cherry, husband and wife, and file the within Answer and New Matter to the Complaint filed herein by Plaintiff, Matthew J. Bower.

ANSWER

(1) Admitted.

(2) Admitted in part and denied in part. It is admitted that Donald W. Cherry resides at 2557 Deer Creek Road, Morrisdale, Clearfield County, Pennsylvania and that he trades and does business as Donald W. Cherry Trucking. It is denied that Denise Cherry, his wife, is an operator or proprietor of the said business, as her only involvement was working as an employee to assist with paperwork. All tax returns, contracts and business relationships, including the one involved in this litigation, were undertaken solely by Donald W. Cherry, t/d/b/a Donald W. Cherry Trucking.

(3) Denied. The initial contact between Plaintiff and Defendant, Donald W. Cherry incurred when the two (2) parties spoke with one another at a landfill in Salem, Ohio, with this being what lead to the transportation services that Plaintiff eventually provided.

(4) It is denied that at any time that Plaintiff provided transportation services for Donald W. Cherry Trucking, as Donald W. Cherry Trucking was solely a broker who helped coordinate transportation services at the price of \$1.00 per ton handled the billing associated with the transportation services that Plaintiff provided for the shipper an issue, which was One World Recycling, Inc.

(5) Admitted in part and denied in part. It is admitted that certain loads were picked up and hauled. The loads were not technically hauled "for the Defendant", but instead were hauled directly by the Plaintiff for One World Recycling, Inc., with Donald W. Cherry Trucking handling the billing as an administrative convenience. See New Matter.

(6) Admitted in part and denied in part. It is admitted that for shipments that Plaintiff hauled on October 26, 2004, October 28, 2004 and October 30, 2004, the Plaintiff was not paid. It is denied that Defendant, Donald W. Cherry Trucking owes Plaintiff any money at all for these loads, as the arrangement the parties entered into was that Plaintiff would be paid for services when Donald W. Cherry Trucking was paid for services. One World Recycling, Inc. never paid for the services in question and for

that reason no payment is due from Defendant(s) and owing to the Plaintiff. See New Matter.

(7) Denied. See New Matter.

(8) Denied, legal conclusion. Furthermore, the amount due and owing is owed by One World Recycling, Inc.

(9) Denied, legal conclusion. See New Matter.

NEW MATTER

In further support of their position herein, Defendants offer the following new matter.

(10) Defendant, Donald W. Cherry, III performed in a combination role, as a trucking company for himself, where he had his own trucks, and as a broker, where he would coordinate and work with other truckers to assist them in getting paid when they provided transportation services for One World Recycling, Inc. One World Recycling, Inc. is a disposal company with facilities in Lindenhurst, New York, and as pertinent to this proceeding, it had a large volume of demolition waste for which it required transportation services moving from Lindenhurst, New York to Salem, Ohio.

(11) After Donald W. Cherry Trucking began servicing Old World Recycling, Inc. with its own trucks, he decided to also act as a facilitator (broker) for other trucking companies to provide similar transportation services, with these trucking

companies services operating directly as motor carriers on their own, being in no way leased or subcontracted to Donald W. Cherry Trucking.

(12) In recognition of the fact that Donald W. Cherry Trucking dealt as a broker with the Plaintiff and other motor carriers, and not as a trucking company, Defendant would point out that the Plaintiff at all times pertinent to this proceeding had his own placards on the cab of his vehicle, operated under his own US DOT number, handled safety records, logs and drug and alcohol testing entirely on his own, and in all respects performed such functions as an independent motor carrier.

(13) The only manner in which Defendant, Donald W. Cherry was involved in the present hauling was that he acted as the coordinator to present billings, and did so on his own letterhead, as a convenience to both the Plaintiff and One World Recycling, Inc.

(14) The terms of engagement under which the Plaintiff would provide transportation services, were that he would be paid when and only when Donald W. Cherry Trucking received payment from One World Recycling, Inc., and at that time Donald W. Cherry Trucking would receive \$1.00 per ton of waste that was disposed of.

(15) As a matter of practice, Donald W. Cherry Trucking would make payment within a day or two after he received a payment check from One World Recycling, Inc., as the large number of shipments involved were such that it was recognized as an economic necessity that Defendant would present payment to Plaintiff only after he

received payment for the shipments that Plaintiff transported for One World Recycling, Inc.

(16) The understanding that Plaintiff would be paid only after Defendant received his payment from One World Recycling, Inc., was a key part of the contract between the parties and, with Plaintiff herein being treated identical to the scores of additional truckers that provided services under a similar hauling arrangement involving Donald W. Cherry Trucking and One World Recycling, Inc.

(17) Defendant has never been paid for the hauling that Plaintiff provided on October 26, 2004, October 28, 2004 and October 30, 2004, thereby establishing that Defendant, Donald W. Cherry Trucking is not indebted to Plaintiff for this hauling.

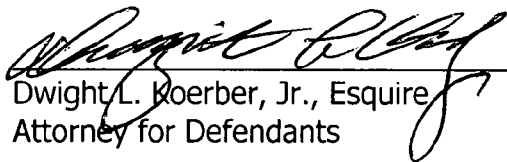
(18) As further indication that the Plaintiff was the true underlying carrier and that Plaintiff recognized that he would get paid only after One World Recycling, Inc. paid Donald W. Cherry Trucking, it should be noted that shortly after One World Recycling, Inc. stopped making payment that Plaintiff made arrangements with the Defendant, Donald W. Cherry Trucking to attempt to collect from One World Recycling, Inc. on a direct basis for the transportation services that had been rendered and in fact did collect for a portion of those services.

(19) In short, it is the position of Defendant that there is no indebtedness owed to Plaintiff for the transportation services which are at issue, as Defendant has never been paid by One World Recycling, Inc. for the trucking services performed by

Plaintiff. Moreover, Plaintiff has already collected directly from One World Recycling, Inc., approximately \$5,000.00 for the services involved in this proceeding.

WHEREFORE, Defendants pray that the complaint filed herein by Plaintiff be denied and that judgment be entered in favor of Defendants.

Respectfully submitted,


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

VERIFICATION

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

5/5/07
Date

Donald W Cherry III
Donald W. Cherry, III

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

MATTHEW J. BOWER,
Plaintiff

v.

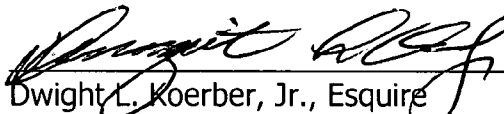
DONALD W. CHERRY, III and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING,
Defendant

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Docket No. 07-573-CD

I certify that on the 4th day of June, 2007, the undersigned served a certified copy of the Answer and New Matter in the above-captioned matter. Such document was served via United States First Class Mail upon the following individual:

John A. Felix, Esquire
25 W. Third Street, Suite 302
Williamsport, PA 17701



Dwight L. Koerber, Jr., Esquire
Attorney for Defendants: DONALD W. CHERRY,
and DENISE CHERRY, his wife and DONALD W.
CHERRY TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MATTHEW J. BOWER
PLAINTIFF

:

V.

: DOCKET NO. 07-573-CD

DONALD W. CHERRY, III and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING,
DEFENDANTS

:

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William A. Shaw
Prothonotary/Clerk of Courts (610)
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REPLY

Paragraphs 1 through 9 of Plaintiff's Complaint are incorporated by reference as if fully set forth.

10. As to drivers other than John I. Bower and Matthew J. Bower, Plaintiff is without knowledge either to admit or to deny that Defendant performed as a trucking company and as a broker, and proof thereof is hereby demanded. Admitted that One World Recycling, Inc. is a disposal company with operations in Lindenhurst, New York.

11. Plaintiff is without knowledge either to admit or deny whether Defendant acted as a broker for other trucking companies to provide hauling services and proof thereof is hereby demanded.

12. Admitted that the Plaintiff operated his own vehicle with his own US DOT identification number, but denied that Defendant dealt as a broker with the Plaintiff. Plaintiff was employed as a subcontractor for the Defendant's trucking company, giving Donald W. Cherry all the bills and pay slips.

13. Denied that the Defendant's only involvement was in presenting billings on his own letterhead "as a matter of convenience". On the contrary, Defendant presented billings to One World Recycling, Inc. as its Contractor.

14. Denied that Plaintiff ever agreed to provide transportation services conditioned upon Defendant receiving payment from One World Recycling, Inc. Plaintiff turned in bills to the Defendant on a Friday and received payment from the Defendant the following Friday.

15. Plaintiff is without knowledge either to admit or deny that Defendant Donald W. Cherry Trucking would make payment after receiving payment check from One World Recycling, Inc. and proof thereof is hereby demanded. Defendant's designation that it was "economic necessity" to pay Plaintiff only after Defendant received payment for Plaintiff's services is self serving and irrelevant. See Reply No. 14.

16. Plaintiff is without knowledge either to admit or deny whether other truckers provided services and received payment under the hauling arrangement claimed. Denied that there was any understanding that Plaintiff would be paid only after Defendant received his payment from One World Recycling, Inc. The key part of the contract was the Plaintiff was employed by Defendant who was responsible to make payment regardless of other hauling arrangements, if any, with other truckers.

17. Plaintiff is without knowledge either to admit or deny that Defendant was ever paid for hauling that Plaintiff provided on October 26, 2004, October 28, 2004 and October 30,

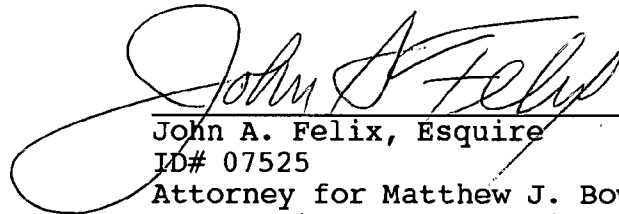
2004 and proof thereof is hereby demanded. Defendant's claims that he is not indebted to the Plaintiff for the hauling services on this date is conclusionary and requires no further reply.

18. Denied that the Plaintiff was the true underlying carrier. Plaintiff asserts that if Defendant was just a facilitator, One World Recycling, Inc. would have paid Plaintiff directly and made any other payments to Defendant as contractually agreed upon.

19. As further proof that Plaintiff was the subcontractor of the Defendant, Plaintiff's 1099 tax form showed wages paid by the Defendant to the Plaintiff in excess of \$100,000.

20. Admitted that Plaintiff received payment from One World Recycling, Inc. Payment was made for hauling services only undertaken after Plaintiff terminated his contract with Defendant and not for any hauling done while a subcontractor of Defendant.

WHEREFORE, Plaintiff demands judgment against the Defendants Donald W. Cherry III and Denise Cherry his wife, and Donald W. Cherry Trucking in the amount of \$7,111.99 plus interest and costs.


John A. Felix, Esquire
ID# 07525
Attorney for Matthew J. Bower
25 W. Third Street, Suite 302
Williamsport, PA 17701
(570) 327-5640

I verify that the facts set forth in the foregoing Pleadings are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 P.C.S., Section 4904 relating to unsworn falsification to authorities.

Matthew J. Bower

Dated:

8/30/07

W V
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

MATTHEW J. BOWER
(Plaintiff)

1123 LOUISA STREET
(Street Address)

WILLIAMSPORT, PA 17701
(City, State ZIP)

CIVIL ACTION

No. 07-573-CD

Type of Case: CIVIL

Type of Pleading: CERTIFICATE OF READINESS

vs.
DONALD W. CHERRY and
DENISE CHERRY, his wife
DONALD W. CHERRY TRUCKING
(Defendant)

2557 DEER CREEK ROAD
(Street Address)

MORRISDALE, PA 16858
(City, State ZIP)

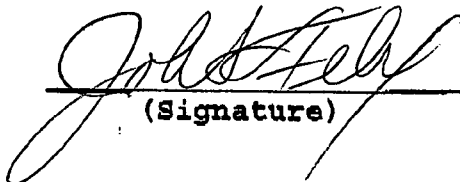
Filed on Behalf of:

PLAINTIFF
(Plaintiff/Defendant)

JOHN A. FELIX, ESQUIRE
(Filed by)

25 W. THIRD STREET, SUITE 302
WILLIAMSPORT, PA 17701
(Address)

570-327-5640
(Phone)


(Signature)

FILED
JAN 22 2008
William A. Shaw
Prothonotary/Clerk of Courts
cc
Any Felix
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Civil Trial Listing/Certificate of Readiness

Plaintiff(s): MATTHEW J. BOWER

Case Number: 07-573-CD

Defendant(s): DONALD W. CHERRY
DENISE CHERRY, his wife
DONALD W. CHERRY TRUCKING

To the Prothonotary:

Arbitration Limit: 20,000

Type Trial Requested: Jury Non-Jury X Arbitration
Estimated Trial Time: 3 hours

Jury Demand Filed By: _____

Date Jury Demand Filed: _____

Please place the above-captioned case on the trial list. I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

(Signature)

(Date)

For the Plaintiff: JOHN A. FELIX, ESQUIRE 570-327-5640 Telephone Number

For the Defendant: DWIGHT L. KOERBER, JR 814-765-9611 Telephone Number

For Additional Defendant: _____ Telephone Number

Certification of Current Address for all parties or counsel of record:

Name:	JOHN A. FELIX, ESQ.	Address:	25 W. Third St, Ste 302	City/State/Zip:	Williamsport, PA
Name:		Address:		City/State/Zip:	17701
Name:	DWIGHT L. KOERBER, JR	Address:	110 N. Second Street	City/State/Zip:	Clearfield, PA
Name:		Address:		City/State/Zip:	16830
Name:		Address:		City/State/Zip:	
Name:		Address:		City/State/Zip:	

FILED

JAN 22 2008

William A. Shaw
Prothonotary/Clerk of Courts

CA

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

MATTHEW J. BOWER

: DOCKET NO. 07-573-CD

v.

:

DONALD W. CHERRY and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING

:

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William A. Shaw
Prothonotary/Clerk of Courts

AND

JOHN I. BOWER

: DOCKET NO. 07-574-CD

v.

:

DONALD W. CHERRY and
DENISE CHERRY, his wife, and
DONALD W. CHERRY TRUCKING

:

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MOTION FOR CONTINUANCE

1. John A. Felix, Esquire is counsel o record for Matthew J. Bower and John I.. Bower, Plaintiffs in the above-captioned matters.

2. Dwight L. Koerber, Jr., Esquire is counsel of record for Donald W. Cherry and Denise Cherry, his wife and Donald W. Trucking, Defendants in the above captioned matters.

3. The cases which have been consolidated are scheduled for Arbitration Hearing on April 1, 2008 at 1:00 PM.

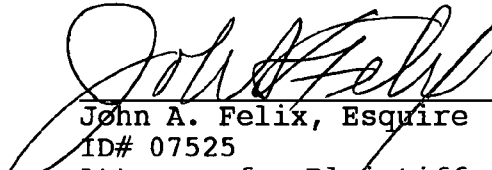
4. The undersigned counsel has been notified of a resentencing hearing in the United States District Court for the

Middle District of Pennsylvania in Williamsport on April 1, 2008
at 1:30 P.M.

5. Because of the travel time from Williamsport, Lycoming County to Clearfield, Clearfield County, counsel for the Plaintiffs will not be available for the Arbitration Hearing on April 1.

6. Dwight L. Koerber, Jr. has been notified of the conflict in scheduling and does not oppose a continuance of the Arbitration Hearing.

WHEREFORE, John A. Felix, Esquire respectfully requests that the Arbitration Hearing scheduled for April 1, 2008 be continued.



John A. Felix, Esquire
ID# 07525
Attorney for Plaintiffs
25 W. Third Street, Suite 302
Williamsport, PA 17701
(570) 327-5640

VF

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

MATTHEW J. BOWER

: DOCKET NO. 07-573-CD

v.

:

DONALD W. CHERRY and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING

:

:

:

AND

JOHN I. BOWER

: DOCKET NO. 07-574-CD

v.

:

DONALD W. CHERRY and
DENISE CHERRY, his wife, and
DONALD W. CHERRY TRUCKING

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William A. Shaw
Prothonotary/Clerk of Courts

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ORDER

AND NOW, this 8th day of ~~March~~ April, 2008, upon consideration of the
Motion for Continuance,

() The Motion for Continuance is DENIED.

(✓) The Motion for Continuance is GRANTED, and the hearing is CONTINUED
to the 15th day of May, 2008, at 1:00 am, pm.

BY THE COURT:



FILED

APR 09 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/9/08

☒ You are responsible for serving all appropriate parties.

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

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

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

MATTHEW J. BOWER :
vs. : No. 07-573-CD
DONALD W. CHERRY and :
DENISE CHERRY, his wife and :
DONALD W. CHERRY TRUCKING :
CONSOLIDATED WITH :
JOHN I. BOWER :
vs. : No. 07-574-CD
DONALD W. CHERRY and :
DENISE CHERRY, his wife and :
DONALD W. CHERRY TRUCKING :

ORDER

NOW, this 1 day of May, 2008, it is the ORDER of the Court that the
above-captioned matter is scheduled for Arbitration on **Thursday, May 15, 2008 at 1:00**
P.M. in the Conference/Hearing Room No. 3, 2nd Floor, Clearfield County Courthouse,
Clearfield, PA. The following have been appointed as Arbitrators:

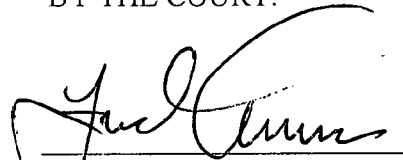
Toni M. Cherry, Esquire, Chairman

John R. Ryan, Esquire

Robin J. Foor, Esquire

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

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

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William A. Shaw
Prothonotary/Clerk of Courts

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

MATTHEW J. BOWER : DOCKET NO. 07-573-CD
V :
DONALD W. CHERRY, AND :
DENISE CHERRY, his wife and :
DONALD W. CHERRY TRUCKING :

JOHN I. BOWER : DOCKET NO. 07-574-CD
V :
DONALD W. CHERRY and :
DENISE CHERRY, his wife, and :
DONALD W. CHERRY TRUCKING :

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MOTION FOR CONTINUANCE

William A. Shaw
Prothonotary/Clerk of Courts

1. John A. Felix, Esquire is counsel of record for Matthew J. Bower and John I. Bower, Plaintiffs in the above-captioned matters.

2. Dwight L. Koerber, Jr., Esquire is counsel of record for Donald W. Cherry and Denise Cherry, his wife and Donald W. Cherry Trucking, Defendants in the above captioned matters.

3. The cases which have been consolidated are scheduled for Arbitration Hearing on May 15, 2008, at 1:00 PM.

4. Matthew J. Bower has sustained a herniated disc injury which necessitates a surgical procedure which has been scheduled on May 15, 2008 in Williamsport hospital and Rehabilitation Center.

5. Dwight L. Koerber, Jr. has been notified of the scheduled surgery date but by letter dated May 1, 2008, a photocopy which is attached and marked as Exhibit 1, opposes a continuance of the Arbitration Hearing.

6. Attorney Koerber indicates that the within Motion is the second continuance request. Although a Motion For Continuance of the April 1, 2008 Arbitration Hearing was mailed to the Deputy Court Administrator, the Motion was not filed before Plaintiff's Attorney by letter dated March 13, 2008, a copy of which is attached and marked as Exhibit 2, notified the court that

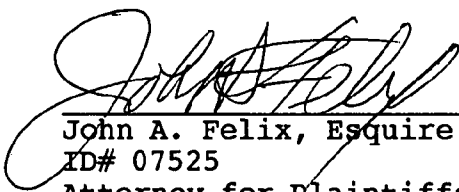
Counsel's scheduling conflict had been resolved and that no continuance was sought.

7. The April 1, 2008 Arbitration Hearing was nonetheless continued as the Board of Arbitration reportedly could not be appointed within the necessary time frame.

8. Attorney Koerber further indicates that the surgery only affects Matthew Bower and not the other Plaintiff, his father John I. Bower. Based upon substantially the same facts and timeframe, the Complaints were upon agreement consolidated. It would, therefore be an unnecessary expenditure of judicial resources to require that the Plaintiffs' complaints to be litigated separately.

9. As the Defendants reside and are self-employed in Clearfield County, any continuance of the May 15, 2008 one-half day hearing should not be disruptive of their work schedule. It is both Plaintiffs and their counsel who must travel from Lycoming County to Clearfield County and it is the Plaintiffs who must adjust their over-the-road truck driving schedules in order to litigate their Complaint.

WHEREFORE, John A. Felix, Esquire respectfully requests that the Arbitration Hearing scheduled for May 15, 2008, be continued.



John A. Felix, Esquire
ID# 07525
Attorney for Plaintiffs
25 W. Third Street, Suite 302
Williamsport, PA 17701
(570) 327-5640

CC: Dwight L. Koerber, Jr.

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

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

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

*Eric E. Cummings, Esquire
Email: eecummings@atlanticbb.net
Facsimile (814) 765-9503*

May 1, 2008

John A. Felix, Esquire
25 West Third Street, Suite 302
Williamsport, PA 17701

Via Fax: 570-327-5650
& U.S. First Class Mail

**Re: Matthew J. Bower v. Donald W. Cherry and Denise
Cherry, his wife, and Donald W. Cherry Trucking
Docket No. 06-02386
And
John I. Bower v. Donald W. Cherry and Denise
Cherry, his wife, and Donald W. Cherry Trucking
Docket No. 06-02387**

Dear Mr. Felix:

I have reviewed your request for a continuance with my clients and must respectfully inform you that my clients oppose any continuance in this matter.

As background information, I would point out that this is the second continuance request. In each one of the situations, my clients adjusted their work schedule and set aside appropriate time for the hearing. That would apply to the hearing we are dealing with which is now scheduled for May 15, 2008.

In addition, I would point out that there are two cases combined herein, with only one of the plaintiffs, Matthew Bower, being affected by the surgery. I would ask that you kindly present to the Court Administrator a copy of this letter indicating our opposition to the request for a continuance.

Very truly yours,


Dwight L. Koerber, Jr.

DLK/sah

cc:

Mr. and Mrs. Donald W. Cherry, III (Via Fax Only)

EXHIBIT A

JOHN A. FELIX

ATTORNEY AT LAW

570-327-5640
Fax 570-327-5650

25 West Third Street, Suite 302
Williamsport, Pennsylvania 17701
March 13, 2008

Ronda Wisor
Deputy Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Bower v. Cherry - 07-573-CD
Bower v. Cherry - 07-574-CD

Dear Ms. Wisor:

I had forwarded a Motion For Continuance on March 7, 2008 for the April 1, 2008 Arbitration Hearing.

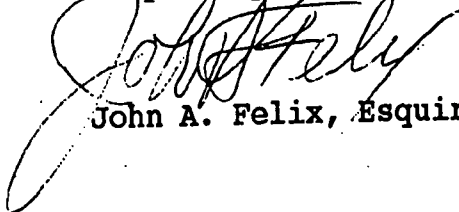
It is my understanding that the Motion For Continuance was not filed since I had not included a proposed order for the Judge to sign either granting or denying the Motion.

This is to notify you that the resentencing hearing on April 1 in the United States District Court has been rescheduled, thereby eliminating the need for the Continuance.

Therefore, the April 1, 2008 Arbitration in Clearfield County can proceed. Attorney Dwight L. Koerber, Jr., who had indicated no opposition to the proposed continuance, is being notified that no continuance now being sought.

Thank you for your cooperation.

Very truly yours,



John A. Felix, Esquire

JAF:djw

cc: Dwight L. Koerber, Jr.

EXHIBIT B

arbitration has
been sched
for 1 hr

Ronda

FILED

MAY 05 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

MATTHEW J. BOWER : DOCKET NO. 07-573-CD

V :

DONALD W. CHERRY, AND :
DENISE CHERRY, his wife and :
DONALD W. CHERRY TRUCKING :

AND

JOHN I. BOWER : DOCKET NO. 07-574-CD

V :

DONALD W. CHERRY and :
DENISE CHERRY, his wife, and :
DONALD W. CHERRY TRUCKING :

O R D E R

AND NOW, this day of , 2008, upon
consideration of the Motion For Continuance,

() The Motion For Continuance is DENIED.

() The Motion for Continuance is GRANTED, and the hearing is
CONTINUED to the day of , 2008, at
am,pm.

BY THE COURT:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Matthew J. Bower

vs.

Donald W. Cherry and Denise Cherry, his wife, and
Donald W. Cherry Trucking

No. 2007-00573-CD

OATH OR AFFIRMATION OF ARBITRATORS

Now, this 15th day of May, 2008, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

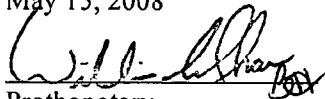
Toni Cherry, Esq.

John R. Ryan, Esq.

Robin J. Foor, Esq.

Chairperson

Sworn to and subscribed before me this
May 15, 2008


Prothonotary

AWARD OF ARBITRATORS

Now, this 15th day of MAY, 2008, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows: Judgment in favor of Plaintiff against Donald W. Cherry individually and +d/b/a Donald W. Cherry Trucking and Donald W. Cherry Trucking in the amount of \$7,111.99 together with interest from 11/13/06 plus costs. Judgment for Denise Cherry

Chairman

(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this 15th day of May, 2008, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT

Prothonotary

By

FILED

014:43301
MAY 15 2008

Notices mailed
to Atty Felix and
Koerber 5/15/08.

William A. Shaw
Prothonotary/Clerk of Courts

COPY

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

Matthew J. Bower

:

Vs.

: No. 2007-00573-CD

:

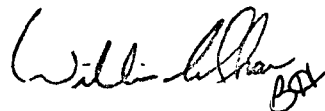
Donald W. Cherry and Denise Cherry, his wife,
and Donald W. Cherry Trucking

NOTICE OF AWARD

TO: John A. Felix, Esq.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on May 15, 2008, and have awarded:

Judgment in favor of Plaintiff against Donald W. Cherry individually and t/d/b/a Donald W. Cherry Trucking and Donald W. Cherry Trucking in the amount of \$7,111.99 together with interest from 11/13/06 plus costs. Judgment for Denise Cherry.



William A. Shaw, Prothonotary

May 15, 2008

Date

This notice of award was placed on the docket and given by mail to the parties or their attorneys on May 15, 2008 at 4:47 p.m.

An Appeal from Award of Arbitration must be filed within thirty (30) days of date of award. Filing fee is fifty percent (50%) of the total award or the amount of compensation paid to the arbitrators, whichever is the least. Arbitrators' compensation to be paid upon appeal: \$825.00.

COPY

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

Matthew J. Bower

:

Vs.

: No. 2007-00573-CD

:

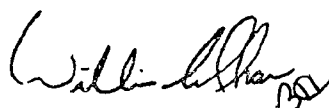
Donald W. Cherry and Denise Cherry, his wife,
and Donald W. Cherry Trucking

NOTICE OF AWARD

TO: Dwight Koerber, Esq.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on May 15, 2008, and have awarded:

Judgment in favor of Plaintiff against Donald W. Cherry individually and t/d/b/a Donald W. Cherry Trucking and Donald W. Cherry Trucking in the amount of \$7,111.99 together with interest from 11/13/06 plus costs. Judgment for Denise Cherry.



William A. Shaw, Prothonotary

May 15, 2008

Date

This notice of award was placed on the docket and given by mail to the parties or their attorneys on May 15, 2008 at 4:47 p.m.

An Appeal from Award of Arbitration must be filed within thirty (30) days of date of award. Filing fee is fifty percent (50%) of the total award or the amount of compensation paid to the arbitrators, whichever is the least. Arbitrators' compensation to be paid upon appeal: \$825.00.

UA

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

MATTHEW J. BOWER,
Plaintiff/Appellee

v.

DONALD W. CHERRY, and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING,
Defendant/Appellant

*
*
*
*
*
*
*
*

Docket No. 07-573-CD

Type of Pleading:
NOTICE OF APPEAL FROM AWARD
OF BOARD OF ARBITRATORS

Filed on Behalf of:
Defendant:
DONALD W. CHERRY, III and
DONALD W. CHERRY TRUCKING

Counsel of Record for
This Party:

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

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

FILED
06/30/08
JUN 12 2008

3cc
Atty Koerber

Def. pd.

William A. Shaw
Prothonotary/Clerk of Courts

\$410.25

[Handwritten initials]

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

MATTHEW J. BOWER,
Plaintiff/Appellee

v.

DONALD W. CHERRY, and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING,
Defendant/Appellant

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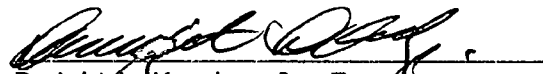
Docket No. 07-573-CD

NOTICE OF APPEAL
FROM AWARD OF BOARD OF ARBITRATORS

TO THE PROTHONOTARY:

Notice is given that Donald W. Cherry and Donald W. Cherry Trucking, appeal
from the award of the Board of Arbitrators entered in this case on May 15, 2008.

I hereby certify that the compensation of the arbitrators has been paid.


Dwight L. Koerber, Jr., Esquire
Attorney for Appellant: Donald W.
Cherry and Denise Cherry, his wife
and Donald W. Cherry Trucking

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

MATTHEW J. BOWER,
Plaintiff/Appellee

v.

DONALD W. CHERRY, and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING,
Defendant/Appellant

*
*
*
*
*
*
*
*

Docket No. 07-573-CD

CERTIFICATE OF SERVICE

I certify that on the 12th day of June, 2008, the undersigned served a certified copy of the Notice of Appeal from Award of Board of Arbitrators in the above-captioned matter. Such document was served via United States First Class Mail upon the following individual:

John A. Felix, Esquire
25 W. Third Street, Suite 302
Williamsport, PA 17701



Dwight L. Koerber, Jr., Esquire
Attorney for Defendants: DONALD W. CHERRY,
and DENISE CHERRY, his wife and DONALD W.
CHERRY TRUCKING

LA

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

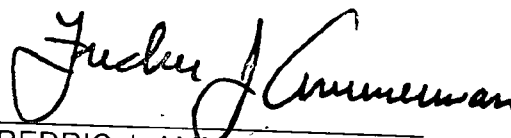
MATTHEW J. BOWER,	*	
	*	
vs.	*	NO. 07-573-CD
DONALD W. CHERRY, et al,	*	
Defendants	*	

JOHN I. BOWER,	*	
	*	
vs.	*	NO. 07-574-CD
DONALD W. CHERRY, et al,	*	
Defendants	*	

ORDER

AND NOW, this 7th day of August, 2008, it is the ORDER of this Court that Pre-trial conference in the above matter shall be held on the 12th day of September, 2008 in Chambers at 1:30 p.m.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

013:03/01
AUG 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

2cc Atty's:
Felix
Koerber

GD

FILED

AUG 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/7/08

☐ You are responsible for serving all appropriate parties.
☒ The Prothonotary's office has provided service to the following parties:
☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other
☐ Defendant(s) ☒ Defendant(s) Attorney
☐ Special Instructions:

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

MATTHEW J. BOWER

: DOCKET NO. 07-573-CD

V

:

DONALD W. CHERRY, AND
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING

:

:

:

AND

JOHN I. BOWER

: DOCKET NO. 07-574-CD

V

:

DONALD W. CHERRY and
DENISE CHERRY, his wife, and
DONALD W. CHERRY TRUCKING

:

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O R D E R

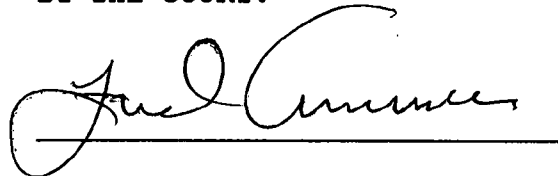
AND NOW, this 28th day of August, 2008, upon
consideration of the Motion For Continuance,

() The Motion For Continuance is DENIED.

☒ The Motion for Continuance is GRANTED, and the hearing is
CONTINUED to the 2nd day of October, 2008, at 3:00

~~am.~~ (pm.)

BY THE COURT:



FILED

0 2:30 p.m. GK

AUG 29 2008

William A. Shaw
Prothonotary/Clerk of Courts

4 cc Atty Felix
a. (OK)

FILED

AUG 29 2008

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

DATE: 8-29-08

☒ You are responsible for serving all appropriate parties.

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

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

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

MATTHEW J. BOWER

: DOCKET NO. 07-573-CD

v.

:

DONALD W. CHERRY and
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING

:

:

:

FILED

0 2:30 P.M. GK

AUG 29 2008

4cc Atty
Felix

William A. Shaw
Prothonotary/Clerk of Courts

AND

JOHN I. BOWER

: DOCKET NO. 07-574-CD

v.

:

DONALD W. CHERRY and
DENISE CHERRY, his wife, and
DONALD W. CHERRY TRUCKING

:

:

:

MOTION FOR CONTINUANCE

1. John A. Felix, Esquire is counsel of record for Matthew J. Bower and John I. Bower, Plaintiffs in the above-captioned matters.

2. Dwight L. Koerber, Jr., Esquire is counsel of record for Donald W. Cherry and Denise Cherry, his wife and Donald W. Trucking, Defendants in the above-captioned matters.

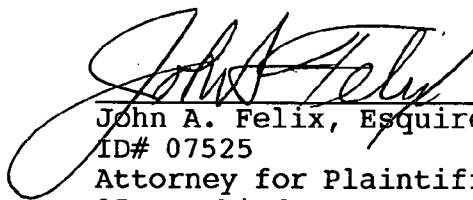
3. Following an appeal from an award by a Board of Arbitration, a Pre-trial Conference has been scheduled for September 12, 2008.

4. Plaintiff's counsel was notified on August 25, 2008 that his wife's quarterly appointment at the Hershey Medical Center with the ALS Clinic (Lou Gehrigs' disease) has been rescheduled to September 12, 2008 causing counsel to be unavailable for the Pretiral Conference.

5. This Pre-Trial Conference has not been privously continued.

6. Dwight L. Koerber Jr., has been notified by telephone on August 26 of the requested continuance and does not oppose the request.

WHEREFORE, John A. Felix, Esquire respectfully requests that the Pre-Trial Conference scheduled for September 12, 2008, be continued.


John A. Felix, Esquire
ID# 07525
Attorney for Plaintiffs
25 W. Third Street, Suite 302
Williamsport, PA 17701
(570) 327-5640

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

MATTHEW J. BOWER,
Plaintiff

vs.

DONALD W. CHERRY and DENISE CHERRY,
his wife, and DONALD W. CHERRY TRUCKING,
Defendants

JOHN I. BOWER,
Plaintiff

vs.

DONALD W. CHERRY and DENISE CHERRY,
his wife, and DONALD W. CHERRY TRUCKING,
Defendants

NO. 07-573-CD

*CONSOLIDATED WITH

NO. 07-574-CD

ORDER

NOW, this 6th day of October, 2008, following pre-trial conference on October 2, 2008 with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Non-Jury Trial is hereby scheduled for January 14, 2009 commencing at 9:00 a.m. in Hearing Room No. 3 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. In the event the Defense will present expert testimony at time of trial, the expert's report and curriculum vitae shall be provided to Plaintiff's counsel by no later than December 15, 2008.
3. The Plaintiffs have certified that they will not produce any expert at time of trial.

FILED
OCT 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

BY THE COURT,

Fredric J. Ammerman
FREDRIC J. AMMERMAN
President Judge

FILED

OCT 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/14/08

☐ You are responsible for serving all appropriate parties.

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

Plaintiff(s)	<input checked="" type="checkbox"/>	Plaintiff(s) Attorney	<input checked="" type="checkbox"/>	Other
Defendant(s)	<input checked="" type="checkbox"/>	Defendant(s) Attorney	<input checked="" type="checkbox"/>	
Special Instructions:				

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

MATTHEW J. BOWER

V

DONALD W. CHERRY, AND
DENISE CHERRY, his wife and
DONALD W. CHERRY TRUCKING

: DOCKET NO. 07-573-CD
:
:
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FILED

No CC
copy to:
CIA

m/1:45pm

JAN 12 2009

Judge
Ammerman

PRAECIPE TO DISCONTINUE

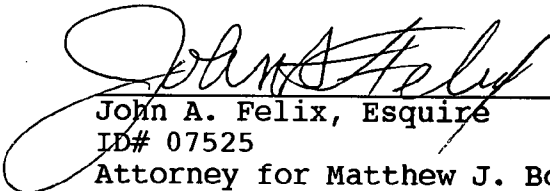
William A. Shaw

Prothonotary/Clerk of Courts

TO THE PROTHONOTARY:

Kindly mark the above captioned civil matter,

"Discontinued".


John A. Felix, Esquire

ID# 07525

Attorney for Matthew J. Bower

25 W. Third Street, Suite 302

Williamsport, PA 17701

(570) 327-5640

FILED

JAN 12 2009

William A. Shaw
Prothonotary/Clerk of Courts

Arb.
5/15

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

Matthew J. Bower,
Plaintiff

*

vs.

*

Docket Number: 07-573-CD

Donald W. Cherry and
Denise Cherry, his wife, and
Donald W. Cherry Trucking,
Defendants

*

*

CONSOLIDATED WITH

*

John I. Bower,
Plaintiff

*

vs.

*

Docket Number: 07-574-CD

Donald W. Cherry and
Denise Cherry, his wife, and
Donald W. Cherry Trucking,
Defendants

*

*

Type of Pleading:
PRE-TRIAL STATEMENT ON
BEHALF OF DEFENDANTS

Filed on behalf of Defendants:
Donald W. Cherry and Denise
Cherry, his wife, and Donald W.
Cherry Trucking

Counsel of record for
this party:

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

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

RECEIVED

MAY 18 2008

Court Administrator's
Office

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

Matthew J. Bower, Plaintiff	*	
vs.	*	Docket Number: 07-573-CD
Donald W. Cherry and Denise Cherry, his wife, and Donald W. Cherry Trucking, Defendants	*	
	*	
 CONSOLIDATED WITH		
	*	
John I. Bower, Plaintiff	*	
vs.	*	Docket Number: 07-574-CD
Donald W. Cherry and Denise Cherry, his wife, and Donald W. Cherry Trucking, Defendants	*	
	*	

PRE-TRIAL STATEMENT ON BEHALF OF DEFENDANTS

THE WITHIN statement is filed pursuant to Local Rule 1306A on behalf of Defendants Donald W. Cherry and Denise Cherry, his wife, and Donald W. Cherry Trucking, all of which are referred to herein collectively by the singular term "Defendant".

BRIEF STATEMENT OF THE CASE

This case arises out of a business transaction which Donald W. Cherry, an individual, trading and doing business as Donald W. Cherry Trucking, provided, as pertinent herein, during the year of 2004. At that time, Mr. Cherry was successful in

establishing a relationship with a company named One World Recycling, Inc., of Lindenhurst, New York (in the New York City area), pertaining to the transportation of demolition waste.¹

Initially in order to serve One World Recycling, Donald W. Cherry Trucking used the trucks that he owned in order to transport the demolition waste, moving it from a facility used by One World Recycling in Lindenhurst, New York, to a landfill in Salem, Ohio. However, as the Mr. Cherry became more closely associated with One World Recycling, he entered into an arrangement in which he acted as a broker for most of its over-the-road needs. Under this arrangement Donald W. Cherry Trucking would arrange for different truckers to transport the demolition waste for One World Recycling. As compensation for brokering the shipments, Donald W. Cherry Trucking would charge One (\$1.00) Dollar per ton for the waste that was transported.

A key part of this case will be evidence which shows that charging only One (\$1.00) Dollar per ton for shipment transported was quite a small sum of money, as a "typical" truckload might entail transportation of somewhere in the range of Twenty-Five (25) Tons per load. That small profit margin is significant because it shows that Mr. Cherry was acting solely as a broker when he was coordinating the transportation loads, with the truckers he used not being leased to him, but instead providing services

¹ Demolition waste is the term used for regulatory purposes to describe a residual waste product that occurs when structures are torn down or renovated, with this waste possibly consisting of soil, building materials, or a wide range of different items related to a structure that has been demolished. Significantly, no separate regulatory authority is needed from the Federal Motor Carrier Safety Administration (formerly Interstate Commerce Commission), in order to transport this waste or to act as a broker on the transportation of the waste.

in their own right, totally independent of his insurance coverage, his safety oversight, or anything relative to the direct furnishing of trucking services.

When Mr. Cherry spoke to a trucker about transporting demolition waste for One World Recycling, he specifically stated that the trucker would be paid immediately after Donald W. Cherry Trucking was paid by One World Recycling. Pursuant to that arrangement, Mr. Cherry set up a regular system of billing One World Recycling each week, whereby he would pick up the check on a Monday or Tuesday of each week, covering shipments that had been transported the prior week. This in turn enabled him to give the truckers their payment very shortly after the services were rendered. At no time did Mr. Cherry pay any of the truckers that he used prior to the time that he was paid, as he had insufficient cash to even consider such a payment arrangement. Moreover, he had no contractual duty to do so.

Unfortunately, One World Recycling stopped making its payments for transportation services rendered and paid for none of the shipments that were transported during October 23 – 30, 2004. This involved the shipments which Matthew J. Bower and John I. Bower transported during that time period which are the subject of the present litigation. Donald W. Cherry Trucking acknowledges that it did not pay either Matthew J. Bower or John I. Bower for the transportation services that are the subject of this litigation, as he was never paid and the precise terms of his arrangement with these two truckers was that they would be paid only after he is paid. That is

precisely how Donald W. Cherry Trucking paid all of the other truckers that were used and the charts and records that we will present confirm this payment pattern.

An issue has been raised by the Plaintiffs, where they claim that the business transacted by Donald W. Cherry Trucking was a business actually provided by Donald W. Cherry and his wife Denise Cherry. While Denise Cherry worked with the company and provided very valuable bookkeeping services, the company was solely and clearly a sole proprietorship. There is no basis for pursuing a liability claim that names Denise Cherry as a defendant.

A factual point which supports the position of Donald W. Cherry Trucking herein is that shortly after One World Recycling refused/failed to make payment for shipments transported during the period October 23 – 30, 2004, Matthew Bower called Mr. Cherry and told him he would like to attempt to collect from One World Recycling on his own. Mr. Cherry readily agreed to that fact, as the only role that he was playing in the entire collection process was that as a broker not an actual transporter of shipments. Matthew Bower was successful in collecting Five Thousand (\$5,000.00) Dollars on his own, and should have paid to Donald W. Cherry Trucking One (\$1.00) Dollar per ton of demolition waste for which he was paid. Donald W. Cherry has not attempted to pursue this claim because of the small sum of money involved.

CITATION TO APPLICABLE CASE OR STATUTE

None.

LIST OF WITNESSES

Defendant plans to call the following witnesses:

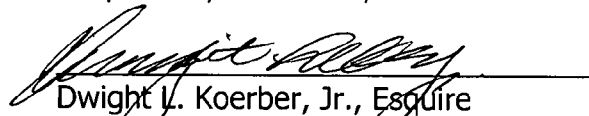
Mr. Donald W. Cherry, III
2557 Deer Creek Road
Morrisdale, PA 16858

Ms. Denise Cherry
2557 Deer Creek Road
Morrisdale, PA 16858

STATEMENT OF DAMAGES

Defendant has no statement of damages and likewise does not have copies of bills which it intends to offer. Attached hereto are copies of the exhibits Defendant anticipates offering. Defendant reserves the right to present additional exhibits as appropriate for the defense of this case.

Respectfully submitted,



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

Donald W. Cherry and Denise Cherry, his wife,
and Donald W. Cherry Trucking

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

Matthew J. Bower,
Plaintiff

vs.

Donald W. Cherry and
Denise Cherry, his wife, and
Donald W. Cherry Trucking,
Defendants

*

*

Docket Number: 07-573-CD

*

*

CONSOLIDATED WITH

*

John I. Bower,
Plaintiff

vs.

Donald W. Cherry and
Denise Cherry, his wife, and
Donald W. Cherry Trucking,
Defendants

*

*

Docket Number: 07-574-CD

*

*

CERTIFICATE OF SERVICE

I certify that on the 8th day of May 2008, the undersigned served a true and correct copy of the foregoing PRE-TRIAL STATEMENT ON BEHALF OF DEFENDANTS in the above-captioned matter by United States First Class Mail upon counsel for Plaintiff as follows:

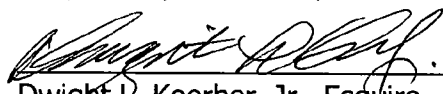
John A. Felix, Esquire
25 W. Third Street, Suite 302
Williamsport, PA 17701

Toni M. Cherry , Esquire
GLEASON, CHERRY AND CHERRY, L.L.P.
P. O. Box 505
DuBois, PA 15801

John R. Ryan, Esquire
BELIN, KUBISTA & RYAN
15 North Front Street
P.O. Box 1
Clearfield, PA 16830

Robin J. Foor, Esquire
211 East Locust Street
Clearfield, PA 16830

Respectfully submitted,


Dwight L. Koerber, Jr., Esquire

Attorney for Defendants:

Donald W. Cherry and Denise Cherry, his wife,
and Donald W. Cherry Trucking

FROM: VICTORIA ZANOSKY
67-36 168th Street, Fresh Meadows, New York 11365
OFFICE: 718-961-3812 FAX: 718-463-1634 CELL: 347-783-9963

RE: DONALD CHERRY TRUCKING COMPANY, (A SOLE PROPRIETOR).
2557 Deer Creek Road
Morrisdale, Pennsylvania 16858
Donald W. Cherry, Owner.

January 4, 2005

DONALD W. CHERRY TRUCKING COMPANY (A SOLE PROPRIETOR).
Donald W. Cherry, Sole Owner.

VS

ONE WORLD RECYCLING, INC.
Principals: Christine Graziose, Partner. And Mark Troiano, Partner.
80 Mahan Street.
West Babylon, New York 11704

TOTAL AMOUNT OF DEBT; \$ 95, 420.09 (Plus legal fees).

We have discussed this case with Victoria Zanosky, who has worked on this claim and now advises at this time it is imperative that immediate suit be filed against One World Recycling, Inc., who owes us a total of \$95, 420.09. One World Recycling, Inc., and one of its partners Mark Triano, previously agreed to pay this however; we have not received any money yet. Christine Graziose, Partner, signed and sent us a check for the amount of \$ 46,385.23 dated October 14, 2004 that bounced and was never made good.

DONALD W. CHERRY TRUCKING, (A SOLE PROPRIETOR) authorizes Gutman, Mintz, Baker & Sonnenfeldt Attorneys, to commence immediate suit against ONE WORLD RECYCLING, INC. Its partners being; Christine Graziose, and Mark Troiano, for the amount of; \$95,420.09 due to us plus legal fees. Enclosed is a check for \$195.00 for suit fees payable to Gutman, Mintz, Baker & Sonnenfeldt, Attorneys.

Enclosed you will also find a copy of the bounced check for \$46,385.23. Also included are additional copies of canceled checks, copy of statement of account, letter we sent, etc.

I Donald W. Cherry, Owner of Donald W. Cherry Trucking, give Gutman, Mintz, Baker & Sonnenfeldt, full authorization to commence immediate legal actions against One World Recycling, Inc., (and it's principals know to be; Christine Graziose and Mark Troiano, if possible.

SIGNED Donald W. Cherry III DATE: 1/4/05

DONALD W. CHERRY, OWNER.

Donald W. Cherry Trucking

2557 Deer Creek Road
Morrisdale, PA 16858

Invoice

Date	Invoice #
10/30/2004	778

Bill To
One World Recycling Inc. 685 North Queens Avenue Lindenhurst, NY 11757

Ship To
BFI CLD Landfill 9960 W. South Range Road Salem, OH 44460

Terms
Due on receipt

Serviced	Quantity	Description	Item	Rate	Amount
10/25/2004	27.17	#23829 & 098741 & 3628 (ld)	Demolition	53.50	1,453.60
10/25/2004	28.64	#23855 & 098772 & 3585 (be)	Demolition	53.50	1,532.24
10/25/2004	23.55	#23864 & 098832 & 3584 (rv)	Demolition	53.50	1,259.93
10/25/2004	30.2	#23892 & 098756 & 3583 (lg)	Demolition	53.50	1,615.70
10/25/2004	25.18	#23893 & 098757 & 3582 (lg)	Demolition	53.50	1,347.13
10/25/2004	26.63	#23903 & 098773 & 3647 (ml)	Demolition	53.50	1,424.71
10/26/2004	25.27	#23919 & 098808 & 3648 (bm)	Demolition	53.50	1,351.95
10/26/2004	25.66	#23922 & 098807 & 3649 (jd)	Demolition	53.50	1,372.81
10/26/2004	51.13	#23932 & 098820 & 05817 (mb)	Demolition	53.50	2,735.46
10/26/2004	52.39	#23935 & 098822 & 05816 (jb)	Demolition	53.50	2,802.87
10/26/2004	25.49	#23943 & 098828 & 05818 (dc)	Demolition	53.50	1,363.72
10/26/2004	24.88	#23958 & 098810 & 05828 (ml)	Demolition	53.50	1,331.08
10/26/2004	23.04	#23964 & 098841 & 05820 (rv)	Demolition	53.50	1,232.64
10/26/2004	25.58	#23973 & 098816 & 05819 (lg)	Demolition	53.50	1,368.53
10/26/2004	25.34	#23987 & 098809 & 05830 (mc)	Demolition	53.50	1,355.69
10/26/2004	26.35	#24014 & 098817 & 05835 (me)	Demolition	53.50	1,409.73
10/27/2004	28.61	#24025 & 098858 & 05834 (ld)	Demolition	53.50	1,530.64
10/27/2004	31.97	#24038 & 098879 & 3699 (lg)	Demolition	53.50	1,710.40
10/27/2004	27.48	#24062 & 098927 & 3700 (be)	Demolition	53.50	1,470.18
10/27/2004	25.78	#24099 & 098900 & 3717 (ml)	Demolition	53.50	1,379.23

Phone #	Fax #
(814) 345-5992	(814) 345-6751

Total

Donald W. Cherry Trucking

2557 Deer Creek Road
Morrisdale, PA 16858

Invoice

Date	Invoice #
10/30/2004	778

Bill To
One World Recycling Inc. 685 North Queens Avenue Lindenhurst, NY 11757

Ship To
BFI CLD Landfill 9960 W. South Range Road Salem, OH 44460

Terms
Due on receipt

Serviced	Quantity	Description	Item	Rate	Amount
10/27/2004	26.87	#24101 & 098860 & 3716 (ml)	Demolition	53.50	1,437.55
10/28/2004	25.77	#24113 & 098922 & 3715 (jd)	Demolition	53.50	1,378.70
10/28/2004	54.98	#24128 & 098952 & 3713 (mb)	Demolition	53.50	2,941.43
10/28/2004	56.47	#24143 & 098953 & 3712 (jb)	Demolition	53.50	3,021.15
10/28/2004	26.24	#24157 & 098929 & 3709 (lg)	Demolition	53.50	1,403.84
10/28/2004	25.11	#24159 & 098928 & 3710 (ml)	Demolition	53.50	1,343.39
10/28/2004	23.55	#24164 & 098926 & 3708 (mc)	Demolition	53.50	1,259.93
10/28/2004	28.44	#24177 & 098923 & 3703 (ml)	Demolition	53.50	1,521.54
10/29/2004	31.15	#24279 & 098984 & 3747 (ml)	Demolition	53.50	1,666.53

Phone #	Fax #
(814) 345-5992	(814) 345-6751

Total	\$47,022.30
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Donald W. Cherry Trucking

2557 Deer Creek Road
Morrisdale, PA 16858

Invoice

Date	Invoice #
11/10/2004	786

Bill To
One World Recycling Inc. 685 North Queens Avenue Lindenhurst, NY 11757

Ship To
BFI CLD Landfill 9960 W. South Range Road Salem, OH 44460

Terms
Due on receipt

Serviced	Quantity	Description	Item	Rate	Amount
10/25/2004	27.36	#23835 & 098760 & 3627 (ng)	Demolition	53.50	1,463.76
10/25/2004	23.33	#23842 & 098823 & 3632 (wr)	Demolition	53.50	1,248.16
10/26/2004	24.48	#24012 & 098844 & 05837 (ml)	Demolition	53.50	1,309.68
10/28/2004	27.29	#24122 & 098931 & 3714 (ng)	Demolition	53.50	1,460.02
10/28/2004	27.72	#24153 & 098987 & 3711 (bm)	Demolition	53.50	1,483.02
10/28/2004	24.32	#24171 & 098981 & 3704 (me)	Demolition	53.50	1,301.12
10/28/2004	24.6	#24181 & 099017 & 3702 (ml)	Demolition	53.50	1,316.10
10/29/2004	24.01	#24213 & 099000 & 3727 (rv)	Demolition	53.50	1,284.54
10/29/2004	26.68	#24220 & 099001 & 3726 (rv)	Demolition	53.50	1,427.38
10/29/2004	30.9	#24268 & 099111 & 3750 (ng)	Demolition	53.50	1,653.15
10/29/2004	37.58	#24269 & 099127 & 3749 (ng)	Demolition	53.50	2,010.53
10/29/2004	26.86	#24271 & 098993 & 3748 (ml)	Demolition	53.50	1,437.01
10/30/2004	59.48	#24312 & 099003 & 3745 (jb)	Demolition	53.50	3,182.18
10/30/2004	53.71	#24319 & 099002 & 3744 (mb)	Demolition	53.50	2,873.49

Phone #	Fax #
(814) 345-5992	(814) 345-6751

Total	\$23,450.14
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Donald W. Cherry Trucking
2557 Deer Creek Road
Morrisdale, PA 16858

Statement

Date
10/1/2006

To:
One World Recycling Inc. 685 North Queens Avenue Lindenhurst, NY 11757

		Amount Due	Amount Enc.		
		\$95,466.27			
Date	Transaction	Amount	Balance		
03/31/2004	Balance forward		5,088.61		
04/01/2004	PMT #1262 - 250.43 T; inv #442-447-448-450		-7,307.68		
04/03/2004	INV #450	-12,396.29	20,240.56		
04/03/2004	PMT #1263 - 187.22 Ton; inv #450	27,548.24	10,973.17		
04/06/2004	PMT #1269 - inv #460; 87.49 tons; #10903,10904,10955	-9,267.39	6,642.42		
04/06/2004	PMT #1267 - inv #450-221.68 tons; 22.46 tons-inv #460	-4,330.75	-5,442.51		
04/09/2004	PMT #1279 - inv #460; 241.89 tons	-12,084.93	-17,416.07		
04/10/2004	INV #460	-11,973.56	12,050.29		
04/10/2004	INV #465	29,466.36	16,023.16		
04/10/2004	INV #469	3,972.87	17,617.56		
04/12/2004	PMT #1282 - inv #460; 215.28 tons	1,594.40	5,683.11		
04/15/2004	PMT #1285 - INV #470; 137.74 TONS	-11,934.45	-1,135.02		
04/15/2004	PMT #1287 - INV #470 & 479	-6,818.13	-13,883.25		
04/15/2004	PMT #1284 - inv #469,470; 216.42	-12,748.23	-24,596.54		
04/17/2004	INV #470	-10,713.29	13,768.51		
04/17/2004	INV #477	38,365.05	15,933.15		
04/17/2004	INV #479	2,164.64	19,266.98		
04/19/2004	PMT #1292 - INV #470 & 460;	3,333.83	3,735.86		
04/22/2004	PMT #1294 - inv #477,479,481	-15,531.12	-7,050.69		
04/23/2004	PMT #1299 - 292.30 tons; inv #481 & 492	-10,786.55	-21,519.54		
04/24/2004	INV #481	-14,468.85	10,216.29		
04/24/2004	INV #491	31,735.83	11,648.82		
04/26/2004	INV #492	1,432.53	15,787.52		
04/27/2004	PMT #1300 - 317.99 tons; inv #481,491,492	4,138.70	47.01		
04/28/2004	PMT #1302 - inv #494; 195.01 tons	-15,740.51	-9,605.99		
04/29/2004	PMT #1304 - paid shortages	-9,653.00	-9,653.00		
05/01/2004	INV #494	-47.01	22,399.28		
05/01/2004	INV #497	32,052.28	23,608.53		
05/01/2004	INV #499	1,209.25	25,748.42		
05/01/2004	PMT #1308 - inv #494; 205.76 tons	2,139.89	15,563.30		
05/05/2004	PMT #1311 - inv #494 (246.75 tons) & 497-24.43 tons)	-10,185.12	2,139.89		
05/05/2004	PMT #1312 - inv #499-43.23 tons; inv #511-- 70.45 tons	-13,423.41	-3,487.27		
05/08/2004	INV #504	-5,627.16	24,764.51		
		28,251.78			
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	0.00	0.00	0.00	95,466.27	\$95,466.27

Donald W. Cherry Trucking
2557 Deer Creek Road
Morrisdale, PA 16858

Statement

Date
10/1/2006

To:
One World Recycling Inc. 685 North Queens Avenue Lindenhurst, NY 11757

				Amount Due	Amount Enc.
				\$95,466.27	
Date	Transaction			Amount	Balance
05/08/2004	INV #511				
05/08/2004	INV #517			3,487.27	28,251.78
05/11/2004	PMT #1318 - inv #504, 517, 518			1,308.46	29,560.24
05/15/2004	INV #518			-38,604.22	-9,043.98
05/15/2004	INV #519			9,045.94	1.96
05/15/2004	INV #524			20,135.40	20,137.36
05/15/2004	INV #525			2,514.40	22,651.76
05/17/2004	INV #530			1,560.45	24,212.21
05/19/2004	PMT #1329 - INV #519,524,525,530			2,753.72	26,965.93
05/22/2004	INV #532			-26,963.97	1.96
05/22/2004	INV #540			23,819.88	23,821.84
05/24/2004	INV #541			1,444.30	25,266.14
05/25/2004	INV #538			6,430.19	31,696.33
05/26/2004	PMT #1337 - inv #530-532-540-541-538			1,180.69	32,877.02
05/29/2004	INV #544			-32,877.02	0.00
05/29/2004	INV #548			30,156.88	30,156.88
05/29/2004	INV #549			1,427.40	31,584.28
05/31/2004	INV #552			5,444.92	37,029.20
06/01/2004	PMT #1348 - inv #544, 548, 549, 552, 559			4,855.24	41,884.44
06/05/2004	INV #556			-45,899.36	-4,014.92
06/05/2004	INV #557			17,507.36	13,492.44
06/05/2004	INV #558			12,803.44	26,295.88
06/05/2004	INV #559			5,956.60	32,252.48
06/08/2004	INV #564			4,014.92	36,267.40
06/08/2004	PMT #1354 - inv #556,557,558,564,569			6,195.80	42,463.20
06/12/2004	INV #567			-47,575.84	-5,112.64
06/12/2004	INV #568			14,056.12	8,943.48
06/12/2004	INV #569			7,123.48	16,066.96
06/12/2004	INV #570			5,112.64	21,179.60
06/14/2004	INV #573			6,192.68	27,372.28
06/14/2004	PMT #1356 - inv #567,568,570,573,575			5,544.76	32,917.04
06/19/2004	INV #575			-39,284.96	-6,367.92
06/19/2004	INV #579			6,375.72	7.80
				26,825.24	26,833.04
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	0.00	0.00	0.00	95,466.27	\$95,466.27

Donald W. Cherry Trucking
2557 Deer Creek Road
Morrisdale, PA 16858

Statement

Date
10/1/2006

To:
One World Recycling Inc. 685 North Queens Avenue Lindenhurst, NY 11757

		Amount Due	Amount Enc.		
		\$95,466.27			
Date	Transaction	Amount	Balance		
06/19/2004	INV #582				
06/21/2004	INV #587	5,854.16	32,687.20		
06/21/2004	INV #588	11,394.76	44,081.96		
06/22/2004	PMT #1364 - inv #579, 582, 587, 588, 599 & 575 (\$1.56)	1,236.56	45,318.52		
06/26/2004	INV #589	-46,575.88	-1,257.36		
06/26/2004	INV #594	26,488.28	25,230.92		
06/26/2004	INV #596	6,362.72	31,593.64		
06/28/2004	INV #597	6,866.60	38,460.24		
07/01/2004	PMT #1374 - inv #589,594,596,597,599,600,605 (#15552)	3,571.88	42,032.12		
07/03/2004	INV #599	-52,653.12	-10,621.00		
07/03/2004	INV #600	8,310.12	-2,310.88		
07/03/2004	INV #601	1,097.20	-1,213.68		
07/06/2004	INV #604	25,845.56	24,631.88		
07/07/2004	INV #605	2,525.12	27,157.00		
07/07/2004	PMT #1379 - inv #601, 604, 605, 613	13,106.60	40,263.60		
07/10/2004	INV #606	-42,137.16	-1,873.56		
07/10/2004	INV #610	17,416.88	15,543.32		
07/10/2004	INV #611	1,311.44	16,854.76		
07/12/2004	INV #613	3,048.76	19,903.52		
07/13/2004	PMT #1389 - inv #606,610,611,614,615	1,865.24	21,768.76		
07/17/2004	INV #614	-40,408.68	-18,639.92		
07/17/2004	INV #615	18,425.68	-214.24		
07/17/2004	INV #617	4,554.16	4,339.92		
07/17/2004	INV #620	26,088.92	30,428.84		
07/21/2004	PMT #1397 - inv #614	4,892.68	35,321.52		
07/21/2004	PMT #1396 - inv #617,620,623,624	-4,348.24	30,973.28		
07/24/2004	INV #623	-53,004.64	-22,031.36		
07/24/2004	INV #624	4,784.00	-17,247.36		
07/24/2004	INV #626	17,239.04	-8.32		
07/24/2004	INV #628	31,388.24	31,379.92		
07/27/2004	INV #631	2,708.68	34,088.60		
07/29/2004	PMT #1404 - inv #626,628,631,633	7,272.20	41,360.80		
07/31/2004	INV #633	-50,412.44	-9,051.64		
		3,158.48	-5,893.16		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	0.00	0.00	0.00	95,466.27	\$95,466.27

Donald W. Cherry Trucking
2557 Deer Creek Road
Morrisdale, PA 16858

Statement

Date
10/1/2006

To:
One World Recycling Inc. 685 North Queens Avenue Lindenhurst, NY 11757

				Amount Due	Amount Enc.	
				\$95,466.27		
Date	Transaction			Amount	Balance	
07/31/2004	INV #635			18,158.40	12,265.24	
07/31/2004	INV #638			4,960.28	17,225.52	
08/05/2004	PMT #1411 - inv #635,638,641,655			-51,600.64	-34,375.12	
08/07/2004	INV #641			24,370.32	-10,004.80	
08/07/2004	INV #642			5,884.84	-4,119.96	
08/07/2004	INV #646			19,794.97	15,675.01	
08/07/2004	INV #648			2,842.84	18,517.85	
08/07/2004	INV #649			1,242.85	19,760.70	
08/11/2004	PMT #1424 - inv #646,649,658			-30,755.37	-10,994.67	
08/14/2004	INV #652			27,884.89	16,890.22	
08/14/2004	INV #655			1,268.80	18,159.02	
08/14/2004	INV #658			9,717.55	27,876.57	
08/14/2004	INV #659			1,364.22	29,240.79	
08/14/2004	INV #660			1,249.21	30,490.00	
08/16/2004	INV #662			22,397.80	52,887.80	
08/19/2004	PMT #1431 - inv #660			-1,249.21	51,638.59	
08/19/2004	PMT #1432 - inv #652,659,662--partial payment			-30,000.00	21,638.59	
08/20/2004	PMT #1433 - inv #662, 664,			-26,923.59	-5,285.00	
08/21/2004	INV #663			38,519.34	33,234.34	
08/21/2004	INV #664			2,706.18	35,940.52	
08/21/2004	INV #667			6,036.70	41,977.22	
08/25/2004	PMT #1438 - partial payment 08/16-21/04			-30,052.18	11,925.04	
08/27/2004	PMT #1440 - Partial payment w/o 08/15-21/04			-30,000.00	-18,074.96	
08/28/2004	INV #669			4,770.53	-13,304.43	
08/28/2004	INV #670			31,434.83	18,130.40	
08/28/2004	INV #671			1,383.83	19,514.23	
08/28/2004	INV #672			10,724.55	30,238.78	
08/28/2004	INV #673			1,283.13	31,521.91	
08/31/2004	PMT #1444 - partial payment 08/23-28/04			-30,000.00	1,521.91	
09/03/2004	PMT #1445 - partial payment 08/22-28/04			-27,099.02	-25,577.11	
09/04/2004	INV #678			21,102.48	-4,474.63	
09/04/2004	INV #679			42,574.90	38,100.27	
09/04/2004	INV #680			4,665.06	42,765.33	
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00		0.00	0.00	0.00	95,466.27	\$95,466.27

Donald W. Cherry Trucking
2557 Deer Creek Road
Morrisdale, PA 16858

Statement

Date
10/1/2006

To:
One World Recycling Inc. 685 North Queens Avenue Lindenhurst, NY 11757

				Amount Due	Amount Enc.
				\$95,466.27	
Date	Transaction			Amount	Balance
09/04/2004	INV #688				
09/08/2004	PMT #1454 - partial pymt. 08/30-09/04/04			1,294.26	44,059.59
09/10/2004	PMT #1455 - 08/30-09/04/04 partial payment			-30,000.00	14,059.59
09/11/2004	INV #689			-22,534.13	-8,474.54
09/11/2004	INV #691			2,489.41	-5,985.13
09/11/2004	INV #692			5,978.40	-6.73
09/11/2004	INV #696			51,656.98	51,650.25
09/15/2004	PMT #1470 - partial payment w/o 09/06-11/04			4,483.27	56,133.52
09/17/2004	PMT #1471 - Partial payment 09/06-11/04			-35,824.43	20,309.09
09/18/2004	INV #699			-35,000.00	-14,690.91
09/18/2004	INV #700			13,005.14	-1,685.77
09/18/2004	INV #702			2,977.54	1,291.77
09/18/2004	INV #703			50,890.07	52,181.84
09/22/2004	PMT #1475 - partial payment w/o 09/13-18/04			2,739.04	54,920.88
09/24/2004	PMT #1476 - partial payment w/o 09/13-18/04			-38,108.18	16,812.70
09/25/2004	INV #711			-30,000.00	-13,187.30
09/25/2004	INV #712			11,927.65	-1,259.65
09/25/2004	INV #713			34,565.54	33,305.89
09/25/2004	INV #720			2,512.73	35,818.62
09/29/2004	PMT #1488 - partial payment w.o 09/19-25/04			1,252.92	37,071.54
10/01/2004	PMT #1489 - partial payment w/o 09/20-25/04			-25,071.75	11,999.79
10/02/2004	INV #721			-25,000.00	-13,000.21
10/02/2004	INV #722			10,484.99	-2,515.22
10/02/2004	INV #723			60,170.90	57,655.68
10/02/2004	INV #727			2,508.49	60,164.17
10/02/2004	INV #728			5,173.86	65,338.03
10/07/2004	PMT #1498 - partial payment w/o 09/26-10/02/04			3,314.76	68,652.79
10/09/2004	INV #734			-36,109.68	32,543.11
10/09/2004	INV #735			56,872.71	89,415.82
10/09/2004	INV #738			2,694.52	92,110.34
10/09/2004	INV #743			6,865.62	98,975.96
10/09/2004	INV #745			1,656.00	100,631.96
10/09/2004	PMT #1501 - partial payment w/o 09/26-10/02/04			1,259.28	101,891.24
				-36,000.00	65,891.24
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE
0.00		0.00	0.00	0.00	95,466.27
					\$95,466.27

Donald W. Cherry Trucking
2557 Deer Creek Road
Morrisdale, PA 16858

Statement

Date
10/1/2006

To:
One World Recycling Inc. 685 North Queens Avenue Lindenhurst, NY 11757

		Amount Due	Amount Enc.		
		\$95,466.27			
Date	Transaction	Amount	Balance		
10/13/2004	PMT #1507 - MSW-10/06-08/04	-3,300.27	62,590.97		
10/13/2004	PMT #1506 - inv #728-shortage	-768.64	61,822.33		
10/14/2004	PMT #1508 - partial payment 10/04-09/04	-46,385.23	15,437.10		
10/16/2004	INV #746	1,644.27	17,081.37		
10/16/2004	INV #747	12,156.61	29,237.98		
10/16/2004	INV #748	22,259.47	51,497.45		
10/16/2004	INV #749	1,281.01	52,778.46		
10/16/2004	INV #750	1,331.36	54,109.82		
10/16/2004	INV #758	3,191.92	57,301.74		
10/18/2004	PMT #1509 - partial payment w/o 10/04-09/04	-40,000.00	17,301.74		
10/22/2004	PMT #1518 - inv #758, 762	-4,780.40	12,521.34		
10/23/2004	INV #760	7,931.98	20,453.32		
10/23/2004	INV #761	22,646.90	43,100.22		
10/23/2004	INV #762	1,588.48	44,688.70		
10/23/2004	INV #763	1,277.30	45,966.00		
10/23/2004	INV #764	2,512.73	48,478.73		
10/23/2004	INV #765	41,855.78	90,334.51		
10/23/2004	PMT #1520 - partial payment w/o 10/12-16/04	-24,764.77	65,569.74		
10/23/2004	INV #771	30.00	65,599.74		
10/26/2004	INV #772	3,222.31	68,822.05		
10/26/2004	INV #775	1,750.53	70,572.58		
10/27/2004	PMT #1524 - inv #775	-1,750.53	68,822.05		
10/27/2004	PMT #1521 - partial payment 10/12-16/04	-24,000.00	44,822.05		
10/29/2004	PMT #1525 - partial payment w/o 10/18-23/04	-32,243.73	12,578.32		
10/29/2004	INV #779	50.00	12,628.32		
10/30/2004	INV #776	4,259.68	16,888.00		
10/30/2004	INV #777	14,817.39	31,705.39		
10/30/2004	INV #778	47,022.30	78,727.69		
10/30/2004	INV #784	8,144.07	86,871.76		
10/31/2004	INV #785	3,116.91	89,988.67		
11/01/2004	PMT #1526 - partial payment w/o 10/18-23/04	-30,000.00	59,988.67		
11/03/2004	INV #787	1,670.49	61,659.16		
11/08/2004	PMT #1537 - inv #784, 787--MSW only	-9,814.56	51,844.60		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	0.00	0.00	0.00	95,466.27	\$95,466.27

Donald W. Cherry Trucking
2557 Deer Creek Road
Morrisdale, PA 16858

10/1/2006

One World Recycling Inc.
685 North Queens Avenue
Lindenhurst, NY 11757

Page 7

MATT BOWER
SUMMARY OF PAYMENTS

HAULING	ONE WORLD	INVOICE	CHECK		CHERRY TKG.	CHECK
DATE-W/E	PAY DATE	NO.	NO.		PAYDATE	NO.
04/17/04	04/15/04	470	1285		04/24/04	2798
04/17/04	04/22/04	477	1294		04/24/04	2798
04/24/04	04/23/04	492	1299		05/01/04	2815
04/24/04	04/28/04	494	1302		05/08/04	2838
05/01/04	05/01/04	494	1308		05/08/04	2838
05/01/04	05/05/04	499	1312		05/08/04	2838
05/08/04	05/11/04	504	1318		05/15/04	2853
05/08/04	05/11/04	518	1318		05/22/04	2871
05/15/04	05/19/04	519	1329		05/22/04	2871
05/22/04	05/26/04	532	1337		05/29/04	2890
05/29/04	06/01/04	544	1348		06/05/04	2909
06/05/04	06/08/04	556	1354		06/12/04	2933
06/05/04	06/08/04	558	1354		06/12/04	2933
06/12/04	06/12/04	568	1354		06/19/04	2951
06/19/04	06/14/04	579	1356		06/26/04	2965
06/19/04	06/22/04	579	1364		06/26/04	2965
06/26/04	07/01/04	589	1374		07/03/04	2984
06/26/04	07/01/04	594	1374		07/03/04	2984
07/03/04	07/07/04	601	1379		07/10/04	3001
07/10/04	07/13/04	606	1389		07/17/04	3019
07/10/04	07/13/04	614	1389		07/23/04	3033
07/17/04	07/21/04	617	1396		07/23/04	3033
07/17/04	07/21/04	624	1396		07/30/04	3053
07/24/04	07/29/04	626	1404		07/30/04	3053
07/24/04	07/29/04	642	1404		08/06/04	3067
07/31/04	08/05/04	641	1411		08/06/04	3067
07/31/04	08/05/04	641	1411		08/14/04	3088
08/07/04	08/11/04	646	1424		08/14/04	3088
08/07/04	08/19/04	658	1431		08/20/04	3107
08/14/04	08/19/04	652	1432		08/20/04	3107
08/14/04	08/20/04	662	1433		08/26/04	3127
08/21/04	08/20/04	663	1433		08/26/04	3127
08/21/04	08/27/04	672	1440		09/04/04	3142
08/28/04	08/31/04	670	1444		09/04/04	3142
09/04/04	09/03/04	679	1445		09/11/04	3160
09/11/04	09/10/04	692	1455		09/18/04	3180
09/18/04	09/17/04	702	1471		09/25/04	3208
10/02/04	10/01/04	722	1489		10/09/04	3242
10/09/04	10/18/04	734	1508*	\$4,216.82	10/16/04	3271
10/09/04	10/18/04	760	1518		10/23/04	3287
10/16/04	10/27/04	761	1521		10/30/04	3317
10/23/04	10/29/04	765	1525		10/30/04	3317
10/23/04	11/01/04	777	1526		11/10/04	3344
10/30/04		778				
11/06/04		786				
Check #1508--\$46,385.23 returned NSF						

JOHN BOWER
SUMMARY OF PAYMENTS

HAULING	ONE WORLD	INVOICE	CHECK		CHERRY TKG.	CHECK
DATE-W/E	PAY DATE	NO.	NO.		PAYDATE	NO.
04/03/04	04/03/04	450	1263		04/10/04	2760
04/10/04	04/09/04	460	1279		04/17/04	2779
04/10/04	04/15/04	465	1284		04/17/04	2779
05/22/04	05/26/04	532	1337		05/29/04	2889
05/29/04	06/01/04	544	1348		06/05/04	2908
06/05/04	06/08/04	556	1354		06/12/04	2932
06/05/04	06/08/04	558	1354		06/12/04	2932
06/12/04	06/14/04	568	1356		06/19/04	2950
06/12/04	06/22/04	579	1364		06/19/04	2950
06/19/04	06/14/04	582	1356		06/26/04	2964
06/25/04	07/01/04	589	1374		07/03/04	2983
06/25/04	07/01/04	594	1374		07/03/04	2983
07/03/04	07/07/04	601	1379		07/10/04	3000
07/10/04	07/13/04	606	1389		07/17/04	3018
07/10/04	07/13/04	614	1389		07/23/04	3032
07/17/04	07/21/04	617	1396		07/23/04	3032
07/17/04	07/21/04	624	1396		07/30/04	3052
07/24/04	07/29/04	626	1404		07/30/04	3052
07/24/04	08/05/04	641	1404		08/06/04	3066
07/31/04	07/29/04	642	1411		08/06/04	3066
08/07/04	08/05/04	641	1411		08/14/04	3087
08/07/04	08/11/04	646	1424		08/14/04	3087
08/14/04	08/19/04	652	1431		08/20/04	3106
08/14/04	08/19/04	658	1432		08/20/04	3106
08/21/04	08/20/04	662	1440		08/28/04	3126
08/21/04	08/20/04	663	1433		08/28/04	3126
08/28/04	08/31/04	670	1440		09/04/04	3141
08/28/04	08/27/04	672	1445		09/04/04	3141
09/18/04	09/17/04	702	1471		09/25/04	3207
10/02/04	10/01/04	722	1489		10/09/04	3241
10/02/04	10/09/04	722	1498		10/09/04	3241
10/09/04	10/18/04	734	1508*	\$4,627.55	10/16/04	3270
10/09/04	10/18/04	760	1508*		10/23/04	3286
10/16/04	10/27/04	761	1521		10/30/04	3316
10/23/04	10/29/04	765	1525		10/30/04	3316
10/23/04	11/01/04	777	1526		11/10/04	3343
10/30/04		778				
11/06/04		786				
Check #1508 \$46,385.23--returned NSF						

Donald W. Cherry Trucking

2557 Deer Creek Road
Morrisdale, PA 16858
Phone: (814) 345-5992 • Fax: (814) 345-6751

Driver: Matthew Bower

DATE	MANIFEST#	LOADED AT:	DELIVERED TO:	TONS	RATE	AMOUNT
10-23	23807 3632	one world	BFI Salem	54.42	44.50	2423.91
		PAID NOV 10 2004				2451.15
10-26	23932 05817	one world	BFI Salem	51.13	44.50	2275.28
			778			2300.85
10-28	24128 3713	one world	BFI Salem	54.98	44.50	2446.61
			778	54.96		2473.2
10-30 del 11-1	2439 3744	"	"	53.71	44.50	2390.09
						9535.89
						2423.91
		PAID NOV 10 2004				7111.98

WEEK ENDING: _____

TOTAL AMOUNT: 7225.2

X _____ %

TOTAL DUE DRIVER: _____

Donald W. Cherry Trucking

2557 Deer Creek Road
Morrisdale, PA 16858
Phone: (814) 345-5992 • Fax: (814) 345-6751

Driver: John Bower

DATE	MANIFEST#	LOADED AT:	DELIVERED TO:	TONS	RATE	AMOUNT
10-23-04	3633 23792	One World Recycling PAID	BFI Salem Ohio NOV 10 2004	55.89	45.00 44.50	2515.05 2487.10
10-26-04	5816 23955	One World Recycling	BFI Salem Ohio 718	52.39	45.00 44.50	2357.55 2331.35
10-28-04	3712 24143	One World Recycling	BFI Salem Ohio 718	56.47	45.00 44.50	2541.15 2512.91
10/30 Del 11-1	24312 21145	"	" 756	59.48	44.50	2646.80
						9978.22 - 2487.10
		2487.10	PAID NOV 10 2004	CK#	3343	7491.12
						7491.12

WEEK ENDING: _____

TOTAL AMOUNT: 7413.25

X _____ %

TOTAL DUE DRIVER: _____

Donald W. Cherry Trucking

2557 Deer Creek Road

Morrisdale, PA 16858

Phone: (814) 345-5992 • Fax: (814) 345-6751

Driver: Matthew Bower

DATE	MANIFEST#	LOADED AT:	DELIVERED TO:	TONS	RATE	AMOUNT
10-23	23807 3632	one world	BFI Salem	54.42	44.50 45	2423.91 2451.15
10-26	23932 05817	one world	BFI Salem	51.13	45	2275.28 2300.85
10-28	24128 3713	one world	BFI Salem	54.98 54.96	45	2446.61 2473.2
10-30 del 11-1	2439 3744	"	"	53.71	44.50	2390.09
						9535.89 - 2423.91 7111.98

WEEK ENDING: _____

TOTAL AMOUNT: 7225.2

X _____ %

TOTAL DUE DRIVER: _____

Donald W. Cherry Trucking

2557 Deer Creek Road
Morrisdale, PA 16858
Phone: (814) 345-5992 • Fax: (814) 345-6751

Driver: John Bower

DATE	MANIFEST#	LOADED AT:	DELIVERED TO:	TONS	RATE	AMOUNT
10-23-04	3633 23792	One World Recycling PAID	BFI Salem Ohio NOV 10 2004 777	55.89 ✓	45.00 44.50	2515.05 2487.10
10-26-04	5816 23935	One World Recycling	BFI Salem Ohio 778	52.39 ✓	45.00 44.50	2337.55 2331.35
10-28-04	3712 24143	One World Recycling	BFI Salem Ohio 778	56.47 ✓	45.00 44.50	2541.15 2512.91
10/30 Del 11-1	24312 21145	"	" 786	59.48	44.50	2646.80
						9978.22 - 2487.10
		2487.10	PAID NOV 10 2004	CL#	3343	7491.12
						7491.12

WEEK ENDING: _____

TOTAL AMOUNT: 7413.75

X _____%

TOTAL DUE DRIVER: _____

Donald W. Cherry Trucking

2557 Deer Creek Road

Morrisdale, PA 16858

Phone: (814) 345-5992 • Fax: (814) 345-6751

Driver: Matthew Bower

DATE	MANIFEST#	LOADED AT:	DELIVERED TO:	TONS	RATE	AMOUNT
10-23	23807 3632	one world	BFI Salem	54.47	44.50 45	2423.91 2451.15
10-26	23932 05817	one world	BFI Salem	51.13	45	2275.28 2300.85
10-28	24128 3713	one world	BFI Salem	54.98 54.96	45	2446.01 2473.2
10-30 del 11-1	2439 3744	"	"	53.71	44.50	2390.09
						9535.89 - 2423.91 7111.98

WEEK ENDING: _____

TOTAL AMOUNT: 7225.2

X _____ %

TOTAL DUE DRIVER: _____

Donald W. Cherry Trucking

2557 Deer Creek Road
Morrisdale, PA 16858
Phone: (814) 345-5992 • Fax: (814) 345-6751

Driver: John Bower

DATE	MANIFEST#	LOADED AT:	DELIVERED TO:	TONS	RATE	AMOUNT
10-23-04	3633 23792	One World Recycling PAID	BFI Salem Ohio NOV 10 2004	55.89	45.00 44.50	2515.05 2487.10
10-26-04	5816 23955	One World Recycling	BFI Salem Ohio 778	52.39	45.00 44.50	2357.55 2331.35
10-28-04	3712 24143	One World Recycling	BFI Salem Ohio 778	56.47	45.00 44.50	2541.15 2518.91
10/30 Del 11-1	24312 21145	"	" 786	59.48	44.50	2646.80
						9978.22 - 2487.10
		2487.10	PAID NOV 10 2004	016#	3343	7491.12
						7491.12

WEEK ENDING: _____

TOTAL AMOUNT: 7413.75

X _____ %

TOTAL DUE DRIVER: _____

Donald W. Cherry Trucking

2557 Deer Creek Road
Morrisdale, PA 16858
Phone: (814) 345-5992 • Fax: (814) 345-6751

Driver: Matthew Bower

DATE	MANIFEST#	LOADED AT:	DELIVERED TO:	TONS	RATE	AMOUNT
10-23	23807 3632	one world	BFI Salem	54.47	44.50 45	2423.91 2451.15
10-26	23932 05817	one world	BFI Salem	51.13	45	2275.28 2300.85
10-28	24128 3713	one world	BFI Salem	54.98 54.96	45	2446.61 2473.2
10-30 del 11-1	24319 3744	"	"	53.71	44.50	2390.09
						9535.89 - 2423.91 7111.98

WEEK ENDING: _____

TOTAL AMOUNT: 7225.2

X _____%

TOTAL DUE DRIVER: _____

Donald W. Cherry Trucking

2557 Deer Creek Road
Morrisdale, PA 16858

Phone: (814) 345-5992 • Fax: (814) 345-6751

Driver: John Bower

DATE	MANIFEST#	LOADED AT:	DELIVERED TO:	TONS	RATE	AMOUNT
10-23-04	3633 23792	One World Recycling PAID	BFI Salem Ohio NOV 10 2004	55.89	45.00 44.50	2518.05 2487.10
10-26-04	5816 23955	One World Recycling	BFI Salem Ohio 718	52.39	45.00 44.50	2357.55 2331.35
10-28-04	3712 24443	One World Recycling	BFI Salem Ohio 718	56.47	45.00 44.50	2541.15 2512.91
10/30 Del 11-1	24312 31745	"	" 1586	59.48	44.50	2646.80
						9978.22 - 2487.10
		2487.10	PAID NOV 10 2004	CIC*	3343	7491.12
						7491.12

WEEK ENDING: _____

TOTAL AMOUNT: 7413.75

X _____%

TOTAL DUE DRIVER: _____

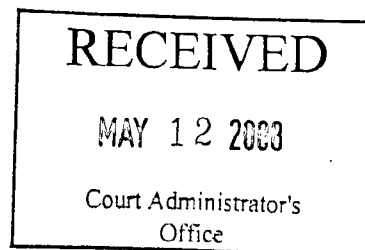
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL DIVISION

Arb
5/15
1:00
PM

MATTHEW J. BOWER : DOCKET NO. 07-573-CD
V :
DONALD W. CHERRY, AND :
DENISE CHERRY, his wife and :
DONALD W. CHERRY TRUCKING :

JOHN I. BOWER : DOCKET NO. 07-574-CD
V :
DONALD W. CHERRY and :
DENISE CHERRY, his wife, and :
DONALD W. CHERRY TRUCKING :

PRETRIAL MEMORANDUM



AND NOW, comes Matthew J. Bower (Docket No: 07-573-CD)
and John I. Bower (Docket No: 07-574-CD), Plaintiff in the
consolidated in the above-captioned matter, by their attorney John
A. Felix, Esquire, and submits the following Pretrial Memorandum:
STATEMENT OF THE CASE:

Defendant Donald W. Cherry in the summer of 2004
contacted Plaintiff Matthew J. Bower requesting that the
Plaintiffs provide hauling services for him.

Both Plaintiffs accepted Defendant Cherry's offer to
haul, making several pickups at a transfer station in the
Glenhurst, New York with deliveries to a demolition landfill in
Salem, Ohio.

Over a period of several months, Defendant Donald W.
Cherry paid Plaintiffs Matthew J. Bower and John I. Bower after
giving the Defendant all the bills and pay slips.

Defendant, having refused to pay for the last three hauling jobs in October, 2004, owes Matthew J. Bower a total of \$7,111.99 and owes John I. Bower a total of \$7,491.12

Although the amounts are admittedly accurate, Donald W. Cherry denied responsibility claiming that the hauling services provided were for One World Recycling, Inc. with Donald W. Cherry handling the billing as "an administrative convenience". Defendant asserts that no money is owed the Plaintiff since the arrangement was Plaintiffs' agreement to be paid for services only when Donald W. Cherry Trucking was paid by One World Recycling, Inc. Cherry's claims include that he provided services as a trucking company for himself and as a broker where he would coordinate with other truckers to assist them in getting paid when they provided hauling for One World Recycling, Inc.

Defendant further claims that he acted as a "facilitator" broker dealing with the Plaintiffs "not as a trucking company" was simply to present billings on his own letterhead as a convenience to the Plaintiffs and One World Recycling, Inc.

Donald W. Cherry further argued in Preliminary Objections before the Court of Common Pleas in Lycoming County that Denise Cherry should be stricken as a Defendant since she simply was an employee assisting with the paper work. This Preliminary Objection was denied after hearing by order dated February 15, 2007, ruling that the assertion was in the nature of a speaking demurer.

APPLICABLE LAW:

Contract law. Liability to be determined based upon the parties' conduct which supports Plaintiffs' argument that they were employed as independent contractors

WITNESSES:

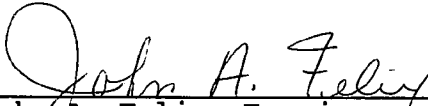
Plaintiff Matthew J. Bower
Plaintiff John I. Bower
Donald W. Cherry, III (as of cross-examination)
Denise Cherry (as of cross-examination)

STATEMENT OF DAMAGES:

For Matthew Bower, \$ 7,111.99 as the total of the three last hauling jobs. A photocopy of the load statement is attached and will be offered as Plaintiff's Exhibit "A".

As to John A. Bower, \$7,491.12 as the total. A photocopy of the load statement is attached and will be marked as Plaintiff's Exhibit "B".

Each Plaintiff demands judgment against Defendant's Donald W. Cherry and Denise Cherry, his wife, and Donald W. Cherry Trucking in the total amounts due plus statutory interest and costs.



John A. Felix, Esquire
ID# 07525
Attorney for Matthew J. Bower
and John I. Bower
25 W. Third Street, Suite 302
Williamsport, PA 17701
(570) 327-5640

Phone: (814) 345-5992 • Fax: (814) 345-6751

Drivers

DATE	MANIFEST#	LOADED AT:	DELIVERED TO:	TONS	RATE	AMOUNT
10-23	23807 363E	one world	BFI Salem mm	54.97	44.50 45	2423.91 2451.15
10-26	23932 05817	one world	BFI Salem 778	51.13	45	2275.2 2300.8
10-28	24128 3713	one world	BFI Salem 778	54.98 54.96	45	2444.61 2473.2
11-30	24319			53.71	44.50	2390.10
		\$2423.91 PAID NOV 10 2004	CK# 3344			
						7145.80

"EXHIBIT A"

Donald W. Cherry Trucking

2557 Dear Creek Road
Morrisdale, PA 18858
Phone: (814) 345-5982 • Fax: (814) 345-6751

Driver: John Bower

DATE	MANIFEST#	LOADED AT:	DELIVERED TO:	TONS	RATE	AMOUNT
10-23-04	3633/ 23792	One World Recycling PAID	BFI Salem Ohio NOV 10 2004	55.89	45.00 44.50	2518.05 2487.10
10-26-04	5816 23935	One World Recycling	BFI Salem Ohio 778	57.39	45.00 44.50	2557.55 2531.35
10-28-04	3712 24143	One World Recycling	BFI Salem Ohio 778	56.47	45.00 44.50	2541.15 2518.91
10/30	3745 24312			59.48	44.50	2646.86
		2487.10	PAID NOV 10 2004	CL#	3343	
						7331.36

WEEK ENDING: _____

TOTAL AMOUNT: 7413.25

X _____ %

TOTAL DUE DRIVER: _____

"EXHIBIT B"

JOHN A. FELIX

570-327-5640
Fax 570-327-5650

ATTORNEY AT LAW

25 West Third Street, Suite 302
Williamsport, Pennsylvania 17701

May 1, 2008

Ronda Wisor
Deputy Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

*advised
of Dr. info
needed 5/6
No Action
JAF*

RE: Bower V. Cherry - 07-573-CD
Bower V. Cherry - 07-574-CD

Dear Ms. Wisor:

As you may recall, this office represents Matthew J. Bower and John A. Bower, Plaintiff in the above-captioned matter scheduled for Arbitration Hearing on May 15, 2008.

Enclosed is a Motion For Continuance and proposed order to be filed.

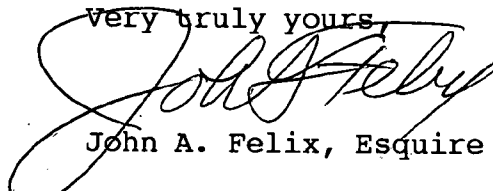
One of the Plaintiffs Matthew J. Bower has major disc surgery scheduled on May 15, 2008 in Williamsport. Attorney Dwight L. Koerber, Jr., Esquire opposes the within Motion For Continuance.

Sorry for the need to file the Continuance after the Arbitration Hearing has been set and attorneys appointed to the Board but Matthew Bower's surgery necessitates a postponement.

Kindly note that he will be unavailable for travel for at least three-four weeks following surgery on May 15 and if rescheduled, would you kindly have the hearing begin at 1:00 PM so as to facilitate travel by my clients and myself to Clearfield?

Thank you for your continued cooperation.

very truly yours,


John A. Felix, Esquire

JAF:djw