

07-1448-CD
Eva Hertlein al vs River Hill Coal

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1254 WDA 2008

Page 1 of 6

August 8, 2008

07-1448-CD

Eva Jane Hertlein, Edith M. Hertlein, Patsy L. Hertlain Kimble, Frank T. Hertlein, Jr.,
Glenn R. Hertlein, Timothy L. Hertlein, Louise E. Hertlein Kirkwood, And G. Lee Hertlein, Individually And As
Attorney-In-Fact for The Heirs Of Frank T. Hertlein And Ivy E. Hertlein
Appellants

V.
River Hill Coal Company, Inc., A Pennsylvania Corporation, And Leitzinger Land Company, Inc.

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: August 5, 2008 Awaiting Original Record

Journal Number:

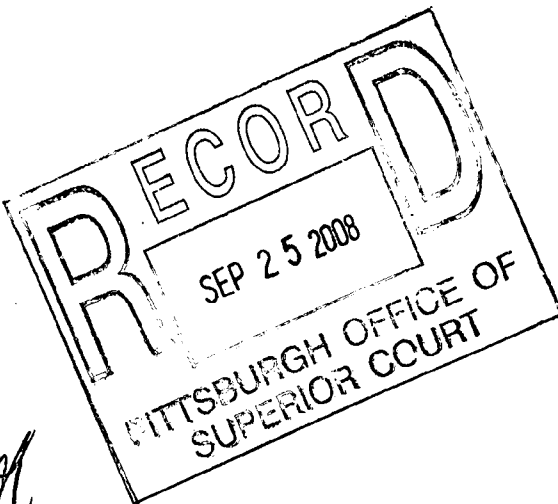
Case Category: Civil CaseType: Quiet Title

Consolidated Docket Nos.: Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Case Initiation	Next Event Due Date: August 5, 2008
Next Event Type: Receive Docketing Statement	Next Event Due Date: August 22, 2008
Next Event Type: Original Record Received	Next Event Due Date: September 26, 2008

Reund
/ transcript
w/ Exhpts.



FILED NOCC
AUG 11 2008
William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1254 WDA 2008

Page 2 of 6

August 8, 2008



COUNSEL INFORMATION

Appellant Hertlein, Eva Jane
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Hertlein, Edith M
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Attorney: Naddeo, James A.
Bar No.: 6820 **Law Firm:** Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 **Fax No.:** (814)765-8142
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellant Hertlein Jr., Frank T
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Attorney: Naddeo, James A.
Bar No.: 6820 **Law Firm:** Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 **Fax No.:** (814)765-8142
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellant Hertlein, Glenn R
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

FILED

AUG 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(c)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the Court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

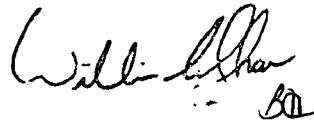
**Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein**
VS.

**River Hill Coal Company, Inc., a Pennsylvania Corporation
and
Leitzinger Land Company, Inc.
07-1448-CD**

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to 22** and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is September 23, 2008.



William A. Shaw
Prothonotary/Clerk of Courts

(seal)

Date: 9/23/2008

Time: 10:29 AM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

Eva Jane Hertlein, et alvs.River Hill Coal Company, Inc., et al

Civil Other-COUNT

Date		Judge
9/5/2007	New Case Filed.	No Judge
	Filing: Complaint-Action for Declaratory Judgment, situated in Karthaus Township Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920556 Dated: 09/05/2007 Amount: \$85.00 (Check) 3CC Atty.	No Judge
10/4/2007	Filing: Praecipe to Reinstate Complaint Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920930 Dated: 10/04/2007 Amount: \$7.00 (Check) Filed by s/ James A. Naddeo, Esquire 1 Compl. reinstated to Sheriff	No Judge
10/8/2007	Praecipe For Entry of Appearance, filed on behalf of Leitzinger Land Company, Inc., filed by s/ Peter F. Smith, Esquire. No CC	No Judge
	Certificate of Service, copy of the Praecipe For Entry of Appearance served upon James A. Naddeo and David S. Ammerman by First Class Mail on 10-5-07. No CC	No Judge
10/23/2007	Certificate of Service, filed. That a true and correct copy of Important Notice was served on River Hill Coal Company on the 12th day of October 2007 by certified mail, filed by s/ James A. Naddeo Esq. 1CC Atty.	No Judge
10/24/2007	Certificate of Service, filed. Served a true and correct copy of the Answer filed on behalf of Leitzinger Land Co. Inc. by first class mail on James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge
	Answer Filed on Behalf of Leitzinger Land Co., Inc., filed by s/ Peter F. Smith, Esquire. 3CC Atty. P. Smith	No Judge
11/2/2007	Praecipe For Entry of Appearance, filed on behalf of River Hill Coal Company, Inc. Filed by s/ David S. Ammerman, Esquire. No CC	No Judge
	Certificate of Service, filed. Served a true and correct copy of the Praecipe for Entry of Appearance filed in this matter on Peter F. Smith Esq and James A. Naddeo Esq by first class mail, filed by s/ David S. Ammerman Esq. No CC.	No Judge
1/23/2008	Sheriff Return, September 20, 2007 at 1:44 pm Served the within Complaint for Declaratory Judgment on River Hill Coal Company Inc by handing to Ger Wood.	No Judge
	October 2, 2007 at 1:31 pm Served the within Complaint for Declaratory Judgment on Leitzinger Land Company Inc. by handing to James Leitzinger So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Naddeo \$62.96	No Judge
2/25/2008	Answer filed on behalf of River Hill Coal Company, Inc. filed by Atty. Ammerman 3 Cert. to Atty.	No Judge
	Certificate of Service, filed by Atty. Ammerman no cert. copies. Served copy of Answer on Atty. Naddeo & Atty. Smith.	No Judge
4/24/2008	Motion For Hearing, filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
4/29/2008	Order, this 25th day of April, 2008, this case will be heard before the Court on the 16th day of May, 2008, at 1:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Naddeo	Paul E. Cherry
4/30/2008	Certificate of Service, a certified copy of Motion for Hearing was served upon David S. Ammerman, Esquire, and Peter F. Smith, Esquire, by First-Class Mail on the 30th day of April, 2008. Filed by s/ James A. Naddeo, Esquire. No CC	Paul E. Cherry

9/23/2008

10:29 AM

Page 2 of 2

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

Eva Jane Hertlein, et alvs. River Hill Coal Company, Inc., et al

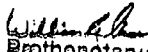
Civil Other-COUNT

Date		Judge
5/19/2008	Order, this 16th day of May, 2008, following hearing on the action for declaratory judgment, it is Ordered that counsel provide the Court with appropriate letter brief by no later than June 6, 2008. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys; Naddeo, D. Ammerman, P. Smith	Paul E. Cherry
7/14/2008	Motion for Reconsideration, filed by s/James A. Naddeo, Esq. Two CC Attorney Naddeo	Paul E. Cherry
7/28/2008	Filing: Notice of Appeal to High Court Paid by: Naddeo, James A. (attorney Paul E. Cherry for Hertlein, Eva Jane) Receipt number: 1925150 Dated: 7/28/2008 Amount: \$50.00 (Check) filed by s/James A. Naddeo, Esq. Six CC Attorney Naddeo One CC and check for \$60.00 to Superior Court	
7/30/2008	Order, AND NOW, this 29th day of July 2008, it is the ORDER of this Court that Status Conference with regard to this matter shall be and is hereby scheduled for the 8th day of August 2008, beginning at 9:00 a.m. in Judge's Chambers, of the Clearfield County Courthouse, Clearfield PA. BY THE COURT: /s/ Paul E. Cherry, Judge. 1CC Atty Naddeo, D. Ammerman and P Smith. (original to 06-903-CD)	Paul E. Cherry
8/11/2008	Appeal Docket Sheet, filed. No CC 1254 WDA 2008	Paul E. Cherry
9/4/2008	Transcript of Proceedings, with Exhibits, filed. Evidentiary Hearing, held before Paul E. Cherry, Judge, on May 16, 2008. Notice, if no objections are made to the text of the transcript within five days after such notice, the transcript will become part of the record upon being filed in the Prothonotary's Office. Filed by s/ Thomas D. Snyder, Court Reporter.	Paul E. Cherry
9/23/2008	September 23, 2008, Mailed Appeal to Superior Court. September 23, 2008, Letters, Re: Notification of mailing appeal mailed to James A. Naddeo, Esq; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931 (c).	Paul E. Cherry

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

SEP 23 2008

Attest,


Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1448-CD

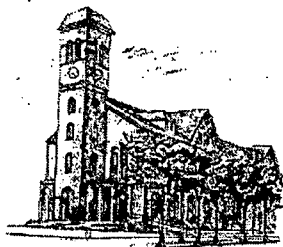
*Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein*

Vs.

*River Hill Coal Company, Inc., a Pennsylvania Corporation
and*

Leitzinger Land Company, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	09/05/2007	Complaint-Action for Declaratory Judgment	81
02	10/04/2007	Praecipe to Reinstate Complaint	02
03	10/08/2007	Praecipe for Entry of Appearance	01
04	10/08/2007	Certificate of Service	01
05	10/23/2007	Certificate of Service	03
06	10/24/2007	Certificate of Service	01
07	10/24/2007	Answer filed on behalf of Leitzinger Land Co., Inc.	05
08	11/02/2007	Praecipe for Entry of Appearance	01
09	11/02/2007	Certificate of Service	01
10	01/23/2008	Sheriff Return	03
11	02/25/2008	Answer filed on behalf of River Hill Coal Company	05
12	02/25/2008	Certificate of Service	01
13	04/24/2008	Motion for Hearing with Order scheduling hearing filed April 29, 2008	04
14	04/30/2008	Certificate of Service	02
15	05/19/2008	Order, Re: counsel to file appropriate letter brief	01
16	07/14/2008	Motion for Reconsideration	14
17	07/28/2008	Notice of Appeal to High Court	10
18	07/30/2008	Order, Re: Status Conference scheduled (Certified copy-original filed to 06-903-CD)	02
19	08/11/2008	Appeal Docket Sheet, 1254 WDA 2008	06
20	09/04/2008	Transcript of Proceedings with Exhibits, Re: Evidentiary Hearing held before Paul E. Cherry, Judge, on May 16, 2008	Separate Cover
21	09/04/2008	Notice, Re: Objections to Transcript	01
22	09/23/08	Letters, Re: Notification of mailing appeal mailed to James A. Naddeo, Esq; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931 (c).	04



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

Paul E. Cherry, Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

James A. Naddeo, Esq.
PO Box 552
207 East Market St.
Clearfield, PA 16830

David S. Ammerman, Esq.
310 East Cherry Street
Clearfield, PA 16830

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

Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein
Vs.

River Hill Coal Company, Inc., a Pennsylvania Corporation
and
Leitzinger Land Company, Inc.

Court No. 07-1448-CD; Superior Court No. 1254 WDA 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on September 23, 2008.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED

010:2630
SEP 23 2008

William A. Shaw
Prothonotary/Clerk of Courts

22

Date: 9/23/2008

Time: 10:08 AM

Page 1 of 2

Clerk of Court
Cleveland County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

Eva Jane Hertlein, et alvs. River Hill Coal Company, Inc., et al

Civil Other-COUNT

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	Answer Filed on Behalf of Leitzinger Land Co., Inc., filed by s/ Peter F. Smith, Esquire. 3CC Atty. P. Smith	No Judge
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FILED

SEP 23 2008

William A. Shaw
Prothonotary/Clerk of Courts

Prothonotary/Clerk of Courts
County of Bucks, Pennsylvania
Philadelphia, Pennsylvania

SEP 23 2008

2008
2008

19

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

EVA JANE HERTLEIN, et al. :

-vs- :

No. 07-1448-CD

RIVER HILL COAL COMPANY, INC. :
a Pennsylvania Corporation :

and :

LEITZINGER LAND COMPANY, INC. :

N O T I C E

In accordance with the Rules of Appellate Procedure, Rule 1922, Notice is hereby given that if no objections are made to the text of the transcript within five (5) days after such notice, the transcript in the above-captioned matter will become part of the record upon being filed in the Prothonotary's office.

August 28, 2008

Date

Thomas D. Snyder

Thomas D. Snyder, RPR
Official Court Reporter

FILED

010:3051
SEP 04 2008

William A. Shaw
Prothonotary/Clerk of Courts

21

FILED

SEP 04 2008

William A. Shaw
Prothonotary/Clerk of Courts

5:24 P.M.


Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1254 WDA 2008

Page 1 of 6

August 8, 2008

07-1448-CD 

Eva Jane Hertlein, Edith M. Hertlein, Patsy L. Hertlain Kimble, Frank T. Hertlein, Jr.,
Glenn R. Hertlein, Timothy L. Hertlein, Louise E. Hertlein Kirkwood, And G. Lee Hertlein, Individually And As
Attorney-In-Fact for The Heirs Of Frank T. Hertlein And Ivy E. Hertlein
Appellants

V.

River Hill Coal Company, Inc., A Pennsylvania Corporation, And Leitzinger Land Company, Inc.

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: August 5, 2008

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType:

Quiet Title

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Case Initiation

Next Event Due Date: August 5, 2008

Next Event Type: Receive Docketing Statement

Next Event Due Date: August 22, 2008

Next Event Type: Original Record Received

Next Event Due Date: September 26, 2008

FILED
AUG 11 2008
William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet**Docket Number: 1254 WDA 2008****Superior Court of Pennsylvania****Page 2 of 6****August 8, 2008****COUNSEL INFORMATION**

Appellant Hertlein, Eva Jane
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Hertlein, Edith M
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Attorney: Naddeo, James A.
Bar No.: 6820 **Law Firm:** Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 **Fax No.:** (814)765-8142
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellant Hertlein Jr., Frank T
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Attorney: Naddeo, James A.
Bar No.: 6820 **Law Firm:** Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 **Fax No.:** (814)765-8142
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellant Hertlein, Glenn R
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Appeal Docket Sheet

Docket Number: 1254 WDA 2008

Page 3 of 6

August 8, 2008

Superior Court of Pennsylvania



Attorney: Naddeo, James A.
Bar No.: 6820 Law Firm: Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 Fax No.: (814)765-8142
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellant Hertlain Jr., Frank T
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Hertlein, Timothy L.
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Attorney: Naddeo, James A.
Bar No.: 6820 Law Firm: Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 Fax No.: (814)765-8142
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellant Hertlein Kirkwood, Louise E
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Attorney: Naddeo, James A.
Bar No.: 6820 Law Firm: Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 Fax No.: (814)765-8142
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellant Hertlein, G Lee
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Appeal Docket Sheet**Docket Number: 1254 WDA 2008****Page 4 of 6****August 8, 2008****Superior Court of Pennsylvania**

Attorney: Naddeo, James A.
Bar No.: 6820 Law Firm: Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 Fax No.: (814)765-8142
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellant Kimble Hertlein, Patsy L
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Attorney: Naddeo, James A.
Bar No.: 6820 Law Firm: Law Office of Naddeo & Lewis, LLC
Address: 207 East Market Street
PO Box 552
Clearfield, PA 16830
Phone No.: (814)765-1601 Fax No.: (814)765-8142
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellee River Hill Coal Company
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Ammerman, David S.
Bar No.: 6801 Law Firm:
Address: 310 E Cherry St
Clearfield, PA 16830
Phone No.: (814)765-1701 Fax No.: (814)765-1703
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Leitzinger Land Company Inc
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Appeal Docket Sheet

Docket Number: 1254 WDA 2008

Page 5 of 6

August 8, 2008

Superior Court of Pennsylvania



Attorney: Smith, Peter Fortune
 Bar No.: 34291 Law Firm:
 Address: 30 S 2nd Street
 PO Box 130
 Clearfield, PA 16830
 Phone No.: (814)765-5595 Fax No.: (814)765-6662
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
7/28/08	Notice of Appeal	60.00	60.00	2008SPRWD000774

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
 County: Clearfield Division: Civil
 Date of Order Appealed From: July 14, 2008 Judicial District: 46
 Date Documents Received: August 5, 2008 Date Notice of Appeal Filed: July 28, 2008
 Order Type: Judgment Entered OTN:
 Judge: Cherry, Paul E. Lower Court Docket No.: No 07-1448-CD
 Judge

ORIGINAL RECORD CONTENTS

Original Record Item Filed Date Content/Description

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
August 5, 2008	Notice of Appeal Filed	Appellant	Hertlein, Eva Jane
August 8, 2008	Docketing Statement Exited (Civil)		Lower Court or Agency

5:24 P.M.

Appeal Docket Sheet

Docket Number: 1254 WDA 2008

Page 6 of 6

August 8, 2008



Superior Court of Pennsylvania



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

FILED

JUL 30 2008

William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys:
Maddox
J. Ammerman
P. Smith

Orig. to 06-903-CD

EVA JANE HERTLEIN, EDITH M. : NO. 06-903-CD
HERTLEIN, PATSY L. HERTLEIN :
KIMBLE, FRAND T. HERTLEIN, JR., :
GLENN R. HERTLEIN, TIMOTHY L. :
HERTLEIN, LOUISE E. HERTLEIN :
KIRKWOOD, and G. LEE HERTLEIN, :
Individually, and as Attorney-in-Fact for :
the heirs of FRANK T. HERTLEIN and :
IVY E. HERTLEIN, :
Plaintiffs :

v. :

RIVER HILL COAL COMPANY, INC., :
A Pennsylvania Corporation, :
Defendants :

EVA JANE HERTLEIN, EDITH M. : NO. 07-1448-CD
HERTLEIN, PATSY L. HERTLEIN :
KIMBLE, FRAND T. HERTLEIN, JR., :
GLENN R. HERTLEIN, TIMOTHY L. :
HERTLEIN, LOUISE E. HERTLEIN :
KIRKWOOD, and G. LEE HERTLEIN, :
Individually, and as Attorney-in-Fact for :
the heirs of FRANK T. HERTLEIN and :
IVY E. HERTLEIN, :
Plaintiffs :

v. :

RIVER HILL COAL COMPANY, INC., :
A Pennsylvania Corporation, :
and :
LEITZINGER LAND COMPANY, INC., :
Defendants :

ORDER

AND NOW, this 29th day of July, 2008, it is the ORDER of this Court that Status
Conference with regard to this matter shall be and is hereby scheduled for the 8th day of

FILED

JUL 30 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/30/08

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided services 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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and
LEITZINGER LAND COMPANY,
INC.,

Defendants.

No. 07-1448-CD

Type of Pleading:

NOTICE OF APPEAL

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

0132134
JUL 28 2008

William A. Shaw
Prothonotary/Clerk of Courts

6000 Atty Naddeo
ICC a check for \$60.00
to Superior Court
Atty pd. \$50.00

Dated: July 28, 2008

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and

LEITZINGER LAND COMPANY,
INC.,

Defendants.

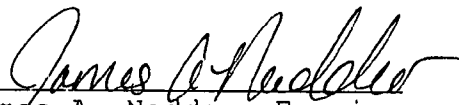
No. 07-1448-CD

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs, EVA JANE
HERTLEIN, EDITH M. HERTLEIN, PATSY L. HERTLEIN KIMBLE, FRANK
T. HERTLEIN, JR., GLENN R. HERTLEIN, TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G. LEE HERTLEIN, Individually and as
Attorney-in-Fact for the heirs of FRANK T. HERTLEIN and IVY E.
HERTLEIN, hereby appeal to the Superior Court of Pennsylvania
from the Order entered on June 27, 2008 and Judgment there
following entered on or about July 14, 2008. The Order has been
entered in error to the docket of Case No. 06-903-CD as is

evidenced by the attached copies of the Docket Entries of both Case No. 06-903-CD and Case No. 07-1448-CD. The Judgment has also been entered in error to Case No. 06-903-CD as evidenced by a copy of the same as attached hereto.

Respectfully submitted by,

By 
James A. Naddeo, Esquire
Attorney for the Plaintiffs

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

EVA JANE HERTLEIN, EDITH M.	*	
HERTLEIN, PATSY L. HERTLEIN	*	
KIMBLE, FRANK T. HERTLEIN,	*	
JR., GLENN R. HERTLEIN,	*	
TIMOTHY L. HERTLEIN, LOUISE	*	
E. HERTLEIN KIRKWOOD, and G.	*	No. 07-1448-CD
LEE HERTLEIN, Individually,	*	
and as Attorney-in-Fact for	*	
the heirs of FRANK T.	*	
HERTLEIN and IVY E.	*	
HERTLEIN,	*	
Plaintiffs,	*	
	*	
v.	*	
	*	
RIVER HILL COAL COMPANY,	*	
INC., A Pennsylvania	*	
corporation,	*	
and	*	
	*	
LEITZINGER LAND COMPANY,	*	
INC.,	*	
Defendants.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Notice of Appeal was served on the following
and in the following manner on the 28th day of July, 2008:

First-Class Mail, Postage Prepaid
The Honorable Paul E. Cherry
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Daniel Nelson, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830


Court Reporter
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

David S. Ammerman, Esquire
310 East Cherry Street
Clearfield, PA 16830

and

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

NADDEO & LEWIS, LLC

By 
James A. Naddeo
Attorney for Plaintiffs

Civil Other-COUNT

Date		Judge
6/5/2006	New Case Filed.	No Judge
	Filing: Civil Complaint, located in Karthaus Township Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1914137 Dated: 06/05/2006 Amount: \$85.00 (Check) 1CC Atty.	No Judge
6/20/2006	Sheriff Return, June 7, 2006 at 11:35 am served the within Complaint on River Hill Coal Company Inc. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Naddeo \$41.74	No Judge
7/6/2006	Praeipce For Entry of Appearance, filed by Atty. Ammerman 2 Cert. to Atty. Enter appearance on behalf of Defendant River Hill Coal Company, Inc. Praeipce for Writ to Jonin Additional Defendant, filed by Atty. Ammerman noc cert copies, issued 2 Writs to Join Addintional Defendant to Atty.	No Judge
7/7/2006	Entry of Appearance, filed. Please enter my appearance as attorney for additional defendant Leitzinger Land Company Inc., in the above-captioned matter, filed by s/ Peter F. Smith Esq. No CC.	No Judge
	Acceptance of Service, filed. I accept service of the Writ to Join Additional Defendant in the above reference case on behalf of Leitzinger Land Company Inc., the additional defendant, and certify that I am counswl of record for Leitzinger Land Company Inc., and authorized to do so, filed by s/ Peter F. Smith Esq. No CC.	No Judge
	Certificate of Service, filed. Peter F. Smith attorney for Leitzinger Land Company Inc., in the above-captioned matter, hereby certify that I served a true and corect copy of the Praeipce for Entry of Apperance and Acceptance of Service filed in this matter on James A. Naddeo Esq. and David S. Ammerman Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge
7/14/2006	Answer and New Matter filed by David S. Ammerman Esq. 3CC atty.	No Judge
7/27/2006	Plaintiffs' First Request for Production of Documents directed to Defendant River Hill Coal Company Inc., filed by s/ James A. Naddeo Esq. 2CC Atty Naddeo.	No Judge
8/15/2006	Answer To New Matter, filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
9/8/2006	Certificate of Service, filed. Served Additional Defendant's Interrogatories directed to Plaintiffs and Additional Defendant's Request for Production of Documents directed to Plaintiffs on James A. Naddeo Esq., filed by Peter F. Smith Esq. No CC.	No Judge
10/4/2006	Certificate of Service, filed. That a true and correct copy of Plaintiffs' Answer to Additional Defendant's Interrogatories Directed to Plaintiffs and Plaintiffs' Response to Additional Defendant's Request for Production of Documents Directed to Plaintiffs in the above-captioned action case was served on David S. Ammerman Esq., and Peter F. Smith Esq., on the 3rd day of October 2006, filed by s/ James A. Naddeo Esq. NO CC.	No Judge
10/10/2006	Certificate of Readiness for Non-Jury Trial, filed by s/ James A. Naddeo, Esquire. No CC	No Judge

Civil Other-COUNT

Date		Judge
1/23/2007	Order, NOW, this 22nd day of Jan, Ordered: 1. Counsel shall submit all documents relative their respective positions to opposing counsel and the Court within 20 days of today's date. 2. Counsel for the parties shall submit Brief no later than March 30, 2007 to the Court. By the Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Naddeo, D. Ammerman, P. Smith	Paul E. Cherry
2/13/2007	Certificate of Service, filed. Sent Pre-Trial Statements filed in the above case on January 15, 2007 to Judge Paul E. Cherry, James A. Naddeo Esq., and David S. Ammerman Esq., filed by s/ Peter F. Smith Esq. No CC.	Paul E. Cherry
4/2/2007	Certificate of Service, filed. That a true and correct copy of Stipulation in the above-captioned action case was served on Peter F. Smith Esq on the 2nd day of April 2007, filed by s/ James A. Naddeo Esq. 1CC Atty Naddeo.	Paul E. Cherry
4/5/2007	Stipulation, filed. By s/ James A. Naddeo, Esquire. No CC	Paul E. Cherry
4/11/2007	Certificate of Service, copy of Leitzinger Land Company, Inc.'s Brief served by Hand Delivery to James A. Naddeo, Esquire, and David S. Ammerman, Esquire, on April 10, 2007. Filed by s/ Peter F. Smith, Esquire. No CC	Paul E. Cherry
6/6/2007	Opinion, NOW, this 5th day of June, 2007, after review of briefs submitted by the Plaintiffs and the Defendant and examination of the exhibits submitted as part of the record this Court finds that the lease excludes the approximately 50 acres identified on the Henry F. Van Valzah map as the "Wharton Cole" tract. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Naddeo, D. Ammerman, P. Smith; 1CC Law Library, D. Mikesell (without memo)	Paul E. Cherry
6/22/2007	Filing: Praeipce to Enter Judgment. Please enter Judgment in favor of the Defendant, Leitzinger Land Company Inc., pursuant to the court's June 5, 2007 opinion. Paid by: Smith, Peter F. (attorney for Leitzinger Land Company, Inc.) Receipt number: 1919513 Dated: 6/22/2007 Amount: \$20.00 (Check) Notices to Attys: Naddeo and Ammerman.	Paul E. Cherry
6/27/2008	Order, this 27th day of June, 2008, AGAIN, this court finds the approximately 20 acres conveyed to Clayton Wooster in 1876 was excluded from the 1950 lease agreement Frank Hertlein, Leitzinger Bros. Realty Company and Edward Redding. By The Court, /s/ Paul E. Cherry, Judge. CC to Attys: Naddeo, Ammerman, and Smith	Paul E. Cherry
7/14/2008	Filing: Praeipce to Enter Judgment. Paid by: Smith, Peter F. (attorney for Leitzinger Land Company, Inc.) Receipt number: 1924968 Dated: 7/14/2008 Amount: \$20.00 (Check) Please enter Judgment in favor of the Defendants and against the Plaintiffs pursuant to the Court's Decision and Order entered in this matter on June 27, 2008, filed by s/ Peter F. Smith Esq. Notice to Attys: Naddeo and Ammerman. Certificate of Service, filed. Served a true and correct copy of the Praeipce to Enter Judgment filed in this matter on the Plaintiffs Attorney James A. Naddeo Esq and the Defendant River Hill Coal Company's Attorney David S. Ammerman, filed by s/ Peter F. Smith Esq. No CC.	Paul E. Cherry

Civil Other-COUNT

Date		Judge
9/5/2007	New Case Filed.	No Judge
	Filing: Complaint-Action for Declaratory Judgment, situated in Karthaus Township Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920556 Dated: 09/05/2007 Amount: \$85.00 (Check) 3CC Atty.	No Judge
10/4/2007	Filing: Praecipe to Reinstate Complaint Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920930 Dated: 10/04/2007 Amount: \$7.00 (Check) Filed by s/ James A. Naddeo, Esquire. 1 Compl. reinstated to Sheriff	No Judge
10/8/2007	Praecipe For Entry of Appearance, filed on behalf of Leitzinger Land Company, Inc., filed by s/ Peter F. Smith, Esquire. No CC	No Judge
	Certificate of Service, copy of the Praecipe For Entry of Appearance served upon James A. Naddeo and David S. Ammerman by First Class Mail on 10-5-07. No CC	No Judge
10/23/2007	Certificate of Service, filed. That a true and correct copy of Important Notice was served on River Hill Coal Company on the 12th day of October 2007 by certified mail, filed by s/ James A. Naddeo Esq. 1CC Atty.	No Judge
10/24/2007	Certificate of Service, filed. Served a true and correct copy of the Answer filed on behalf of Leitzinger Land Co. Inc. by first class mail on James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge
	Answer Filed on Behalf of Leitzinger Land Co., Inc., filed by s/ Peter F. Smith, Esquire. 3CC Atty. P. Smith	No Judge
11/2/2007	Praecipe For Entry of Appearance, filed on behalf of River Hill Coal Company, Inc. Filed by s/ David S. Ammerman, Esquire. No CC	No Judge
	Certificate of Service, filed. Served a true and correct copy of the Praecipe for Entry of Appearance filed in this matter on Peter F. Smith Esq and James A. Naddeo Esq by first class mail, filed by s/ David S. Ammerman Esq. No CC.	No Judge
1/23/2008	Sheriff Return, September 20, 2007 at 1:44 pm Served the within Complaint for Declaratory Judgment on River Hill Coal Company Inc by handing to Gene Wood. October 2, 2007 at 1:31 pm Served the within Complaint for Declaratory Judgment on Leitzinger Land Company Inc. by handing to James Leitzinger. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Naddeo \$62.96	No Judge
2/25/2008	Answer filed on behalf of River Hill Coal Company, Inc. filed by Atty. Ammerman 3 Cert. to Atty.	No Judge
	Certificate of Service, filed by Atty. Ammerman no cert. copies. Served copy of Answer on Atty. Naddeo & Atty. Smith.	No Judge
4/24/2008	Motion For Hearing, filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
4/29/2008	Order, this 25th day of April, 2008, this case will be heard before the Court on the 16th day of May, 2008, at 1:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Naddeo	Paul E. Cherry
4/30/2008	Certificate of Service, a certified copy of Motion for Hearing was served upon David S. Ammerman, Esquire, and Peter F. Smith, Esquire, by First-Class Mail on the 30th day of April, 2008. Filed by s/ James A. Naddeo, Esquire. No CC	Paul E. Cherry

Date: 7/25/2008
Time: 03:03 PM
Page 2 of 2

Clad Ueld County Court of Common Pleas
ROA Report
Case: 2007-01448-CD
Current Judge: Paul E. Cherry

User: GLKNISLEY

Civil Other-COUNT

Date		Judge
5/19/2008	Order, this 16th day of May, 2008, following hearing on the action for declaratory judgment, it is Ordered that counsel provide the Court with appropriate letter brief by no later than June 6, 2008. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys; Naddeo, D. Ammerman, P. Smith	Paul E. Cherry
7/14/2008	Motion for Reconsideration, filed by s/James A. Naddeo, Esq. Two CC Attorney Naddeo	Paul E. Cherry

FILED

JUL 28 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and
LEITZINGER LAND COMPANY,
INC.,

Defendants.

No. 07-1448-CD

Type of Pleading:

**MOTION FOR
RECONSIDERATION**

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa. I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED
03:40 PM
JUL 14 2008

2cc
Amy Naddeo

William A. Shaw
Prothonotary/Clerk of Courts

Dated: July 14, 2008

#16

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and

LEITZINGER LAND COMPANY,
INC.,

Defendants.

No. 07-1448-CD

MOTION FOR RECONSIDERATION

NOW COME the Plaintiffs and by their attorney, James
A. Naddeo, Esquire, set forth the following:

1. That the Plaintiffs commenced this action on or
about September 5, 2007 seeking a declaratory judgment by this
Court to interpret its prior order entered in case number 06-
903-CD on June 5, 2007.

2. That the Court heard this matter on May 16, 2008.

3. That following the hearing of May 16, 2008 the
parties submitted briefs to the Court regarding this matter.

4. That on June 27, 2008 the Court entered an Order which stated "...AGAIN, this Court finds the approximately 20 acres conveyed to Clayton Wooster in 1876 was **excluded from the 1950 lease** agreement..." A true and correct copy of Order of Court dated June 27, 2008 is attached hereto as Exhibit "A." It is noted that this Order is filed to case number 06-903-CD, but was actually entered as a result of the hearing held in case 07-1448-CD and should be filed to the docket entries of case 07-1448-CD.

5. That Plaintiffs believe the Court intended to state in its most recent Order of June 27, 2008 that the approximately 20 acres conveyed to Clayton Wooster in 1876 were **excluded from the Wharton Coal tract**, not that the 20 acres conveyed to Clayton Wooster were excluded from the lease. Stated another way the 20 acres conveyed to Clayton Wooster in 1876 were **included** in the 1950 lease agreement.

6. Plaintiffs believe this to be the case as the Court when it concluded that the Wharton Coal Tract was excluded from the lease and defined the Wharton Coal Tract, it found the Wharton Coal Tract contained approximately 50 acres, but that it did not contain the 20 acres conveyed to Clayton Wooster. The Court stated as follows:

...this Court has done so and concludes that the original signers of the contract intended to **exclude the approximately 50 acres** contained within the

Wharton Coal tract as identified on the map prepared by Henry F. VanValzah. (Court's Opinion of June 7, 2007, Case No. 06-903-CD at the Conclusion at page 7) Savel received his land via two conveyances. The first conveyance from Wharton Coal that covered 1 $\frac{3}{4}$ acres. The second from Malcolm Cole (Coal) that conveyed approximately 65 acres **but excepted and reserved the 20 acres Wharton Coal had previously conveyed to Clayton Wooster.** That would leave approximately 45 acres that were conveyed to John Savel from Malcom Cole (Coal) in 1919 in addition to approximately 2 acres that were conveyed to him from Wharton Coal by deed dated February 16, 1907. Thus, the Savel Tract of land, that contains 46 $\frac{3}{4}$ acres, contains almost the same amount of land as the Wharton Coal Tract that contains approximately 50 acres." (Court's Opinion of June 7, 2007, Case No. 06-903-CD at page 6.) "Again, in 1880 Wharton Coal had already conveyed approximately 20 acres of the property without reserving and excepting the subsurface rights to a third party, therefore, he would not be able to convey subsurface rights to those 20 acres to Weaver and Betts." (Court's Opinion of June 7, 2007, Case No. 06-903-CD at page 7.)

A true and correct copy of Court's Opinion of June 7, 2007, Case No. 06-903-CD is attached hereto as Exhibit "B."

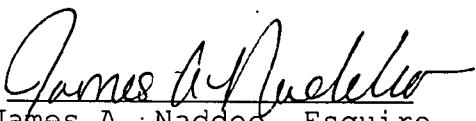
7. Perhaps the Court meant what it said in its most recent Order of June 27, 2008. Plaintiffs anticipate that it may be an oversight as the mentioning of the 20 acres conveyed to Clayton Wooster was described at length by the Court in its Opinion of June 7, 2007 in case 06-903-CD and that the same Wooster tract was excluded from the Wharton Coal Tract, not that it was excluded from the lease.

8. If Plaintiffs are correct, Plaintiffs respectfully request this Court enter an Order correcting its Order of June

27, 2008 in this matter to reflect that the 20 acres conveyed to Clayton Wooster were excluded from the Wharton Coal Tract and thereby not excluded from the lease or more specifically because they were excluded from the Wharton Coal Tract the same are included in the 1950 lease agreement.

WHEREFORE, Plaintiffs respectfully request Your Honorable Court enter an order amending its order of June 27, 2008 according to the averments stated herein.

Respectfully submitted by, .

By 
James A. Naddeo, Esquire
Attorney for the Plaintiffs

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

EVA JANE HERTLEIN, EDITH M. *
HERTLEIN, PATSY L. HERTLEIN *
KIMBLE, FRANK T. HERTLEIN, JR., *
GLENN R. HERTLEIN, TIMOTHY L. *
HERTLEIN, LOUISE E. HERTLEIN *
KIRKWOOD, and G. LEE HERTLEIN, *
Individually, and as Attorney-in- *
Fact for the heirs of FRANK T. *
HERTLEIN and IVY E. HERTLEIN, *
Plaintiffs, *

v. *

No. 07 - 1448 - CD

RIVER HILL COAL COMPANY, INC., *
A Pennsylvania corporation, *
and *
LEITZINGER LAND COMPANY, INC., *
Defendants. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Motion for Reconsideration was served on the following and in the following manner on the 14th day of July, 2008:


First-Class Mail, Postage Prepaid

David S. Ammerman, Esquire
310 East Cherry Street
Clearfield, PA 16830

and

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

NADDEO & LEWIS, LLC

By 
James A. Naddeo
Attorney for Plaintiffs

JUN 30 2008

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T HERTLEIN, JR.,
GLENN R. HERTLEIN, TIMOTHY L.
HERTLEIN, LOUISE E. HERTLEIN
KIRKWOOD, and G LEE HERTLEIN,
Individually, and as Attorney-in-Fact
for the heirs of FRANK T HERTLEIN
and IVY E. HERTLEIN,
Plaintiffs,

vs.

RIVER HILL COAL COMPANY, INC.,
A Pennsylvania Corporation
and
LEITZINGER LAND COMPANY, INC.,
Defendants

NO. 06-903-CD

ORDER

NOW, this 27th day of June, 2008, upon further consideration of the clear language and
~~meaning of the original opinion, issued the 5th day of June, 2007; AGAIN, this Court finds the~~
approximately 20 acres conveyed to Clayton Wooster in 1876 was excluded from the 1950
lease agreement Frank Hertlein, Leitzinger Bros. Realty Company and Edward Redding.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY
Judge

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

JUN 27 2008

Exhibit "A"

Attest.

William H. Cherry
Prothonotary/
Clerk of Courts

JUN 8 2007

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN, JR.,
GLENN R. HERTLEIN, TIMOTHY L.
HERTLEIN, LOUISE E. HERTLEIN
KIRKWOOD, and G. LEE HERTLEIN,
Individually, and as Attorney-in-Fact
for the heirs of FRANK T. HERTLEIN
and IVY E. HERTLEIN,
Plaintiffs,

No. 06-903-CD

v.

RIVER HILL COAL COMPANY, INC.,
A Pennsylvania Corporation,
and
LEITZINGER LAND COMPANY, INC.,
Defendants

OPINION

NOW, this 5th day of June, 2007, after review of briefs submitted by the Plaintiffs and the Defendant and examination of the exhibits submitted as part of the record this Court finds that the lease excludes the approximately 50 acres identified on the Henry F. VanValzah map as the "Wharton Cole" tract.

FACTUAL BACKGROUND

At issue in the present case is an agreement (hereafter lease) between the Hertleins, heirs of Frank T. Hertlein and Ivy E. Hertlein (hereafter Plaintiffs), and Leitzinger Land Company, Inc. (hereafter Defendant). There is also an additional defendant in the present action, River Hill Coal Company, Inc (hereafter River Hill). River Hill, as the party that actually mines the coal that is the subject of the current dispute, has the funds from that coal in escrow and has agreed to

Exhibit "B"

distribute them as directed by the Court. Therefore, River Hill will not be discussed in this Opinion.

Plaintiffs' predecessors in interest entered into a lease with Defendant's predecessors in interest on January 1, 1950 for the right to mine coal from the leased premises. The lease covers approximately 1500 acres in Karthaus Township and is subject to the exception of certain smaller portions of land. The parties subsequently joined together to lease and sublease the property to River Hill. River Hill, as noted earlier, has been mining the entire property. The royalties from the coal were split 50/50 between the original lessors and the Plaintiffs.

At issue in the present case is language in the lease that excepts a portion of the 1500 acres from the lease and therefore, from the royalty calculations. The description of the excepted parcels is as follows:

Excepting from this lease that portion of the premises now under lease to William Hoffman, being known as the Savel tract of land, identified on the map prepared by Henry F. Van Valzah, identified as the "Wharton Coal Tract" P. 1 Defendant's Exhibit A.

In particular, the issue is that the excepted parcel is referred to in four ways. It is referred to as (1) "the premises now under lease to William Hoffman;" (2) "the Savel tract of land;" (3) identified on the map prepared by Henry F. Van Valzah; and (4) the "Wharton Coal Tract."

Also, it should be noted that "Savel" and "Wharton Coal" are referred to both by those spellings and by the spellings "Savil" and "Wharton Cole" respectively in various exhibits.

Since the lease was signed in 1950, these descriptions meant to provide clarity create an ambiguity as to which parcel of land was excepted from the lease. The terms are not referenced again in the contract nor are they defined at any point.

Plaintiffs argue that the excepted parcel is limited to the coal underneath the property presently owned by Steven Savel, which encompasses 39.5 acres. Plaintiffs rely on the language

"known as the Savel tract of land" and argue that the property is defined by that term in the contract and the other terms merely point to where the tract of land can be identified – albeit incorrectly.

Defendants argue that you must give meaning to all of the terms of the contract and that the lease excludes approximately 65 acres that was the entire property owned by John Savel conveyed to him by Wharton Coal.

DISCUSSION

Preliminarily this Court will note "the fundamental rule in construing a contract is to ascertain and give effect to the intention of the parties." *Huegel v. Mifflin Const. Co., Inc.*, 796 A.2d 350, 354 (Pa.Super. 2002). Further, "under Pennsylvania contract law, when language of a contract is clear and unambiguous, its meaning must be determined by examination of the contract itself." *Fleetway Leasing Co. v. Wright*, 697 A.2d 1000, 1002 (Pa.Super. 1997) citations omitted. While the original signers of the 1950 lease almost certainly knew which land they were referring to, the descriptors they chose to describe it have little meaning now 57 years after the lease was signed. These terms are therefore ambiguous. When terms in a contract are ambiguous the Court has stated:

In the construction of any contract, if there is any doubt as to the meaning of a term of the contract, such term should receive a reasonable construction and one that will accord with the intention of the parties and in order to ascertain that intention the court must look at the circumstances under which the contract was made, the situation of the parties, the objects they have in mind and the nature of the subject matter of the contract.

Township of Raccoon v. Municipal Water Authority of Borough of, 597 A.2d 757, 765 (Pa.Cmwth. 1991) citations omitted.

Further, while parol evidence is generally not admissible, the Court has held "although the parol evidence rule bars such evidence that adds to or varies an agreement, it does not bar evidence introduced for the purpose of interpreting an ambiguous agreement." *Morgan v. First*

Pennsylvania Bank, 541 A.2d 380, 384 (Pa.Super. 1988) citations omitted. Therefore, because the language of the lease is ambiguous, parol evidence may be examined to interpret the agreement and give effect to the intention of the parties.

Additionally, "in construing a contract, each and every part of it must be taken into consideration and given effect, if possible, and the intention of the parties must be ascertained from the entire instrument." *Marcinak v. Southeastern Greene School Dist.*, 544 A.2d 1025, 1027 (Pa.Super. 1988). Therefore, when determining the drafters' meaning we cannot look only at one descriptor used in the lease and ignore the remaining three. It is necessary to look at all four of the descriptors used to define the excepted land to give effect to the intention of the parties.

Here, the original signers of the contract are deceased so it is necessary to ascertain their intentions through objects they had in mind and the circumstances under which they made the contract. Fortunately, the contract references four different identifiers for the excepted parcel of land. Unfortunately, these identifiers do not offer complete clarity in identifying the excepted parcel since initially they seem to reference very different parcels and amounts of land.

First, in looking at the exhibits it is important to note that this lease deals with the subsurface rights, particularly the right to the coal under the surface, and not the surface land. Therefore, Exhibit G, which depicts the surface ownership of the property above the leased property is not particularly relevant to interpreting the language of the lease. It is clear from a review of Exhibits F, G, and H that the subsurface lots do not perfectly align with the surface lots. Since the lease deals with subsurface rights only, Exhibit G will be only marginally useful in determining what land is excepted. Its relevance rests almost entirely on its being a tool to identify where the Wharton Coal Tract is located.

Initially, it may seem that the Savel tract and the Wharton Coal tract contain significantly different acreage. However, on closer examination of the evidence that is not the case. John Savel received his surface land via two different conveyances. The first conveyance was between Wharton Coal and John Savel and conveyed 1 ¼ acres to John Savel by deed dated February 16, 1907. The second conveyance was between Malcolm Cole (Coal) and John Savel in 1919. That deed conveyed approximately 65 acres excepting and reserving approximately 20 acres. The 20 acres that were excepted and reserved were the acres conveyed by Wharton Coal to Clayton Wooster via deed dated December 11, 1876. This would leave John Savel with approximately 46 ¾ acres. The Wharton Coal Tract as identified on exhibits F and H is listed as approximately 50 acres.

Further, it is clear from the exhibits that Wharton Coal conveyed approximately 20 acres of the approximately 65 acres he had in 1876 to a Clayton Wooster. P. 1 Plaintiffs' Exhibit 2. The deed to Clayton Wooster did not except or reserve any portion of the land nor did it except or reserve any of the subsurface or mineral rights. This would mean that following the conveyance to Wooster, Wharton Coal had approximately 45 acres remaining. In 1880 Wharton Coal conveyed the "oils, coal, fire clay, iron ore, and other minerals" to Weaver and Betts by agreement dated March 3, 1880. P. 2 Defendant's Exhibit D. In 1880, Wharton Coal would have only had available to him approximately 45 acres to convey subsurface rights to, as he had sold 20 acres to Clayton Wooster in 1876. In fact, in the conveyance to John Savel, Exhibit D, that purports to convey approximately 65 acres there is a paragraph that excepts and reserves the 20 acres conveyed to Clayton Wooster from the deed.

Therefore, with regard to the descriptors "being known as the Savel tract of land; identified on the map prepared by Henry F. Van Valzah; and identified as the "Wharton Coal

Tract" it seems that there is not as much disparity as originally indicated. Savel received his land via two conveyances. The first conveyance from Wharton Coal that covered $1 \frac{3}{4}$ acres. The second from Malcolm Cole (Coal) that conveyed approximately 65 acres but excepted and reserved the 20 acres Wharton Coal had previously conveyed to Clayton Wooster. That would leave approximately 45 acres that were conveyed to John Savel from Macolm Cole (Coal) in 1919 in addition to approximately 2 acres that were conveyed to him from Wharton Coal by deed dated February 16, 1907. Thus, the Savel Tract of land, that contains $46 \frac{3}{4}$ acres, contains almost the same amount of land as the Wharton Coal Tract that contains approximately 50 acres.

The record also does not contain any evidence of a lease with a Mr. William Hoffman. However, there is a lease with a Mr. James Hoffman that is included in the exhibits. Exhibit I is the lease between Letzinger Bros. Realty Company and James Hoffman dated October 30, 1953. It describes the lease as containing "the coal under the property known as the John Savel Place or Wharton Cole Premises situate on Cataract Hill in Karthaus Township, Clearfield County, Pennsylvania." This shows that the Wharton Coal tract was available for lease in 1953 when this agreement was entered into - three years after the lease in the present action. Additionally, it shows the land was being leased to a Hoffman. Therefore, it is clear that it must have been excluded from the Hertlein lease to be leased at a later date to another individual. Unfortunately, this lease does not contain specific indicators of the land or acreage either. Again, though, the descriptors refer to "under the property known as the John Savel Place" and "Wharton Cole Premises."

Taking into account the various exhibits and realizing that the surface land does not necessarily correspond exactly with the subsurface rights, it is most probable that the Wharton Coal tract contains approximately 50 acres. Although, the surface tracts have passed between

many parties and been divided between parties, the subsurface rights seem to have remained fairly constant since 1880 when Wharton Coal conveyed them to Weaver and Betts. Again, in 1880 Wharton Coal had already conveyed approximately 20 acres of the property without reserving and excepting the subsurface rights to a third party, therefore he would not be able to convey the subsurface rights to those 20 acres to Weaver and Betts. Despite the fact that the descriptors seem so disparate initially, they actually, when taken with all of the circumstances and facts that would have been known by the original signers, are remarkably similar and fairly constant in pointing to a approximately 50 acre parcel that is excepted from this lease.

CONCLUSION

Therefore, since this Court is able to look at circumstances under which the contract was made, the situation of the parties, the objects they had in mind, and the nature of the subject matter of the contract to determine the intention of the parties, this Court has done so and concludes that the original signers of the contract intended to exclude the approximately 50 acres contained within the Wharton Coal tract as identified on the map prepared by Henry F. VanValzah. In reaching this conclusion, the Court has examined all of the evidence submitted by the parties and examined all of the relevant terms in the lease to fit everything together to determine exactly what parcel of land was excluded from the lease.

BY THE COURT:

/s/ Paul E. Cherry

PAUL E. CHERRY

Judge

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

JUN 06 2007

William E. Cherry

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EVA JANE HERTLEIN, et al.

-VS-

No. 07-1448-CD

RIVER HILL COAL COMPANY, INC.
a Pennsylvania Corporation

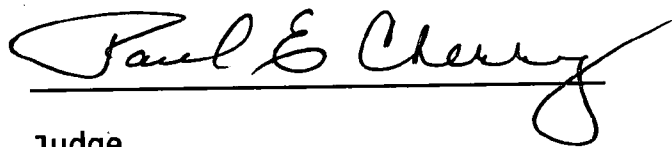
and

LEITZINGER LAND COMPANY, INC.

O R D E R

AND NOW, this 16th day of May, 2008, following hearing on the action for declaratory judgment, it is the ORDER of this Court that counsel provide the Court with appropriate letter brief by no later than June 6, 2008.

BY THE COURT,



Judge

FILED

0/10:47/04
MAY 19 2008

William A. Shaw
Prothonotary/Clerk of Courts

100 Atty's:
Naddeo
S. Ammerman
P. Smith

OK

#15

FILED

MAY 19 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/19/08

☒ You are responsible for serving all appropriate parties.
☒ The Prothonotary's office has provided service to the following party:
____ 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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and
LEITZINGER LAND COMPANY,
INC.,

Defendants.

No. 07-1448-CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

01032amlbk

APR 30 2008

NO CC

William A. Shaw
Prothonotary/Clerk of Courts

60

14

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

EVA JANE HERTLEIN, EDITH M. *
HERTLEIN, PATSY L. HERTLEIN *
KIMBLE, FRANK T. HERTLEIN, JR., *
GLENN R. HERTLEIN, TIMOTHY L. *
HERTLEIN, LOUISE E. HERTLEIN *
KIRKWOOD, and G. LEE HERTLEIN, *
Individually, and as Attorney-in- *
Fact for the heirs of FRANK T. *
HERTLEIN and IVY E. HERTLEIN, *
Plaintiffs, *

v. *

No. 07 - 1448 - CD

RIVER HILL COAL COMPANY, INC., *
A Pennsylvania corporation, *
and *
LEITZINGER LAND COMPANY, INC., *
Defendants. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Motion for Hearing was served on the following
and in the following manner on the 30th day of April, 2008:

First-Class Mail, Postage Prepaid

David S. Ammerman, Esquire
310 East Cherry Street
Clearfield, PA 16830

and

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

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Plaintiffs

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and
LEITZINGER LAND COMPANY,
INC.,

Defendants.

No. 07-1448-CD

Type of Pleading:

MOTION FOR HEARING

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED
0/10:37 AM
APR 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

Dated: April 24, 2008

#13

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,
Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and
LEITZINGER LAND COMPANY,
INC.,
Defendants.

No. 07-1448-CD

ORDER

AND NOW this 25th day of April, 2008, upon
consideration of the Motion to Schedule Hearing filed by James
A. Naddeo, attorney of record for Plaintiffs, it is the Order of
this Court that this case will be heard before the Court on the 16th
day of May, 2008, at 1:30 P.M., at the
Clearfield County Courthouse, Clearfield, Pennsylvania,
Courtroom No. 2.

2 hours has been allotted for this hearing.

BY THE COURT,

FILED 2cc
012:51/01 Amy Naddeo
APR 29 2008

William A. Shaw
Prothonotary/Clerk of Courts

Paul E. Cherry
Judge

DATE: 4/29/08

☒ 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:

FILED

APR 29 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

EVA JANE HERTLEIN, EDITH M. *
HERTLEIN, PATSY L. HERTLEIN *
KIMBLE, FRANK T. HERTLEIN, *
JR., GLENN R. HERTLEIN, *
TIMOTHY L. HERTLEIN, LOUISE *
E. HERTLEIN KIRKWOOD, and G. *
LEE HERTLEIN, Individually, *
and as Attorney-in-Fact for *
the heirs of FRANK T. *
HERTLEIN and IVY E. *
HERTLEIN, *

Plaintiffs, *

v. *

RIVER HILL COAL COMPANY, *
INC., A Pennsylvania *
corporation, *
and *

LEITZINGER LAND COMPANY, *
INC., *

Defendants. *

No. 07-1448-CD

MOTION FOR HEARING

NOW COME the Plaintiffs and by their attorney, James
A. Naddeo, Esquire, sets forth the following:

1. That the plaintiffs commenced this action on or
about September 5, 2007.

2. That Defendant, Leitzinger Land Company, Inc.,
filed its answer to plaintiffs' complaint on or about October
24, 2007.


3. That Defendant, River Hill Coal Company, filed its
answer to plaintiffs' complaint on or about February 25, 2008.

4. That the pleadings are closed and this being a declaratory judgment action, the matter is ripe for hearing by Your Honorable Court.

5. That Plaintiffs respectfully request Your Honorable Court schedule a hearing in this matter.

WHEREFORE, Plaintiffs respectfully request Your Honorable Court enter an order scheduling a hearing in this matter.

Respectfully submitted by,

By 
James A. Naddeo, Esquire
Attorney for the Plaintiffs

#12

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

EVA JANE HERTELIN EDITH M.
HERTELIN PAUL L. HERTELIN
KIMBLE, FRANK T. HERTELIN, JR.
GLENN R. HERTELIN, TIMOTHY L.
HERTELIN, LOUISE F. HERTELIN
KIRKWOOD, and G. LEE HERTELIN,
Individually and as Attorney-in-Fact for
the heirs of FRANK T. HERTELIN and
IVY E. HERTELIN.

Plaintiffs

v.

RIVER HILL COAL COMPANY, INC.,
a Pennsylvania corporation.

Defendant

and

FEITZINGER LAND COMPANY,
Defendant

CERTIFICATE OF SERVICE

I, David S. Armstrong, Attorney for River Hill Coal Company, Inc. in the above-captioned matter, hereby certify that I served a true and correct copy of the Answer filed in this matter on the Plaintiff's attorney James A. Nibbles and the Defendant, Feitzinger Land Company's attorney Peter F. Smith by U.S. First Class Mail as follows:

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

James A. Nibbles, Esquire
307 West Market Street
P.O. Box 222
Clearfield, PA 16830

Respectfully submitted,

Date:

(84) 362-1301
Clearfield, Penna.
310 First Street
William A. Shaw
Notary Public/Clerk of Courts

FILED
FEB 25 2008

No. 07-1448-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN, JR.,
GLENN R. HERTLEIN, TIMOTHY L.
HERTLEIN, LOUISE E. HERTLEIN
KIRKWOOD, and G. LEE HERTLEIN,
Individually and as Attorney-in-Fact for
the heirs of FRANK T. HERTLEIN and
IVY E. HERTLEIN,

Plaintiffs

v.

RIVER HILL COAL COMPANY, INC.,
a Pennsylvania corporation

Defendant

and

LEITZINGER LAND COMPANY, INC.,
a Pennsylvania corporation,

Additional Defendant

No. 07-1448-CD

Type of Case:
CIVIL

Type of Pleading:
ANSWER FILED ON BEHALF OF
RIVER HILL COAL COMPANY, INC.

Attorney for Defendant:
River Hill Coal Company, Inc.
David S. Ammerman, Esquire
Supreme Court No. 06801
310 E. Cherry Street
Clearfield, PA 16830
(814) 765-1701

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

Attorney for Plaintiffs:
James A. Naddeo, Esquire
Supreme Court No. 06820
Trudy G. Lumadue, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED


FEB 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

3 SENT TO MR

VERIFICATION

I, HARRY HANCHAR, President of River Hill Coal Company, Inc.
verify that the statements made in the foregoing ANSWER are true and
correct. I understand that false statements herein are made subject to the
penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to
authorities.



Harry Hanchar

FILED

FEB 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

No. 07-1448-CD

EVA JANE HERTLEIN, et al,
Plaintiffs

v.

RIVER HILL COAL COMPANY, INC.,
Defendant

and

LEITZINGER LAND COMPANY,
LLC,

Additional Def.

ANSWER FILED ON BEHALF
OF RIVER HILL COAL COMPANY,
INC.

DAVID S. AMMERMAN
Attorney at Law
310 EAST CHERRY STREET
CLEARFIELD, PA 16830

CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103171
NO: 07-1448-CD
SERVICE # 1 OF 2
COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: EVA JANE HERTLEIN et al

vs.

DEFENDANT: RIVER HILL COAL COMPANY, INC. and LEITZINGER LAND COMPANY INC.

SHERIFF RETURN

NOW, September 20, 2007 AT 1:44 PM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON RIVER HILL COAL COMPANY, INC. DEFENDANT AT 48 MEMORIAL ROAD, KYLERTOWN, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO GENE WOOD, EMPLOYEE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN / HUNTER

FILED

01/11:45 am
JAN 23 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103171
NO: 07-1448-CD
SERVICE # 2 OF 2
COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: EVA JANE HERTLEIN et al

vs.

DEFENDANT: RIVER HILL COAL COMPANY, INC. and LEITZINGER LAND COMPANY INC.

SHERIFF RETURN

NOW, October 02, 2007 AT 1:31 PM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON LEITZINGER LAND COMPANY, INC. DEFENDANT AT 402 WEST SEVENTH AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JAMES LEITZINGER, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN / HUNTER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103171
NO: 07-1448-CD
SERVICES 2
COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: EVA JANE HERTLEIN et al
vs.
DEFENDANT: RIVER HILL COAL COMPANY, INC. and LEITZINGER LAND COMPANY INC.

SHERIFF RETURN

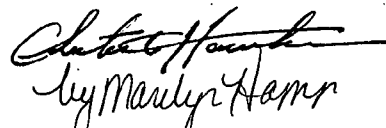
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	NADDEO	675	20.00
SHERIFF HAWKINS	NADDEO	675	42.96

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,



Chester A. Hawkins
Sheriff

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN, JR.,
GLENN R. HERTLEIN, TIMOTHY L.
HERTLEIN, LOUISE E. HERTLEIN
KIRKWOOD, and G. LEE HERTLEIN,
Individually and as Attorney-in-Fact for
the heirs of FRANK T. HERTLEIN and
IVY E. HERTLEIN,

Plaintiffs

v.

RIVER HILL COAL COMPANY, INC.,
a Pennsylvania corporation,
and
LEITZINGER LAND COMPANY,
Defendants

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No. 07-1448-CD

FILED
010:55701
NOV 02 2007
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE


I, David S. Ammerman, attorney for River Hill Coal Company, Inc. in the above-captioned matter, hereby certify that I served a true and correct copy of the Praecipe for Entry of Appearance filed in this matter on the Plaintiffs attorney James A. Naddeo and the Defendant, Leitzinger Land Company's attorney Peter F. Smith by U.S. First Class Mail as follows:

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

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Respectfully submitted,

Dated: November 2, 2007


David S. Ammerman, #06801
310 East Cherry Street
Clearfield, Pennsylvania 16830
(814) 765-1701

#9

FILED

NOV 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

No. 07-1448-CD

PRECEDENCE FOR ENTRY OF APPEARANCE

TO: WILLIAM A. SHAW, PROTHONOTARY

Please enter my appearance on behalf of RIVER HILL COAL COMPANY, INC. in the above-captioned matter.

Respectfully submitted,

David S. Ammerman, #068801
310 East Cherry Street
Clearfield, Pennsylvania 16830
(814) 763-1701

Dated: November 2, 2007

Defendants
LEITINGER LAND COMPANY,
and
a Pennsylvania corporation,
RIVER HILL COAL COMPANY, INC.,
v.
Plaintiffs
IVY E. HERTLEIN,
heirs of FRANK T. HERTLEIN and
individually and as Attorney-in-Fact for
KIRK WOOD and G. LEE HERTLEIN,
HERTLEIN, LOUISE E. HERTLEIN,
GLENN R. HERTLEIN, TIMOTHY L.
KIMBLE, FRANK T. HERTLEIN, JR.,
HERTLEIN, PAISY L. HERTLEIN,
EVA JANE HERTLEIN, EDITH M.

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN, JR.,
GLENN R. HERTLEIN, TIMOTHY L.
HERTLEIN, LOUISE E. HERTLEIN
KIRKWOOD, and G. LEE HERTLEIN,
Individually and as Attorney-in-Fact for the
Heirs of FRANK T. HERLEIN and
IVY E. HERTLEIN,

Plaintiffs

vs.

RIVER HILL COAL COMPANY, INC.,
A Pennsylvania corporation
Defendant

and

LEITZINGER LAND COMPANY, INC.
A Pennsylvania corporation
Defendant

No. 07-1448-CD

Type of Case:
CIVIL

Type of Pleading:
**ANSWER FILED ON BEHALF OF
LEITZINGER LAND CO., INC**

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

Attorney for Plaintiffs:
James A. Naddeo, Esquire
Supreme Court No. 06820
Trudy G. Lumadue, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED 3CC
01/12/32/07
OCT 24 2007
H. Smith
GR

William A. Shaw
Prothonotary/Clerk of Courts

7

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

EVA JANE HERTLEIN, EDITH M.	:	
HERTLEIN, PATSY L. HERTLEIN	:	No. 06-903-CD
KIMBLE, FRANK T. HERTLEIN, JR.,	:	
GLENN R. HERTLEIN, TIMOTHY L.	:	
HERTLEIN, LOUISE E. HERTLEIN	:	
KIRKWOOD, and G. LEE HERTLEIN,	:	
Individually and as Attorney-in-Fact for the	:	
Heirs of FRANK T. HERTLEIN and	:	
IVY E. HERTLEIN,	:	
Plaintiffs	:	
vs.	:	
	:	
RIVER HILL COAL COMPANY, INC.	:	
A Pennsylvania corporation,	:	
Defendant	:	
	:	
and	:	
	:	
LEITZINGER LAND COMPANY, INC.	:	
A Pennsylvania corporation,	:	
Additional Defendant	:	

ANSWER

COMES NOW, Leitzinger Land Company, Inc., a Defendant, by its attorney Peter

F. Smith, who answers the complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Denied as stated. The court's decision involved determinations of both fact and law, not just matters of law. The parties agreed that the disputed portion of the lease is ambiguous. Therefore, the Court considered parol evidence beyond the original lease.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Denied. Plaintiffs misconstrue this Court's holding by focusing on one portion of the decision only. In the Opinion's first paragraph and then again the conclusion, the Court found that, "...the contract intended to exclude the approximately 50 acres contained within the Wharton Cole tract as identified on the map prepared by Henry F. Van Valzah."

The 20 acres from which Plaintiffs claim royalties, is within the boundaries of the Wharton Cole tract as defined by the Van Valzah map. Therefore this parcel is excluded from the lease to Plaintiffs.

23. Denied as stated. The Clayton Wooster parcel is still within the Wharton Cole tract as defined by the Van Valzah map and therefore properly excluded from the parties' lease.

24. Denied for the reasons set forth in 22 and 23 above.

25. Denied for the reasons set forth in 22 and 23 above.

26. Denied for the reasons set forth in 22 and 23 above.

27. Denied as stated for the reasons set forth in 22 and 23 above.

28. Admitted because Plaintiffs are not entitled to royalties from coal extracted from the excluded area.

29. Denied that Plaintiffs are entitled to the relief requested for the reasons set forth in paragraphs 22 and 23 above.

WHEREFORE, Defendants prays this Honorable Court to enter an order denying Plaintiff's prayer for relief and further decreeing that the Clayton Wooster tract is part of the Wharton Cole tract for the purposes of this litigation and as such properly excluded from the lease between the parties.

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Defendant
Leitzinger Land Company, Inc.

Date: 10/23/07

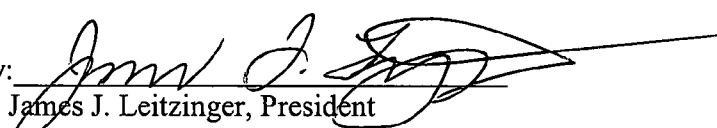
VERIFICATION

I verify that the statements made in this 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 falsification to authorities.

LEITZINGER LAND COMPANY, INC.

Dated: 10-7-09

By:


James J. Leitzinger, President

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN, JR.,
GLENN R. HERTLEIN, TIMOTHY L.
HERTLEIN, LOUISE E. HERTLEIN
KIRKWOOD, and G. LEE HERTLEIN,
Individually and as Attorney-in-Fact for the
Heirs of FRANK T. HERLEIN and
IVY E. HERTLEIN,

Plaintiffs

vs.

RIVER HILL COAL COMPANY, INC.,
A Pennsylvania corporation

Defendant

and

LEITZINGER LAND COMPANY, INC.

Defendant

No. 07-1448-CD

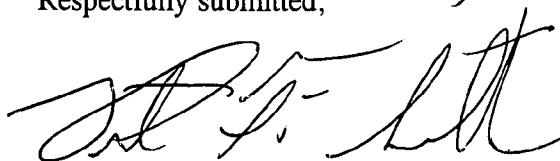
FILED NO
10/18/32/54 CC
OCT 24 2007
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Peter F. Smith attorney for Leitzinger Land Company, Inc. in the above-captioned matter, hereby certify that I served a true and correct copy of the **ANSWER FILED ON BEHALF OF LEITZINGER LAND CO., INC** filed in this matter on the Plaintiffs Attorney James A. Naddeo by U.S. First Class Mail as follows:

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff

Date:

cc: Leitzinger Land Company, Inc.

16

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and
LEITZINGER LAND COMPANY,
INC.,

Defendants.

No. 07- 1448 - CD

FILED *icc*
9/11/10/07
Oct 23 2007
Any
William A. Shaw
Prothonotary/Clerk of Courts

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: October 23, 2007

15

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

EVA JANE HERTLEIN, EDITH M. *
HERTLEIN, PATSY L. HERTLEIN *
KIMBLE, FRANK T. HERTLEIN, JR., *
GLENN R. HERTLEIN, TIMOTHY L. *
HERTLEIN, LOUISE E. HERTLEIN *
KIRKWOOD, and G. LEE HERTLEIN, *
Individually, and as Attorney-in- *
Fact for the heirs of FRANK T. *
HERTLEIN and IVY E. HERTLEIN, *
Plaintiffs, *

v. *

No. 07 - 1448 - CD

RIVER HILL COAL COMPANY, INC., *
A Pennsylvania corporation, *
and *
LEITZINGER LAND COMPANY, INC., *
Defendants. *


CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Important Notice was served on the following and in the following manner on the 12th day of October, 2007 as appears from the original receipt of certified mail attached hereto:

First-Class Mail, Postage Prepaid

River Hill Coal Company
48 Memorial Road
P.O. Box 141
Kylertown, PA 16847

NADDEO & LEWIS, LLC

By 
James A. Naddeo
Attorney for Plaintiffs

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

River Hill Coal Company
~~48 Memorial Road~~
 Kylertown, PA 16847



2. Article Number
 (Transfer from service label)

7007 1490 0005 1484 4334

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Laurie Ward

☒ Agent
☐ Addressee

B. Received by (Printed Name)

Laurie Ward

C. Date of Delivery

10-12-07

D. Is delivery address different from item 1? ☒ Yes

If YES, enter delivery address below: ☐ No

Po Box 141

3. Service Type

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

4. Restricted Delivery? (Extra Fee)

☒ Yes

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN, JR.,
GLENN R. HERTLEIN, TIMOTHY L.
HERTLEIN, LOUISE E. HERTLEIN
KIRKWOOD, and G. LEE HERTLEIN,
Individually and as Attorney-in-Fact for the
Heirs of FRANK T. HERLEIN and
IVY E. HERTLEIN,

Plaintiffs

vs.

RIVER HILL COAL COMPANY, INC.,
A Pennsylvania corporation

Defendant

and

LEITZINGER LAND COMPANY, INC.

Defendant

No. 07-1448-CD

FILED
OCT 08 2007
cc

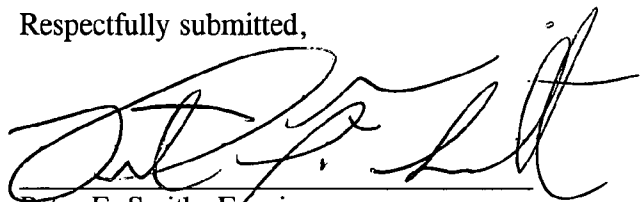
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Peter F. Smith attorney for Leitzinger Land Company, Inc. in the above-captioned matter, hereby certify that I served a true and correct copy of the **PRAECIPE FOR ENTRY OF APPEARANCE** filed in this matter on the Plaintiffs Attorney James A. Naddeo and the Defendant, River Hill Coal Company's Attorney David S. Ammerman by U.S. First Class Mail as follows:

James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff

Date:

10-5-07

cc: Leitzinger Land Company, Inc.

24

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN, JR.,
GLENN R. HERTLEIN, TIMOTHY L.
HERTLEIN, LOUISE E. HERTLEIN
KIRKWOOD, and G. LEE HERTLEIN,
Individually and as Attorney-in-Fact for the
Heirs of FRANK T. HERLEIN and
IVY E. HERTLEIN,

Plaintiffs

vs.

RIVER HILL COAL COMPANY, INC.,
A Pennsylvania corporation

Defendant

and

LEITZINGER LAND COMPANY, INC.

Defendant

No. 07-1448-CD

FILED NO CC
OCT 08 2007
William A. Shaw
Prothonotary/Clerk of Courts

P R A E C I P E

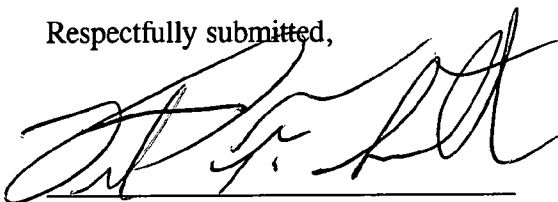
To: Prothonotary of Clearfield County

Dear Sir:

Please enter my appearance as attorney for LEITZINGER LAND COMPANY, INC. in
the above-captioned matter.

Respectfully submitted,

Dated: 10/5/07



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

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
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TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and
LEITZINGER LAND COMPANY,
INC.,

Defendants.

No. 07- 1448 - CD

FILED

OCT 03 2007

William A. Shaw
Prothonotary/Clerk of Courts

Type of Pleading:

PRAECIPE TO REINSTATE

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

01/10/54621
OCT 04 2007

William A. Shaw
Prothonotary/Clerk of Courts

Att'y pd. 7.00
One
Complaint Reinstated

to Sheriff

(GH)

(#2)

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and
LEITZINGER LAND COMPANY,
INC.,

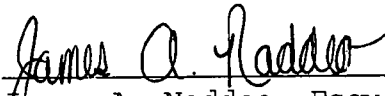
Defendants.

No. 07- 1448 - CD

FRAECIPE TO REINSTATE

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

Please reinstate the Complaint filed in the above-
captioned case.


James A. Naddeo, Esquire
Attorney for Plaintiffs

FILED

OCT 04 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and
LEITZINGER LAND COMPANY,
INC.,

Defendants.

No. 07-1448- CD

Type of Pleading:

**COMPLAINT - ACTION FOR
DECLARATORY JUDGMENT**

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Nadddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED Any pd. 85.00

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SEP 05 2007
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3ccA Hy

William A. Shaw
Prothonotary/Clerk of Courts

Oct 4, 2007 Document
Reinstated/Reissued to Sheriff/Attorney
for service.

William A. Shaw
Deputy Prothonotary

Dated: September 5, 2007

(#1)

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

EVA JANE HERTLEIN, EDITH M. *
HERTLEIN, PATSY L. HERTLEIN *
KIMBLE, FRANK T. HERTLEIN, *
JR., GLENN R. HERTLEIN, *
TIMOTHY L. HERTLEIN, LOUISE *
E. HERTLEIN KIRKWOOD, and G. *
LEE HERTLEIN, Individually, *
and as Attorney-in-Fact for *
the heirs of FRANK T. *
HERTLEIN and IVY E. *
HERTLEIN, *

Plaintiffs, *

v. *

RIVER HILL COAL COMPANY, *
INC., A Pennsylvania *
corporation, *
and *
LEITZINGER LAND COMPANY, *
INC., *

Defendants. *

No. 07- - CD

NOTICE

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.

Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and

LEITZINGER LAND COMPANY,
INC.,

Defendants.

No. 07- - CD

COMPLAINT - ACTION FOR DECLARATORY JUDGMENT

NOW COME the Plaintiffs and by their attorney, James
A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff, Eva Jane Hertlein, is an adult
individual who resides in Frenchville, Pennsylvania 16836.

2. That the Plaintiff, Edith M. Hertlein, is an adult
individual who resides in Frenchville, Pennsylvania 16836.

3. That the Plaintiff, Patsy L. Hertlein Kimble, is
an adult individual who resides in Frenchville, Pennsylvania
16836.

4. That the Plaintiff, Frank T. Hertlein, Jr., is an adult individual who resides at Karthaus, Pennsylvania 16845.

5. That the Plaintiff, Glenn R. Hertlein, is an adult individual who resides at Karthaus, Pennsylvania 16845.

6. That the Plaintiff, Timothy L. Hertlein, is an adult individual who resides at Drifting, Pennsylvania 16834.

7. That the Plaintiff, Louise E. Hertlein Kirkwood, is an adult individual who resides at Karthaus, Pennsylvania 16845.

8. That the Plaintiff, G. Lee Hertlein, is an adult individual who resides at Frenchville, Pennsylvania 16836.

9. That the Plaintiff, G. Lee Hertlein, brings this action individually and as attorney-in-fact for the Plaintiffs identified in Paragraphs 1 through 8 hereof all of whom are the sole heirs at law of Frank T. Hertlein and Ivy E. Hertlein. A copy of the Power of Attorney of G Lee Hertlein dated August 30, 1995 is attached hereto as Exhibit "A."

10. That the Defendant, River Hill Coal Company, Inc., is a Pennsylvania corporation having its principal place of business located in Kylertown, Pennsylvania 16847.

11. That the Defendant, Leitzinger Land Company, Inc. is a Pennsylvania corporation having its principal place of business located at 400 West Seventh Avenue, Clearfield, Pennsylvania 16830.

language of the Lease and determining the land identified (and excluded) in the Lease.

17. That the suit as described in Paragraph 14 and 15 was resolved by the Court determining as a matter of law the interpretation of the language in said Lease as described in Paragraph 13.

18. That this Court entered an Opinion on June 5, 2007 finding that the subject Lease excludes approximately 50 acres identified on the Henry F. VanValzah map as the "Wharton Cole" tract. A true and correct copy of said Opinion of this Court is attached hereto as Exhibit "C."

19. That the Defendant, Leitzinger Land Company, Inc. requested judgment be entered in its favor pursuant to the June 5, 2007 Opinion of the Court and judgment was so entered by the Prothonotary of Clearfield County.

20. That the land which is identified by the Lease as approximately 1500 acres (as identified in Paragraph 13 of this Complaint and Paragraph one of said Lease which is attached hereto as Exhibit B) which has not been determined to be excepted or excluded from the lease by the Court and is leased to the Hertleins and included within the 1500 acres identified in said Lease is thereby included in the land leased by Plaintiffs to Defendant, River Hill Coal Company (Lease and

Wooster chain of title is attached collectively hereto as Exhibit "E."

24. That the 20 acres conveyed to Clayton Wooster (as per the Court's Opinion) was not excluded from the lease, as the only land interpreted to be excluded from the lease is the Wharton Cole tract which has been determined not to include the Wooster tract of land.

25. That therefore the Wooster tract of land is leased by the Plaintiffs and as a result is land from which Defendant, River Hill Coal Company, owes royalty payments to Plaintiffs for coal to be extracted therefrom.

26. That there again is a dispute as to whether the Court's Opinion should be interpreted as described in this Complaint at Paragraph's 18 through 25 and in particular that the Lease as interpreted does not exclude the Wooster tract of land (i.e. 20 acres of land) which Plaintiffs now hold under lease and are entitled to royalties to be paid with regard to all coal to be extracted from this tract of land.

27. That in particular Defendants interpret this Court's June 5, 2007 Opinion to not only exclude the 46 $\frac{3}{4}$ acres identified as the Wharton Coal tract, but also to exclude the Wooster tract of land (20 acres).


28. That as a result of Defendants' interpretation of this Court's Opinion as described in Paragraph

27, they are refusing to pay the royalties due Plaintiffs for the coal to be extracted from the Wooster tract of land.

29. That Plaintiffs with this action are requesting this Court to further interpret its June 5, 2007 Opinion as attached hereto as Exhibit C and declare what royalties are due Plaintiffs pursuant to this Court's Opinion and interpretation of the Lease and in particular declare whether Plaintiffs are entitled to royalties to be paid for coal extracted from the Wooster tract of land.

WHEREFORE, Plaintiffs pray for a judgment declaring the identification of land to which Plaintiffs are due royalties from the Defendants pursuant to this Honorable Court's June 5, 2007 Opinion. Further Plaintiffs request this Honorable Court enter an Order directing Defendants to place all royalties from coal to be mined from the Wooster tract of land in escrow until this Court declares to whom said monies are due to be paid.

Respectfully submitted by,

By 
James A. Naddeo, Esquire
Attorney for the Plaintiffs

V E R I F I C A T I O N

I, G. Lee Hertlein, verify that I am Attorney-in-Fact for the heirs of Franklin T. Hertlein and Ivy E. Hertlein, and that I am authorized to execute this verification and further that the statements made in the foregoing Complaint and Declaratory Action are true and correct upon my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

By:

G. Lee Hertlein
G. Lee Hertlein, Plaintiff
Attorney-in-Fact for Hertlein Heirs

Dated:

9/4/07

POWER OF ATTORNEY

We, the undersigned persons, all of Clearfield County, Pennsylvania, do hereby appoint G. LEE HERTLEIN of R.D.#1, Box 77, Frenchville, PA 16836 as our true and lawful Attorney-in-Fact with full power of substitution for us and in our names to do all things that he deems necessary to protect our right to certain coal interest leased to Frank J. Hertlein, "Frank T. Hertlein" by Agreement dated January 1, 1950 and more specifically, to file any suit or suits which may be necessary in our name and on our behalf; to employ counsel; to negotiate settlement; to enter into settlement agreements; or to negotiate a lease of said coal with such persons or entities as may be necessary and to accomplish the aforesaid as completely as we might do if personally present.

This power shall not be affected by our subsequent disability or incapacity. All acts done by our Attorney-in-Fact pursuant to this power during any period of our disability or incapacity shall have the same effect and inure to the benefit of and bind us and our successors in interest as if we were competent and not disabled.

IN WITNESS WHEREOF, we have signed this Power of Attorney this 30th day of August, 1995.

WITNESS:

Cynthia A. Gormat

Louise E. Hertlein Kirkwood
Louise E. Hertlein Kirkwood

EXHIBIT "A"

1950

Catact coal

THIS AGREEMENT

WRA

Made the first day of January, 1950, between LEITZINGER BROS. REALTY COMPANY, a corporation organized and existing under the laws of the State of Pennsylvania, with principal office and place of business in the Borough of Clearfield, Clearfield County, Pennsylvania, and EDWARD REDDING of Altoona, Pennsylvania, parties of the first part, hereinafter called Lessors;

A
N
D

FRANK J. HERTLICH of Karthaus, Karthaus Township, Clearfield County, Pennsylvania, party of the second part, hereinafter called Lessee.

W I T N E S S E T H:

(1), The Lessors for and in consideration of the sum of One (\$1.00) Dollar in hand paid, the receipt whereof is hereby acknowledged, for and in consideration of the rents, royalties, covenants, stipulations and agreements hereinafter contained, by the Lessee to be kept and performed, do hereby let, lease and demise to the Lessee, the right and privilege to mine and take away all the coal in, under and upon the following described premises.

Lease for Catact Coal Co. Lands

All that tract of land located in Karthaus Township, Clearfield County, Pennsylvania, containing approximately 1500 acres, formerly known as the Catact Coal Company lands, now belonging to the Lessors herein. Excepting from this lease that portion of the premises now under lease to William Hoffman, being known as the Savel tract of land, identified on the map prepared by Henry R. KanValach, identified as the "Wharton Coal Tract", and that tract of land known as the Jerry Quisen tract under lease to Frank Albert. Not at issue

In connection with this lease, the Lessors herein have leased to the Catact Coal Company, Inc., a certain portion of the premises for a right of way to and for railroad siding and loading facilities, said portion of the premises being excepted and reserved from this lease agreement. Provided, however, that the Lessee herein is granted by the Lessors herein, the right and privilege of using said right of way for the purpose of transporting his coal from the demised premises, the Lessors herein having distinctly made reservation of said right of way in order that they may use the same for the mining

Exhibit "B"

and removal of their coal, and they are granting the use of those rights to the Lessee herein. It is not intended by this lease to cover the tracts of land known as the Fielding or the Fielding and Smith tracts of land owned individually by Leitzinger Bros. Realty Company, one of the lessors herein, said tract of land being leased by a separate lease agreement.

* The Lessee herein shall have the right to transport the coal hereby leased over other premises owned by the Lessors herein, without payment of wheel toll or other charge, so long as said operation does not interfere with the use or operation on the property of the Lessors not covered by this agreement.

rfac (2). The Lessors further grant to the Lessee the right of ingress, egress and regress into, through and upon the above described land, for the purpose of examining, searching for, prospecting, mining, manufacturing and preparing said coal for market, and taking, storing, removing and transporting the same, and for these purposes the said Lessee shall have the right to mine and remove the said coal according to any and all known and modern methods, (together with the right of using and occupying so much of the surface of the aforesaid land for drifts, headings, openings, shafts, airshafts, tipplers, dumps, chutes, roads, tramroads, lateral railroads, electric power or transmission lines, improvements and other buildings), except miners' houses, upon, over, across and through said lands and the surface of the same, so far as may be necessary or convenient for the proper working of any mine or mines, for the removal of said coal, or the shipping of the same, together with the right to deposit dirt or waste from such mine or mines upon the surface thereof, insofar as the Lessors have the right to grant the same.

rfac (3). The Lessors hereby grant to the Lessee such rights in, upon and over the surface of the herein described premises as they have; Lessors further grant to the Lessee a release of all damages that may result to the surface, wells, springs, water or water courses, insofar as the said Lessors have the right to grant the same.

(4). The Lessee is not obligated to mine and remove any coal that is unmerchantable and unminable, but the said Lessee shall have the right to mine and remove the same if he so desires. He shall pay therefor, if such right is exercised, royalty at the rate herein provided for the mining and removal thereof.

(5). The Lessee agrees to pay to the Lessors the sum of eighteen (18) cents per net ton of two thousand (2000) pounds for all coal mined and removed from the demised premises. Said royalty shall be paid monthly on the 20th day of the month following the mining and removal thereof, to Leitzinger Bros. Realty Company, at its place of business in the Borough of Clearfield, Pennsylvania, without demand, and all payments required to be made by way of royalty or otherwise, shall be paid in like manner. Accompanying each payment shall be a statement showing the period for which the payment is made and the number of tons mined and removed during said period. The weight of said coal shall be determined by the railroad scales, if the same is shipped by rail. In the event that the said coal is not shipped over any railroad, the weights shall be ascertained by the weights as shown by the weigh scales of the Lessee. The Lessee hereby covenants to provide and maintain proper scales for the weighing of said coal. Provided, however, that the Lessors shall not be bound by the said weights, but may use any proper method to determine the weight or amount of coal actually mined and removed from the demised premises.

(6). Commencing as of ^{January} ~~January~~ 1, 1949, the Lessee agrees to mine, remove or to pay for as if mined and removed, at the rate per ton stipulated in paragraph (5) hereof, at least sufficient tons of coal from the demised premises, each and every month

during the continuance hereof, so that the Lessors will have an income of at least One Hundred ^{Twenty-five (25.00) with} ~~Hundred~~ Dollars per month from the premises, the subject of this agreement. In case of failure to mine the minimum requirements in any given month, the Lessee shall pay the Lessors the deficiency between royalty on coal actually mined from the demised premises and the minimum royalty computed at the rate per ton hereinbefore stipulated, on or before the 20th day of each and every month after the particular minimum month. It is further stipulated and agreed that the Lessee shall have the privilege of mining coal previously not mined but paid for under the minimum provisions hereof, in any succeeding month during the continuance of this lease after the minimum tonnage for the succeeding months and all intervening months has been mined and the royalty thereon paid, without interest on any payment made under the minimum provisions hereof.

(7). The Lessee hereby covenants and agrees to operate the mine by approved methods and in accordance with the mining laws of the United States of America, all subdivisions thereof and of the State of Pennsylvania, including the open pit mining law as to restoration of overburden, etc., so that all the merchantable and minable coal in the seam hereby leased under the demised premises that can be taken out consistent with safety, shall be taken out clean and entire. The Lessors or their representatives, shall also have the right to examine the mine books and to enter the mine at all reasonable times, and to inspect and examine the workings and make maps thereof, but in such manner and at such times as not to interfere unduly with the operations of the Lessee.

(8). The Lessee shall authorize and request the railroad company, if he ships the coal by rail, over which railroad the coal from the demised premises shall be shipped, to furnish the Lessors at any time said Lessors desire, a statement of the weight of all coal shipped from the demised premises. The Lessors, however, hereby agree to pay all charges made by the railroad company or its agents, for compiling such statement of tonnage.

(9). On the termination of this lease, if it be for any cause other than the exhaustion of the coal herein demised, the Lessee agrees to leave the drainageways, haulageways, gangways, headings and all the workings in workable condition.

(10). Lessee and Lessors covenant and agree that the Lessee shall not be required to pay for more coal than is actually contained in the demised premises, and if the Lessee shall pay for all coal in said premises, excluding required pillars either by way of minimum royalty or otherwise, without having mined and removed the same, the Lessee shall have the right for the period of one year thereafter, without payment of minimum royalty hereunder required, or other charges, of any kind, except wheel toll if the same is due, to hold, possess and enjoy the herein demised premises with the rights and privileges herein granted, subject, however, to the terms and conditions hereof. Provided, however, that the Lessee shall promptly notify the Lessors when they have determined or are of the opinion that all the merchantable and minable coal has been mined and removed from the demised premises.

(11). Lessee shall not remove the plant and equipment necessary for the proper operation of the mines, or any part thereof, during the term of this lease, but on the termination of this lease, Lessee shall have the right for thirty (30) days thereafter to remove all improvements erected by him; provided, however, that all rents or royalties due the Lessors and the other terms and obligations of the Lessee hereunder, shall have been fully paid and discharged before removal, it being expressly stipulated further that all such improvements not so removed within thirty (30) days as above stated, shall become and be the property of the Lessors.

(12). The Lessors hereby reserve the right to prospect and produce clay, oil, gas or other minerals in the premises herein described or on adjoining or adjacent lands owned by them or that may come under their control or the control of their Lessees, but such operations or prospecting shall not be conducted in such

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manner as to interfere with or injure the mines or operations of the Lessee.

(13). The Lessee herein is hereby granted the right to haul in, over, through or across the premises hereby demised, any coal which he may mine from other lands upon payment of the sum of two (24) cents wheel toll per net ton to the Lessors herein.

Settlement shall be made monthly with the Lessors herein for said wheel toll or haulage right in the manner provided for the settlement of royalties for coal mined and removed, and it is understood and agreed that the Lessors shall have all the rights and remedies granted to them for the collection of royalties to enforce the collection of said wheel toll.

(14). It is hereby specifically understood and agreed between the parties hereto that any violation by the Lessee for thirty (30) days or more, of any of the covenants herein contained or his suffering his interest, or part of it, to be taken in execution, shall authorize the Lessors, at their option, to terminate this lease and resume possession of the demised premises without further proceeding in a summary way, and to recover royalty in arrears by distress, as provided by Landlord and Tenant Act or in any other manner authorized by law; and the Lessee hereby waives all benefits of the exemption laws of the State of Pennsylvania, exempting personal property from levy and sale on execution.

(15). Lessee shall pay any and all taxes, duties, charges, or assessments now imposed or that may be imposed during the continuance of this lease, by any laws of the United States or of the State of Pennsylvania, or by any subdivision thereof, upon improvements erected by it and upon coal mined and removed from said premises; and the Lessors shall pay all other taxes levied or assessed against the demised premises. In the event the Lessee

TAXES

fails to pay taxes and assessments, duties or charges as provided in this paragraph, when the same become due and payable, the Lessors are hereby authorized to pay any and all such taxes, assessments, duties or charges to either the United States or the State of Pennsylvania, or any county or municipal subdivision thereof, by or under the laws of the State of Pennsylvania, whereupon such amounts shall be considered as royalty for coal mined and past due, and the Lessors are privileged to take whatever action for the collection thereof that is hereunder permitted. Any removal or attempt at removal of any equipment or chattels from said premises by the Lessee while any portion of the minimum royalty for coal mined, taxes, assessments or charges as herein provided, shall remain unpaid, shall be deemed a fraudulent and clandestine removal and the whole minimum royalty for the entire term, together with any taxes or assessments as above set forth, shall be deemed to have fallen due and be collectible at once, and all equipment and chattels so removed may be followed for the space of thirty (30) days and seized for the collection of the same, by Landlord's Warrant. It is further agreed that as often as default shall be made in the payment of any minimum royalty, royalty for coal mined, taxes or assessments as hereinabove provided, and said default shall continue for the space of thirty (30) days after written notice to the Lessee, the Lessors may proceed by Landlord's Warrant if such default is not remedied or rectified within said thirty (30) days' period, and make collection of all such royalties or charges then due, with costs of such proceeding, the Lessee hereby waiving the benefit of all laws or usages exempting any property from liability for rent, and the Lessors not waiving any remedies given by existing laws. The Lessee hereby authorizes any attorney of any court of record, as often as default shall be made in the payment of said minimum royalty, royalty for coal actually mined or for taxes or charges assessed and herein referred to, and after the Lessors have given the Lessee thirty (30)

30 DAYS

30 DAY
NOTICE

days' notice in writing, of said default, the Lessee neglects or refuses to remedy, rectify or make payment during said period of thirty (30) days, to appear for them and confess judgment or judgments against them for the amount of royalties or charges then due and unpaid, with attorneys' commission of ten per cent costs of suit, without stay or execution, waiving inquisition and exemption. And on failure of the Lessee to pay the minimum royalty, rent, royalty on coal actually mined, and keep all the covenants of this lease, or remove from the premises at the determination of the same, then the Lessee hereby authorizes and empowers any attorney or any court of record in Pennsylvania, to appear in court and confess judgment in favor of the Lessors and against the Lessee, in an amicable action of ejectment for the premises above described, and authorizes the immediate issuance of a writ of habere facias possessionem, with clause of fi. fa. for rent, royalty or amount due under this lease, with cost of suit, and ten per cent attorneys' commission or fees, to be released upon the payment of the amount due with costs and attorneys' commission, as herein provided, within five days from the confession of said judgment.

WRITTEN
CONSENT

(16). Lessee agrees not to mortgage or encumber with liens of any kind, or sell, assign or set over or sublet the whole or any part of the hereby demised premises or improvements, without the written consent of the Lessors thereunto first had and obtained. It is hereby agreed and provided that any lawful levy and sale on execution or other legal process, as well as any assignment or sale in bankruptcy, or insolvency or under any other compulsory proceeding, or any receivership created, shall be deemed and taken to be an assignment or subletting within the meaning of this agreement, and, at the option of the Lessors shall work an immediate forfeiture without notice, and thereupon possession may be immediately taken by Lessors without further formality, the Lessee may have the property or portions of it worked by contract or other persons, he, the said Lessee, shall,

however, remain liable at all times for all obligations under this lease. The Lessee herein, however, shall remain liable for the payment of royalties and for the carrying out of the terms and conditions of this agreement, notwithstanding that he may contract operations on any part of the herein demised premises.

(17). It is expressly understood and agreed between the parties hereto that this lease and the grants hereunder are made subject to all restrictions, conditions, reservations, exceptions, covenants and agreements under any and all the several deeds, grants and conveyances by virtue of which Lessors hold title to the leased premises aforesaid, and the Lessors are only granting such rights as they have the right to grant under and by virtue of said instruments of conveyance.

(18). Lessee herein covenants and agrees to furnish Lessors herein copies of any and all drill records, analysis of coal and other data in respect to the amount and quality of the coal contained in the demised premises during the term of this lease.

(19). The term of this lease shall be from ^{JANUARY 1950} ~~December 1st~~ 1949 to the exhaustion of the merchantable and minable coal, unless it is sooner terminated or determined under the provisions hereof.

(19). This agreement shall be binding upon and shall inure to the benefit of all persons, natural or artificial, lawfully claiming under the parties hereto, respectively, in whatsoever capacity, as if they were in each instance specifically named throughout.

IN WITNESS WHEREOF, LEITZINGER BROS. REALTY COMPANY has caused this agreement to be signed by its proper officers, EDWARD REDDING and FRANK J. HERTLEIN have hereunto set their hands and seals the day and year first above written.

ATTEST:

SECRETARY

LEITZINGER BROS. REALTY COMPANY
BY William A. Hefner
PRESIDENT

ALL THE
COAL

WITNESSED BY:

S. E. Bishop

James A. Luzzell

Edward Redding (SEAL
(Edward Redding) LESSORS

Frank O. Hertlein (SEAL
(Frank O. Hertlein) LESSOR

STATE OF PENNSYLVANIA:
COUNTY OF CLEARFIELD : SS:

On this the 9 day of ~~January~~ ^{March} 1950, before me the undersigned officer, personally appeared WILLIAM A. E. LEITZINGER, who acknowledged himself to be the President of Leitzinger Bros. Realty Company, a corporation, and that he as such President, being authorized to do so, executed the foregoing agreement of lease for the purposes contained therein, by signing the name of the corporation by himself as President.

WITNESS my hand and official seal the day and year aforesaid.

RECORDER OF DEEDS
STATE OF PENNSYLVANIA
My Commission Expires First Monday in January 1952

COUNTY OF Lebanon : SS:

On this the 3rd day of ~~January~~ ^{June} 1950, before me the undersigned officer, personally appeared EDWARD REDDING, known to me to be the person whose name is subscribed to the within Agreement of Lease, and acknowledged that he executed the same for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

NOTARY PUBLIC
My Commission Expires March 3, 1951

STATE OF PENNSYLVANIA:
COUNTY OF Cater : SS:

On this the 24 day of ~~January~~ ^{March} 1950, before me the undersigned officer, personally appeared FRANK J. HENSTEN known to me to be the person whose name is subscribed to the within Agreement of Lease, and acknowledged that he executed the same for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

NOTARY PUBLIC
My Commission Expires March 3, 1951

NOTARY PUBLIC
My Commission Expires March 3, 1951

JUN 5 2007

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN, JR.,
GLENN R. HERTLEIN, TIMOTHY L.
HERTLEIN, LOUISE E. HERTLEIN
KIRKWOOD, and G. LEE HERTLEIN,
Individually, and as Attorney-in-Fact
for the heirs of FRANK T. HERTLEIN
and IVY E. HERTLEIN,
Plaintiffs,

No. 06-903-CD

v.

RIVER HILL COAL COMPANY, INC.,
A Pennsylvania Corporation,
and
LEITZINGER LAND COMPANY, INC.,
Defendants

OPINION

NOW, this 5th day of June, 2007, after review of briefs submitted by the Plaintiffs and the Defendant and examination of the exhibits submitted as part of the record this Court finds that the lease excludes the approximately 50 acres identified on the Henry F. VanValzah map as the "Wharton Cole" tract.

FACTUAL BACKGROUND

At issue in the present case is an agreement (hereafter lease) between the Hertleins, heirs of Frank T. Hertlein and Ivy E. Hertlein (hereafter Plaintiffs), and Leitzinger Land Company, Inc. (hereafter Defendant). There is also an additional defendant in the present action, River Hill Coal Company, Inc (hereafter River Hill). River Hill, as the party that actually mines the coal that is the subject of the current dispute, has the funds from that coal in escrow and has agreed to

Exhibit "C"

distribute them as directed by the Court. Therefore, River Hill will not be discussed in this Opinion.

Plaintiffs' predecessors in interest entered into a lease with Defendant's predecessors in interest on January 1, 1950 for the right to mine coal from the leased premises. The lease covers approximately 1500 acres in Karthaus Township and is subject to the exception of certain smaller portions of land. The parties subsequently joined together to lease and sublease the property to River Hill. River Hill, as noted earlier, has been mining the entire property. The royalties from the coal were split 50/50 between the original lessors and the Plaintiffs.

At issue in the present case is language in the lease that excepts a portion of the 1500 acres from the lease and therefore, from the royalty calculations. The description of the excepted parcels is as follows:

Excepting from this lease that portion of the premises now under lease to William Hoffman, being known as the Savel tract of land, identified on the map prepared by Henry F. Van Valzah, identified as the "Wharton Coal Tract"...

P. 1 Defendant's Exhibit A.

In particular, the issue is that the excepted parcel is referred to in four ways. It is referred to as (1) "the premises now under lease to William Hoffman;" (2) "the Savel tract of land;" (3) identified on the map prepared by Henry F. Van Valzah; and (4) the "Wharton Coal Tract." Also, it should be noted that "Savel" and "Wharton Coal" are referred to both by those spellings and by the spellings "Savil" and "Wharton Cole" respectively in various exhibits.

Since the lease was signed in 1950, these descriptions meant to provide clarity create an ambiguity as to which parcel of land was excepted from the lease. The terms are not referenced again in the contract nor are they defined at any point.

Plaintiffs argue that the excepted parcel is limited to the coal underneath the property presently owned by Steven Savel, which encompasses 39.5 acres. Plaintiffs rely on the language

"known as the Savel tract of land" and argue that the property is defined by that term in the contract and the other terms merely point to where the tract of land can be identified – albeit incorrectly.

Defendants argue that you must give meaning to all of the terms of the contract and that the lease excludes approximately 65 acres that was the entire property owned by John Savel conveyed to him by Wharton Coal.

DISCUSSION

Preliminarily this Court will note "the fundamental rule in construing a contract is to ascertain and give effect to the intention of the parties." *Huegel v. Mifflin Const. Co., Inc.*, 796 A.2d 350, 354 (Pa.Super. 2002). Further, "under Pennsylvania contract law, when language of a contract is clear and unambiguous, its meaning must be determined by examination of the contract itself." *Fleetway Leasing Co. v. Wright*, 697 A.2d 1000, 1002 (Pa.Super. 1997) citations omitted. While the original signers of the 1950 lease almost certainly knew which land they were referring to, the descriptors they chose to describe it have little meaning now 57 years after the lease was signed. These terms are therefore ambiguous. When terms in a contract are ambiguous the Court has stated:

In the construction of any contract, if there is any doubt as to the meaning of a term of the contract, such term should receive a reasonable construction and one that will accord with the intention of the parties and in order to ascertain that intention the court must look at the circumstances under which the contract was made, the situation of the parties, the objects they have in mind and the nature of the subject matter of the contract.

Township of Racoon v. Municipal Water Authority of Borough of, 597 A.2d 757, 765 (Pa.Cmwlth. 1991) citations omitted.

Further, while parol evidence is generally not admissible, the Court has held "although the parol evidence rule bars such evidence that adds to or varies an agreement, it does not bar evidence introduced for the purpose of interpreting an ambiguous agreement." *Morgan v. First*

Pennsylvania Bank, 541 A.2d 380, 384 (Pa.Super. 1988) citations omitted. Therefore, because the language of the lease is ambiguous, parol evidence may be examined to interpret the agreement and give effect to the intention of the parties.

Additionally, "in construing a contract, each and every part of it must be taken into consideration and given effect, if possible, and the intention of the parties must be ascertained from the entire instrument." *Marcinak v. Southeastern Greene School Dist.*, 544 A.2d 1025, 1027 (Pa.Super. 1988). Therefore, when determining the drafters' meaning we cannot look only at one descriptor used in the lease and ignore the remaining three. It is necessary to look at all four of the descriptors used to define the excepted land to give effect to the intention of the parties.

Here, the original signers of the contract are deceased so it is necessary to ascertain their intentions through objects they had in mind and the circumstances under which they made the contract. Fortunately, the contract references four different identifiers for the excepted parcel of land. Unfortunately, these identifiers do not offer complete clarity in identifying the excepted parcel since initially they seem to reference very different parcels and amounts of land.

First, in looking at the exhibits it is important to note that this lease deals with the subsurface rights, particularly the right to the coal under the surface, and not the surface land. Therefore, Exhibit G, which depicts the surface ownership of the property above the leased property is not particularly relevant to interpreting the language of the lease. It is clear from a review of Exhibits F, G, and H that the subsurface lots do not perfectly align with the surface lots. Since the lease deals with subsurface rights only, Exhibit G will be only marginally useful in determining what land is excepted. Its relevance rests almost entirely on its being a tool to identify where the Wharton Coal Tract is located.

Initially, it may seem that the Savel tract and the Wharton Coal tract contain significantly different acreage. However, on closer examination of the evidence that is not the case. John Savel received his surface land via two different conveyances. The first conveyance was between Wharton Coal and John Savel and conveyed 1 $\frac{3}{4}$ acres to John Savel by deed dated February 16, 1907. The second conveyance was between Malcolm Cole (Coal) and John Savel in 1919. That deed conveyed approximately 65 acres excepting and reserving approximately 20 acres. The 20 acres that were excepted and reserved were the acres conveyed by Wharton Coal to Clayton Wooster via deed dated December 11, 1876. This would leave John Savel with approximately 46 $\frac{3}{4}$ acres. The Wharton Coal Tract as identified on exhibits F and H is listed as approximately 50 acres.

Further, it is clear from the exhibits that Wharton Coal conveyed approximately 20 acres of the approximately 65 acres he had in 1876 to a Clayton Wooster. P. 1 Plaintiffs' Exhibit 2. The deed to Clayton Wooster did not except or reserve any portion of the land nor did it except or reserve any of the subsurface or mineral rights. This would mean that following the conveyance to Wooster, Wharton Coal had approximately 45 acres remaining. In 1880 Wharton Coal conveyed the "oils, coal, fire clay, iron ore, and other minerals" to Weaver and Betts by agreement dated March 3, 1880. P. 2 Defendant's Exhibit D. In 1880, Wharton Coal would have only had available to him approximately 45 acres to convey subsurface rights to, as he had sold 20 acres to Clayton Wooster in 1876. In fact, in the conveyance to John Savel, Exhibit D, that purports to convey approximately 65 acres there is a paragraph that excepts and reserves the 20 acres conveyed to Clayton Wooster from the deed.

Therefore, with regard to the descriptors "being known as the Savel tract of land; identified on the map prepared by Henry F. Van Valzah; and identified as the "Wharton Coal

Tract" it seems that there is not as much disparity as originally indicated. Savel received his land via two conveyances. The first conveyance from Wharton Coal that covered 1 ¼ acres. The second from Malcolm Cole (Coal) that conveyed approximately 65 acres but excepted and reserved the 20 acres Wharton Coal had previously conveyed to Clayton Wooster. That would leave approximately 45 acres that were conveyed to John Savel from Macolm Cole (Coal) in 1919 in addition to approximately 2 acres that were conveyed to him from Wharton Coal by deed dated February 16, 1907. Thus, the Savel Tract of land, that contains 46 ¾ acres, contains almost the same amount of land as the Wharton Coal Tract that contains approximately 50 acres.

The record also does not contain any evidence of a lease with a Mr. William Hoffman. However, there is a lease with a Mr. James Hoffman that is included in the exhibits. Exhibit I is the lease between Letzinger Bros. Realty Company and James Hoffman dated October 30, 1953. It describes the lease as containing "the coal under the property known as the John Savel Place or Wharton Cole Premises situate on Cataract Hill in Karthaus Township, Clearfield County, Pennsylvania." This shows that the Wharton Coal tract was available for lease in 1953 when this agreement was entered into – three years after the lease in the present action. Additionally, it shows the land was being leased to a Hoffman. Therefore, it is clear that it must have been excluded from the Hertlein lease to be leased at a later date to another individual. Unfortunately, this lease does not contain specific indicators of the land or acreage either. Again, though, the descriptors refer to "under the property known as the John Savel Place" and "Wharton Cole Premises."

Taking into account the various exhibits and realizing that the surface land does not necessarily correspond exactly with the subsurface rights, it is most probable that the Wharton Coal tract contains approximately 50 acres. Although, the surface tracts have passed between

many parties and been divided between parties, the subsurface rights seem to have remained fairly constant since 1880 when Wharton Coal conveyed them to Weaver and Betts. Again, in 1880 Wharton Coal had already conveyed approximately 20 acres of the property without reserving and excepting the subsurface rights to a third party, therefore he would not be able to convey the subsurface rights to those 20 acres to Weaver and Betts. Despite the fact that the descriptors seem so disparate initially, they actually, when taken with all of the circumstances and facts that would have been known by the original signers, are remarkably similar and fairly constant in pointing to a approximately 50 acre parcel that is excepted from this lease.

CONCLUSION

Therefore, since this Court is able to look at circumstances under which the contract was made, the situation of the parties, the objects they had in mind, and the nature of the subject matter of the contract to determine the intention of the parties, this Court has done so and concludes that the original signers of the contract intended to exclude the approximately 50 acres contained within the Wharton Coal tract as identified on the map prepared by Henry F. VanValzah. In reaching this conclusion, the Court has examined all of the evidence submitted by the parties and examined all of the relevant terms in the lease to fit everything together to determine exactly what parcel of land was excluded from the lease.

BY THE COURT:

/s/ Paul E. Cherry

PAUL E. CHERRY

Judge

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

JUN 06 2007

Attest.

William L. Brown
Prothonotary/
Clerk of Court

JUL 01 2005

LEASE AND SUBLEASE AGREEMENT

This coal lease and agreement (hereinafter sometimes referred to as the "Lease" or "Agreement") is made and entered into as of this 14th day of MARCH, 2005,

BY AND BETWEEN

Leitzinger Land Company, Inc., of 404 West Seventh Avenue, Clearfield, Pennsylvania 16830, hereinafter referred to as "First Lessors";

AND

Robert E. Hoover, Jr., successor in M. Lillian Buckius interest, of 228 Sunrise Avenue, Southeast, Ocean Shore, Washington 98569, of the one part, and Mary A. Lee, of Spruce Cabin Road, P.O. Box 194, Mountainhome, Pennsylvania 18342, successor in interest to Elizabeth Smith, of the other part, said parties being the present owners of the Edward Redding (Cataract Coal Company) interest, hereinafter being jointly referred to as "Additional Lessors";

AND

Louise Kirkwood, Eva Jane Hertlein, Edith Hertlein, Patsy L. Kimble, Frank T. Hertlein, Glenn R. Hertlein, Timothy Hertlein and G. Lee Hertlein, being all of the children and successors in interest to Frank T. Hertlein and Ivy E. Hertlein, deceased hereinafter referred to as "Sublessors";

AND

River Hill Coal Company, Inc., a Pennsylvania Corporation with offices in Kylertown, Pennsylvania, hereinafter referred to as "Lessee".

First Lessors, Additional Lessors and Sublessors being collectively referred to herein as "Lessors".

EXHIBIT "D"

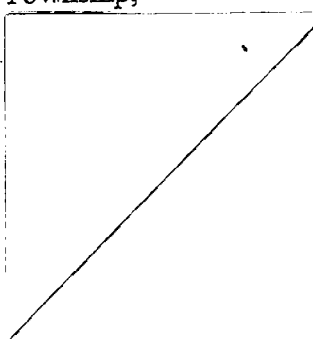
RECITALS

WHEREAS, First Lessor is the successor in interest to Leitzinger Brothers Realty Company by deed recorded at Clearfield County Instrument Number 200220045 by which First Lessor became the owner of 6/16 undivided interest of Cataract Coal Company in the surface and underlying strata and of all the coal in, upon and underlying that certain tract of land described in paragraph 1 of this Sublease and Agreement, which tract contains approximately 1833 acres and is situate in Karthaus Township, Clearfield County, Pennsylvania; and

WHEREAS, Additional Lessors are each the owner of a 5/16 (for a total of 10/16) of an undivided interest of Cataract Coal Company in the surface and underlying strata and of all the coal in, upon and underlying that certain tract of land described in paragraph I of this Sublease and Agreement, which tract contains approximately 1833 acres and is situate in Karthaus Township, Clearfield County, Pennsylvania; and

WHEREAS, Edward J. Redding, T/A Cataract Coal Company (Additional Lessors' predecessor in interest) and Leitzinger Bros. Realty Company, as Lessors, entered into a certain Agreement dated January 1, 1950 (sometimes for convenience hereinafter referred to as the "1950 Agreement") with Frank T. Hertlein as aforementioned, as Lessee, which 1950 Agreement leased to Sublessor the property described in paragraph 1 of this Lease and Sublease Agreement; and

WHEREAS, subsequently by agreement dated November 28, 1978, Leitzinger Bros. Realty Company, as "First Lessor"; the Estate of Lillian Buckius as owner of a 1/2 interest as heir of Edward Redding as "Additional Lessor"; and Ivy E. Hertlein and her children as "Sublessors"; and River Hill Coal Company, Inc. as "Lessee" entered in an agreement entitled "Sublease, Joinder and Amended Agreement" for lease of the surface and coal rights of the following lands in Karthaus Township, Clearfield County as set forth in paragraph I herein; and



WHEREAS, by subsequent agreement dated December 29, 1978, the "First Lessor", (Leitzinger Bros.), the then "Sublessors", (Ivy Hertlein, et al) and the "Lessee", (River Hill Coal Company, Inc.) entered into another agreement for the same lands, this time, however, with Elizabeth Smith, single, as owner of the other 1/2 interest of Edward Redding; and

WHEREAS, First Lessor (Leitzinger Brothers) and Additional Lessors (Hoover and Lee), previously consented to Sublessors (Hertleins) subletting or assigning Sublessors' (Hertleins) rights under the "1950 Agreement" to Lessee (River Hill Coal Company, Inc.); and

WHEREAS, it is the purpose of the within Agreement that the parties to the previous Agreements restate the terms of those Agreements to be consistent with the current market value of their interests in the surface and coal of the premises hereinafter described.

LEASE AGREEMENT

NOW THEREFORE, for and in consideration of the sum of One and 00/100 (\$1.00) Dollar each in hand paid herewith by Lessee to First Lessor, Additional Lessors and Sublessors, the receipt of which is hereby respectively acknowledged and for and in consideration of the mutual covenants and agreements hereinafter set forth, the adequacy of which is hereby acknowledged by First Lessor, Additional Lessors, Sublessors and Lessee, the parties do hereby covenant and agree as follows, vis:

1. **LEASED PREMISES:** First Lessors, Additional Lessors and Sublessors do hereby let, demise and lease to the Lessee all of their respective right, title and interest in and to the surface, underlying strata and all coal and mining rights (and any substances mixed with coal) upon, in and underlying the land described on Schedule A which is attached hereto and incorporated herein by reference.

Schedule A also states the relative ownership interest of each party to this lease as to each particular parcel leased by this agreement.

The leased premises are believed to contain 1,833 acres, more or less.

Hereinafter referred to as the "premises" or "leased premises" for the purpose of going upon the same and removing coal underlying said premises by the strip mine method, including the right to strip mine and/or auger drill and otherwise to develop, work and process for market said coal and other coal now owned or hereafter acquired by Lessee, its successors or assigns, by mining methods or machinery now or hereafter employed, including the free and uninterrupted right and right-of-way into, upon, over, across, under and through the leased premises at such points and in such manner as may be convenient or necessary for the purpose of all operations in connection therewith and in the horizons of said coal and in the strata above or below the same and other coal now owned or hereafter acquired by Lessee, its successors or assigns, in, on or underlying the leased premises and other premises in the surrounding area, including but not limited to the transportation of personnel, supplies and equipment, and the right to explore, test drill, dig, mine, drain, transport and carry away said coal and other materials and other coal and materials now owned or which may be hereafter acquired by Lessee, its successors or assigns, in, on, from or underlying the leased premises and to erect and maintain on the premises such structures, improvements and facilities as may be necessary or convenient to said operations, and without being required to lease or provide subjacent or lateral support for the overlying strata or surface or anything therein, thereon or thereunder, including structures or improvements now or hereafter erected thereon and, in connection with strip mining, auger mining, excavation or similar mining, the right and privilege to excavate, drill, remove and displace any or all of the earth, rock and other strata or materials in, upon or about said coal and said other coal and the horizons thereof and to deposit the same on or off the premises, and Lessor, Additional Lessors and Sublessors, for themselves, their heirs and assigns, for the consideration aforesaid, do hereby covenant to **WAIVE AND RELEASE** all surface damages and damages of any sort howsoever caused, arising from the removal of and all operations in said coal, and said other coal

and materials or the horizons thereof by Lessee, its successors or assigns, or arising from any and all physical conditions now present or which may hereafter develop in, about and/or above the same.

2. **LESSORS' INTERESTS:** The within lease is for all of the surface (right of surface support) and coal mining rights (as set forth in paragraph 1 above) of the First Lessor, Additional Lessors and Sublessors in the leased premises. It is understood that the First Lessors, Additional Lessors and Sublessors (hereinafter collectively referred to as "Lessors") have varied and various surface and coal interests in many of the properties which collectively are referred to as the "leased premises".

The Lessors individually warrant unto the Lessee that their interest in the premises relative to one another are as stated on Schedule A which is attached hereto and incorporated herein by reference.

3. **NO WARRANTY OF TITLE:** Lessors make no warranty of title beyond that stated in the foregoing paragraph as to their relative interests.

4. **TERM OF LEASE:** This Lease shall commence upon its execution and continue unless canceled for a period of ten (10) years and as long thereafter as the Lessee is continuously and substantially operating the premises, unless prevented from so operating by causes beyond its control. For the purpose of construing this clause, "continuously" shall mean at least seven (7) months' operation in any given lease year.

The continuance of this lease is also continued upon Lessee making delay or actual royalty payments to the Lessors, without demand, on or before the 25th day of each month. This requirement shall apply to the initial ten (10) year term of this lease and any continuation or extension thereafter. Actual royalty shall be calculated according to paragraph five (5) which follows. Delay royalties shall be in the amount of \$350.00 per month which shall be apportioned among the Lessors according to

the following formula: Leitzinger Land Company, Inc. - 6/16 of ½ or \$65.64; Robert E. Hoover, Jr. - 5/16 of ½ or \$54.70; Mary A. Lee - 5/16 of ½ or \$54.70; Hertleins - \$175.00 per month.

It is further agreed between the parties that the Lessee may, at any time, cancel this Agreement with or without cause, provided it is not in default and has paid in full all royalties due hereunder, by sending to the Lessors written notice of cancellation.

5. MINING ROYALTIES:

A FUTURE ROYALTIES- Lessee shall pay each Lessor its proportionate share as actual royalty for each ton of 2000 pounds of coal mined and removed from the leased premises the greater of ten (10%) percent of sales price per ton of like quality coal or \$2.00 per ton. This new royalty rate will commence on May 1, 2003. In the event that a sale is not to a bona fide third

party or an arms-length transaction, then the sales price shall be based on Lessee's most recent sale, preferably during the same royalty period, of coal of comparable quality in a bona fide, arms-length transaction. No deduction shall be made from the sales price for the transportation, brokerage fees, taxes or similar expenses.

Lessee shall stockpile all cannel coal mined and removed from the demised premises separately from all cannel coal mined from properties belonging to a Lessor other than Leitzinger, Redding or Hertlein. Lessee shall pay to Lessors \$.50 per ton for all waste, binder, cannel, or similar quality coals mined, sold and removed from the demised premises where Lessors are the owners of the surface and mineral. The royalty to be paid by Lessee to Lessors shall be \$.25 per ton where Lessors own the coal or surface but not both. It is agreed, however, that the royalty to be paid by Lessee to Lessors as set forth herein shall be paid to Lessors based upon 10% of the selling price of said coal should the selling price of said waste, binder, cannel, or similar quality coals exceed \$8.00 per ton. In the event that a sale is not to a bona fide third party or an arms-length transaction, then the

selling price shall be based upon Lessee's most recent sale of coal of comparable quality in a bona fide arms-length transaction. No deduction shall be made from the selling price for the transportation, brokerage fees, taxes or similar expenses.

All of the above payments are based on the Lessors collectively owning 100% of the surface (right of surface support) and 100% of the coal of the property being mined. To the extent that third parties may own the said surface of coal or a part thereof of either or both, then in said event the payments to the Lessors would be reduced in proportion to their ownership interests. By way of example only, if the Lessors collectively own no surface rights but only the coal, the royalty payments would be 5% of the sale price of the coal or \$1.00, whichever is the greater, i.e. the owners would receive collectively 50% of 5% of the selling price or \$.50, whichever is the greater, and the Hertleins as Sublessors would receive the other 50% of 5% of the selling price of the coal or \$.50 whichever is greater.

All royalties due under the terms of this Lease shall be payable as follows:

- (a) One-half (1/2) of the royalty to Sublessors; and
- (b) One-half (1/2) of the royalty to First Lessors and Additional Lessors in proportion to their interest in surface, minerals or the surface and minerals as the case may be.

B. BACK ROYALTIES- Lessee shall pay to Lessors, a total of \$38,960.00 upon exchange of wholly executed counterparts of this agreement. Lessors shall divide this payment according to their interest as stated in paragraph four (4) above. The parties agree that this additional payment shall compensate Lessors for all back royalties which they claim are due under prior agreements as recited above. As additional consideration for this payment Lessors, for themselves, their heirs, successors and assigns, hereby release, discharge, forgive and waive any other claim, counterclaim, damages, right of action or liability accruing to them against the Lessee because of the prior agreements or the Lessee's extraction of coal on the premises.

6. ROYALTY PAYMENTS AND RECORDS:

Lessee agrees as follows:

(a). To pay to the Lessors, without demand, each actual royalty payment on or before the **25th** day of the month following the month of mining and removal.

(b). All coal removed from its original bed or strata will be loaded onto trucks to be weighed on licensed scales certified by a duly authorized public agency, said certification to be current. No coal will be hauled on vehicles where the net or gross weight is estimated.

(c). Each and every truck load shall be reported and accounted for on an exact duplicate truck weight sheet indicating the following:

1. Name of weighmaster;

2. Date of delivery over said scales;

3. Identification of said truck and name of owner;

4. Tract identification or point of origin of each load and point of delivery;

5. Current truck tare empty and exact loaded weight of each truck load. Weights will be exact off to the nearest on hundred (100).

(d). No coal will be hauled from the original bed or strata and co-mingled with any other coal of different tract origin, different rate of royalty or value, nor stockpiled off the demised premises, unless said coal is first weighed and accounted for in the preceding manner.

(e). The following exceptions may be allowed in the event that labor disputes, lack of transportation facilities or severe weather may prohibit the immediate delivery of coal to market destination, to wit; Said coal may be stockpiled on

the leased premises provided that such coal is not co-mingled with coal from other tracts and that coals of different values or from different strata are separated into different stockpiles.

(f). Said duplicated truck weight slips will be provided to Lessor, Lee Hertlien, one of the Lessors, to his address which appears at the end of this agreement on or before the 25th day of each month for all coal mined and removed from the premises for the preceding month. Additionally, Lessee shall provide daily tonnage information to Lessor or its agent as such times as a telephone call would be made to Lessee. Finally, Lessee shall provide Lessor with a copy of all coal sale receipts upon which Lessee calculated the selling price of the coal for the purpose of determining the royalty rate due to Lessor.

(g). A report of all coal hauled from the leased premises which shows daily tonnages, total tonnages for the reporting month, tract of origin of all tonnages and royalty rates applicable to said tonnages shall be delivered with the royalty payments at times specified herein.

(h). Any Lessor shall have the free and uninterrupted right, through Lessors' agents, servants, employees, engineers, accountants, market experts or attorneys, to examine and copy all of the records, maps, invoices or other matters necessary, in the sole opinion of the Lessors, to verify the Lessee's compliance with any or all of the terms of this Lease, but the rights set forth in this Paragraph (c) shall be limited to Lessee's records, maps, invoices or other matters which are of, or relate to, the properties (and the coal produced therefrom) which are subject to this Agreement.

This right may be exercised in whole or in part from time to time at any office of the Lessee during regular business hours, but exercised in a manner so as not to unreasonably interfere with the business of the Lessee.

7. **1950 AGREEMENT:** During the term of this Lease and Sublease Agreement, Sublessors will not be required to pay the minimum royalties set forth in the 1950 Agreement, but, at the time the Lease and Sublease Agreement is terminated for any reason, First Lessor, Additional Lessors and Lessee shall each notify Sublessors that such agreement is terminated, and at that time, Sublessors shall have the option to again begin to pay the minimum royalties to First Lessor and Additional Lessors which are provided in the 1950 agreement, and should Sublessors pay such minimum royalties as provided in the 1950 agreement, then the 1950 agreement shall continue in full force and effect as between First Lessor, Additional Lessors and Sublessors, but inasmuch as this Agreement will have been terminated, Lessee shall have no further rights, obligations and/or liabilities under this Agreement or by virtue of any other Agreement shall Lessee have any rights, obligations or liabilities at this time or at any other time by virtue of or under that certain Agreement dated January 1, 1950 between Leitzinger Bros. Realty Company and Edward Redding as Lessors and Frank J. Hertlein (Frank T. Hertlein) as Lessee.

8. **RIGHT OF ENTRY:** Lessee is hereby granted the right of ingress and egress over or through the lands which are the subject of this Agreement for any purpose whatsoever consistent with the development of the leased premises during the term and extensions of this lease. Lessee may also re-enter the premises for five (5) years following termination of this lease but solely for the purpose of complying with the orders of regulations of the Pennsylvania Department of Environmental Protection or other duly authorized government entity.

9. **MINING METHODS:** Lessee agrees to use, at any given time, modern

and commercially reasonable methods of mining to the end that a reasonable commercial yield from the leased premises is secured.

10. **MINING LAW COMPLIANCE:** As a direct inducement to the Lessors to enter into this Lease, the Lessee agrees, at its sole expense, to comply promptly and fully with any provision, present or future, of any law relating and applicable to the removal of coal by any mining method used and the restoration of disturbed areas. For the purpose of this provision, the word "law" shall mean any applicable statute, regulation, and decision of any Court or regulatory body of the United States, the Commonwealth of Pennsylvania or any subdivision of either.

11. **LIABILITY INSURANCE:** Lessee covenants that it is an independent contractor and does control the manner and means of performing all work in connection with the removal, mining, processing or transporting of said coal from the demised premises. Lessee covenants to carry not less than \$1,000,000.00 of comprehensive liability insurance during the continuance of this Lease insuring against loss to person or property from Lessee's use of the demised premises with a reputable insurance company qualified to do business in the Commonwealth of Pennsylvania insuring the Lessee and the Lessor from any claim for damages, as their interest may appear. Said policy of insurance shall specifically protect against loss to person or property resulting from the use of explosives.

12. **REAL ESTATE TAXES:** Each Lessor herein agrees to pay all local real estate taxes assessed against its particular interest in the leased premises; provided, however, that Lessee agrees to pay all local real estate taxes against improvements which are erected by Lessee upon said premises.

13. **HOLD HARMLESS:** Lessee does herewith agree to indemnify the Lessors individually and collectively, and, at the Lessee's sole expense, to hold the Lessors

harmless from any claim by any third party for any reason arising directly or indirectly from the Lessee's activities hereunder.

14. **RIGHT OF RE-ENTRY:** Lessee shall have the right, at any time during or within six (6) months after the expiration of this Lease, to remove any and all machinery, equipment, property and fixtures placed by the Lessee on the leased premises; provided, however, that Lessee shall be entitled to make re-entry into the leased premises with machinery and equipment after the formal termination of the term hereof for any purposes of compliance with Federal, State or other governmental or regulatory requirements.

15. **MINING: ADVANCE NOTICE:** Lessee shall give to the Lessors, in writing, ninety (90) days' advance notice of areas that the Lessee proposes to disturb so that the Lessors may cause to be removed any merchantable timber owned by Lessors from the areas in question. Lessors shall exercise this right so as not to impede or interfere with the Lessee's rights hereunder. The within notice shall apply only to those areas in which the Lessors have an ownership interest in the surface (exclusive of the right of surface support).

16. **ASSIGNMENT OF LEASE:** This Lease shall not be assignable by the Lessee without the prior written consent of the Lessors for this purpose, provided that Lessee may make such assignment of its rights and obligations under this Agreement, including the right to receive the proceeds thereof, as may be necessary pursuant to Lessee's security arrangements related to financing. Any sale of corporate securities, any reorganization as defined under the Securities Act of the United States of 1933, as amended, or as defined under Section 331 et seq. of the Internal Revenue Code of the United States which results in a change or control of ownership of the Lessee, regardless of form, shall be considered in substance an assignment and shall require the prior consent of the Lessor. No consent to assignment shall be unreasonably withheld.

Lessors may assign their interests and shall promptly give Lessee written notice thereof.

HERE
SIGN

17. **RESERVATION OF OIL AND GAS AND OTHER MINERALS:** Lessors reserve

to the Lessors, Lessors successors and assigns, or the Lessors' heirs, as the case may be, all clay, oil, gas, surface, timber or other minerals, excepting the coal and the rights heretofore granted, together with the right to develop the same by any presently known or hereafter known method so long as said development does not interfere unreasonably with the operations of the Lessee hereunder. It is understood that Sublessors have no ownership interest in the foregoing mineral rights and oil and gas and the provisions set forth herein are not applicable to the Sublessors.

18. **DEFAULT:** If any default occurs hereunder, Lessor, Additional Lessors and/or Sublessors shall give the Lessee thirty (30) days' written notice specifying the default, during which period the Lessee may rectify the default, except a default under Paragraph 16 hereof and shall cause an immediate forfeiture of this Lease. Any default, claim or dispute shall be subject to the jurisdiction of the Court of Common Pleas of Clearfield County, Pennsylvania.

19. **NOTICES:**

(a). All notices, requests, demands, consents, documents and other communications required or permitted hereunder shall be in writing and may be delivered either personally or by certified or registered mail (return receipt requested) at the following addresses (provided, however, that any of the parties hereto may from time to time change their address by giving written notice as aforesaid of the new or changed address):

Leitzinger Land Company, Inc.
404 West Seventh Avenue
Clearfield, Pennsylvania 16830

Robert E. Hoover, Jr.
228 Sunrise Avenue, Southeast
Ocean Shore, Washington 98569

Mary A. Lee
Spruce Cabin Road
P.O. Box 194
Mountainhome, Pennsylvania 18342

Louise E. Kirkwood
H.C. 1, Box 41
Karthaus, Pennsylvania 16845

Eva Jane Hertlein
R.R. #1, Box 61
Frenchville, Pennsylvania 16836

Edith M. Hertlein
P.O. Box 203
Frenchville, Pennsylvania 16836

Patsy L. Kimble
R.R. #1, Box 36
Frenchville, Pennsylvania 16836

Frank T. Hertlein, Jr.
H.C. 1, Box 38
Karthaus, Pennsylvania 16845

Glenn R. Hertlein
H.C. 1, Box 16845
Karthaus, Pennsylvania 16845

G. Lee Hertlein
R.R. # 1 Box 77
Frenchville, PA 16836

Timothy L. Hertlein
P.O. Box 142
Drifting, Pennsylvania 16834

20. **MEMORANDUM OF LEASE:** Lessor and Lessee covenant and agree to execute and acknowledge a Memorandum of this Lease suitable for recording. In the event that this Lease and the term hereof shall be terminated for any reason, Lessee covenants and agrees to execute such release and assurance in recordable form as may be reasonably requested by Lessor. However, upon termination of this Lease, Lessee shall have the option to retain the mining rights and releases provided herein for so long as Lessee continues active operations upon the adjacent properties or other properties in the area in reasonable proximity to the leased premises.

This Lease and Agreement and all of its terms, covenants, conditions and provisions shall extend to and be binding upon and inure to the benefit of not only the parties hereto but each of their

respective heirs, representatives, executors, administrators, successors and assigns, except as may be specifically provided otherwise in Paragraph 15 of this Agreement.

21. **SUPPLEMENTAL C:** Lessors agree to execute, acknowledge and deliver unto Lessee, within ten (10) days after written notice from Lessee, the consents of landowner designated as "Supplemental C" required by the Commonwealth of Pennsylvania in order for Lessee to obtain a mining permit for the premises. The within lease involves various different parcels of land and the within provision shall relate to each said parcel for which a "Supplemental C" is required. Said consent shall be executed and acknowledge by Lessors in four (4) originals as required by DEP.

22. ***GENERAL PROVISIONS:***

- A) This Agreement shall be governed by the laws of Pennsylvania. Jurisdiction and venue shall rest in the Court of Common Pleas of Clearfield County, Pennsylvania, for all suits and claims.
- B) This Lease shall bind and inure to the benefit of LESSORS and LESSEES, their respective heirs, successors and assigns.
- C) This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. This agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this agreement to be drafted. All terms and words used in this agreement, regardless of the number or gender, in which they are used, shall be deemed to include any other number and any other gender as the context may require.
- D) In construing this Agreement, "LESSEES" and "LESSORS" shall mean, wherever applicable, an individual, partnership, estate, trust or corporation, as the case may be;
- E) This Agreement can only be modified or amended by the prior written consent of all parties hereto.
- F) Failure by the LESSORS to take any action, assert any right or declare any breach of this lease shall not constitute a waiver of any rights of LESSORS.
- G) In the event of litigation, mediation or arbitration of a dispute between the parties, concerning this agreement or the parties' earlier agreements are recited above, the prevailing party shall recover, as part of its damages,

attorneys fees, expert witness fees and other costs reasonably and actually incurred by the prevailing party in conjunction with the litigation, mediation or arbitration.

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

WITNESS:

Francis K. Leitzinger

WITNESS:

WITNESS:

Lee Hertlein

Lee Hertlein

Lee Hertlein

Lee Hertlein

Lee Hertlein

FIRST LESSORS:

LEITZINGER LAND COMPANY, INC.

James J. Leitzinger, President

Thomas Leitzinger, Secretary

ADDITIONAL LESSORS:

Robert E. Hoover, Jr.

Mary A. Lee

SUBLESSORS:

Louise Kirkwood
Louise Kirkwood

Eva Jane Hertlein
Eva Jane Hertlein

Edith Hertlein
Edith Hertlein

Patsy L. Kimble
Patsy L. Kimble

Frank T. Hertlein
Frank T. Hertlein

Lee Hertlein

Lee Hertlein

Mary Ann Conway

WITNESS:

Larry Kanow

Glenn R. Hertlein
Glenn R. Hertlein

Timothy Hertlein
Timothy Hertlein

G. Lee Hertlein
G. Lee Hertlein

LESSEE:
RIVER HILL COAL COMPANY, INC.

Harry I. Blanchard
Harry I. Blanchard, President

County Parcel No. 121-02-16

D E E D

Made this 6th day of SEPTEMBER 2000, between
DORIS O. LUCAS, widow, of H.C. Box 30, Pottersdale, Pennsylvania
16871, party of the first part, hereinafter referred to as GRANTOR;

A
N
D

HERB LUCAS, of P.O. Box 23, Karthaus, Pennsylvania 16845, **ALTHEA
L. McPHERSON**, of 201 W. Gardenia Drive, Orange City, Florida 32763
and **DAVID A. LUCAS**, of Route 3, Box 75A, Hurricane, West Virginia
25526, as tenants in common, parties of the second part, hereinafter
referred to as GRANTEES.

WITNESSETH, that in consideration of the sum of One and 00/100
(\$1.00) Dollar, in hand paid, the receipt whereof is hereby acknowledged,
the said Grantor does hereby grant and convey to the said Grantees;

ALL that certain lot or piece of land situate in the Township of
Karthaus, County of Clearfield and Commonwealth of Pennsylvania,
bounded and described as follows:

BEGINNING at a stone corner of William Harshbarger on line of
lands of I.C. McCloskey Estate; thence South 85 3/4 degrees East, 54
rods and 2 feet to a post on the Public Road; thence along said road
South 3 1/2 degrees West, 41 rods and 8 feet to a post corner of lands of
W.M. Cole; thence North 85 3/4 degrees West, 50 perches to stone
corner of Harshbarger Lot; thence North along same 3 1/2 degrees East,
41 rods and 8 feet to stones and place of beginning. Containing 14 acres
and 17 rods and 2 feet, more or less, having erected thereon a frame
dwelling and barn.

EXHIBIT "E"

BEING the same premises which Matthew Novak, et al by deed dated June 23, 1936 and recorded in Clearfield County Deed Book 314 at Page 24 conveyed to Clair Lucas and Doris Lucas, his wife. The said Clair Lucas having since departed this life on April 8, 1993 the property vested solely in Doris Lucas, Grantor herein.

EXCEPTING AND RESERVING a life estate in the Grantor, Doris O. Lucas, together with the full power to sell the premises and consume the proceeds thereof for her sole use and benefit during her lifetime and without the joinder of the remaindermen.

THIS IS A CONVEYANCE FROM PARENT TO SONS AND
DAUGHTER AND IS, THEREFORE, EXEMPT FROM PENNSYLVANIA
REALTY TRANSFER TAX.

IN WITNESS WHEREOF, the said Grantor has hereunto set her hand and seal the day and year first above written.

Sealed and delivered
in the presence of:

David S. Ammerman

Doris O. Lucas (SEAL)
Doris O. Lucas

CERTIFICATE OF RESIDENCE

I hereby certify that the precise residence of the Grantee, Herb Lucas, is P.O. Box 23, Karthaus, Pennsylvania 16845.

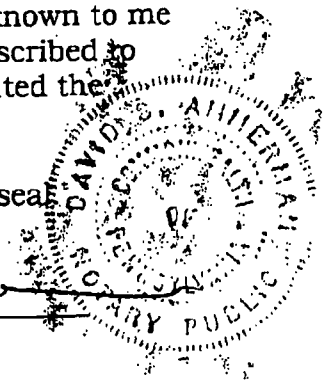
Herb Lucas

COMMONWEALTH OF PENNSYLVANIA :
:SS
COUNTY OF CLEARFIELD :

On this, the 6th day of SEPTEMBER, 2000, before me, the undersigned officer, personally appeared DORIS O. LUCAS, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she has executed the same for the purposes therein contained.

In Witness Whereof, I have hereunto set my hand and seal

David S. Ammerman



My commission expires

NOTARIAL SEAL
DAVID S. AMMERMAN, NOTARY PUBLIC
CLEARFIELD BORO., CLEARFIELD CO., PA.
MY COMMISSION EXPIRES NOV. 20, 2000

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER

200013024

RECORDED ON

Sep 06, 2000

11:31:08 AM

RECORDING FEES - \$13.00

RECORDER

COUNTY IMPROVEMENT \$1.00

FUND

RECORDER \$1.00

IMPROVEMENT FUND

STATE WRIT TAX \$0.50

TOTAL \$15.50

314-24

DEED**This Indenture**

Matthew Novak et al

to

Clair Lucas et al

Made the Twenty-third day of June in the year of our
 Lord one thousand nine hundred and thirty-six Between
Matthew Novak and Anna Novak, his wife, of the City of
Homestead, in the County of Allegheny, and State of
Pennsylvania hereinafter called Grantors and parties

of the first part, and Clair Lucas and Doris Lucas his wife, of the Township of
 Karthaus, County of Clearfield and State of Pennsylvania, hereinafter called Grantees,
 and parties
 of the second part: ~~Witnesseth~~ That the said parties of the first Part,

for and in consideration of the sum of One Hundred, Dollars,

lawful money of the United States

Of America unto them well and truly paid by the said parties of the second part,

at and before the sealing and delivery of these presents, the
 receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed
 and by these presents doth grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said

parties of the second part, their

heirs and assigns

ALL that certain Parcel or tract of land situate in the Township of Karthaus,
 County of Clearfield and State of Penna, which is Bounded and described as follows:-

BEGINNING at a stone corner of William Harshbarger on line of lands of I.C.
 McCloskey Estate; Thence south, 85 $\frac{3}{4}$ Deg, East, Fifty-four (54) rods and two (2) feet to
 a post on the Public Road; Thence along said road South, 3 $\frac{1}{2}$ Deg. West, Forty-one (41)
 rods and eight (8) feet to a post corner of lands of W.M.Cole; Thence North, 85 $\frac{3}{4}$ Deg.
 West, fifty (50) perches to stone corner of Harshbarger Lot; Thence North along same,
 3 $\frac{1}{2}$ Deg East, forty-one (41) rods and eight (8) feet to stones and place of beginning.
 Containing fourteen (14) acres and seventeen (17) rods and two (2) feet, more or less
 having erected thereon a frame dwelling and barn.

Being the same premises that became vested in the Grantors by Deed of George
 E.Stiner and Ida Stiner, dated October the sixth, 1917, and is recorded in the Records
 office at Clearfield, Pa, in Deed Book. No 223 at Page 216.

Together With, all and singular, the said property, improvements, ways, waters, water courses, rights
 liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the
 reversion and remainder, rents, issues and profits thereof,
 and all the estate, right, title, interest, property

claim and demand whatsoever, of the said parties of the first part, in law, equity or otherwise how-
 soever, of, in and to the same and every part thereof, except minerals under the same, with
 right of ingress and egress to mine and remove the same, This conveyance to include sur-
 face only, as the minerals have heretofore been sold.

To have and to hold The said Surface and buildings hereditaments and premises hereby granted

or mentioned, and intended so to be, with

the appurtenances

unto the said parties of the second part, their

heirs and assigns, to

and for

the only proper use

and behoof of the said

parties of the second part, their

heirs and assigns forever

except as hereinbefore reserved

And the said parties of the first part, for themselves, their

heirs, executors and administrators, do

by these presents covenant, grant and agree, to and with the aids

parties of the second part, their

heirs and assigns,

that they the said parties of the first part, and their

heirs, all and singular, the hereditaments and premises hereinabove described and granted, or mentioned and intended so to be,

with the appurtenances unto the said parties of the second part their

heirs and assigns, against them the said parties of the first part and their

heirs, and against all and every other person or persons

whomsoever lawfully claiming or to claim the same or any part thereof, except as reserved

SHALL and WILL

WARRANT and forever DEFEND

In Witness Whereof The said parties of the first part have to these presents

hereunto set their hands and seals. Dated the day and year first above written.

Signed, Sealed and delivered

In presence of

Michael Schram

Matthew Novak

Anna Novak



State of Pennsylvania)

County of Allegheny)SS

On this 27th day of June A.D. 1936 before me, the subscriber, personally came the above named Matthew Novak and Anna Novak who in due form of law acknowledged the foregoing Indenture to be their act and deed, and desired that the same might be recorded as such.

Witness my hand and seal the day and year aforesaid.

Michael Schram (off.seal)

Michael Schram, Notary Public

My commission expires March 6, 1939

State Documentary Stamp \$.05

Certificate of Residence

I do hereby certify that the precise residence of the within named grantee is Pottersdale, Clearfield, Pa.

19__

Attorney for Grantees,

Entered of Record Jul 3 A.D. 1936. 10-55 A M

Recorded by

L. G. Davis
M. J.

Recorder

223-216

Deed

Geo. E. Stiner et ux
to
Matthew Novak et al

This Indenture,

Made the 6 (Sixth) day of October in the year of our
Lord one thousand nine hundred and 17 Seventeen Between
Geo. E. Stiner & Ida (his wife) of Girard Township, Clear-
field Co. Penna.

of the first part, and Matthew Novak & Annie (his wife) of Karthaus Township &
County aforesaid (Clearfield) State of Penna.

of the second part: Witnesseth, that the said parties of the first part

for and in consideration of the sum of

Five Hundred and Five Dollars (\$505.00)

lawful money of the United States

of America well and truly paid by the said parties of the second part to the said
parties of the first part,

at and before the en sealing and delivery of these presents, the
receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed,
and by these presents doth grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said
parties of the second part his

heirs and assigns,

all that certain tract of land situated in the Township of Karthaus
County of Clearfield, State of Penna. Bounded & described as follows. Beginning at stone
corner of William Harshbarger on line of land of I. C. McCloskey Thence South $85\frac{3}{4}^{\circ}$
Eighty five & three fourth) Degrees East 54 rods, and two ft. to a post on public road.
Thence along said road South $3\frac{1}{2}^{\circ}$ West 41 rods & eight ft. to a post corner of W. M.
Cole's land North $85\frac{3}{4}^{\circ}$ West fifty perches to stone corner of Harshberger lot, Thence North
along the same $3\frac{1}{2}^{\circ}$ East 71 rods & eight feet, to stones, and place of beginning. Containing
fourteen acres, and seventeen rods and two feet, more or less. Having erected thereon, one
dwelling house, and barn and being the same tract of land that J. P. Staver Sheriff of Clear-
field Co. deeded to J. L. McGonigal, by deed dated No. 359 May Term 1904 and September
1905 and recorded at Clearfield Oct 9th 1905 in the Recorders office of said County. By
Sheriff deed Book Vol. 153, page 16 which upon examination will more fully appear.

Together With, all and singular, the buildings, improvements, woods, ways,

rights,

liberties, privileges, hereditaments and appurtenances to the same belonging,

or in anywise appertaining, and the

reversion and reversions remainder, and remainders
and also

rents, issues and profits thereof,

and of every part and parcel thereof all the estate, right, title, interest, ~~property~~ of said first party property
possession

claim and demand whatsoever, both in law and equity of the said parties of the first part, of, in
and to the said premises, with the appurtenances: Surface only as the coal & all other
minerals are reserved, and not included in this conveyance with the right of ingress
and egress, and regress to mine and prepare said minerals for market.

To have and to hold The said premises, with all and singular

the appurtenances

unto the said parties of the second parties his
heirs and assigns, to the only proper use benefit, and behoof of the said
parties of the second part, his heirs and assigns forever

And the said Geo. E. Stiner & his wife their

heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said
parties of the second parties his heirs and assigns, forever

that they the said parties of the first part their

heirs, all and singular, the hereditaments and premises hereinabove described and granted, or mentioned and intended so to be,
with the appurtenances unto the said parties of the second part, his

heirs and assigns, against them the said parties
heirs, and against all and every other person or persons
whomsoever lawfully claiming or to claim the same or any part thereof, by from or under them

SHALL and WILL by these presents WARRANT and forever DEFEND.

In Witness Whereof The said parties of the first part to these presents
have hereunto set their hand and seal & Dated the day and year first above written.

Signed, Sealed and delivered

George E. Stiner



In presence of

Ida M. Stiner



John Kirkwood

Justice of Peace

Received the day of the date of the above Indenture of the above named Matthew Novak
Five Hundred & five dollars, the within purchase money.

State of Penna

County of Clearfield, SS

On this Sixth day of October, A. D. 1917, before me, a Justice of the Peace in
and for Clearfield Co. personally appeared the above named Geo. E. Stiner & Ida his
wife and in due form of law acknowledged the above indenture to be their act and deed,
and desired that the same might be recorded as such.

Witness my hand and official seal the day and year aforesaid.

John Kirkwood (Off. Seal)

My Commission Expires First Monday in January 1922.

Entered of record NOV. 16 A.D. 1917

Recorded by *PA. B. O. Hax* Recorder.

5-30 P.M. 7

213-61

DEED

This Indenture,

James L. McGonigal et ux
in
George Stiner

Made the Fourth day of June in the year of our
Lord one thousand nine hundred and Seven Between
James L. McGonigal and Annie his wife of Karthaus
Township, Clearfield County Penna.

of the first part, and
State aforesaid

George Stiner of the township and County and

of the second part: Witnesseth, that the said parties of the first part

for and in consideration of the sum of

One Hundred and eighty three Dollars

lawful money of the United States

of America well and truly paid by the said party of the second part to

the said parties of the first part, at and before the en sealing and delivery of these presents, the
receipt thereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed,
and by these presents doth grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said
party of the second part, his

heirs and assigns,

All that certain tract of land situate in the Township of Karthaus
county of Clearfield and State of Pennsylvania, bounded and described as follows:-
beginning at a stone corner of William Harshbarger on Line of land of I. C. McCloskey,
Thence South 85 3-4° East (54) rods and two feet to a post on public road; thence along
said road South 3 1/2° west (41) rods and eight feet to a post corner of W. M. Coles Land,
North 85 3-4° west (50) perches to stone corner of Harshbarger Lot; thence North along
the same 3 1/2° west (41) Rods and 8 feet to stones and place of beginning containing
14 acres and seventeen rods and 2 feet more or less having thereon erected three small
dwelling houses and three small barns and being the same tract of land that J. P.
Staver, Sheriff of Clearfield county, deeded to J. L. McGonigal by deed dated
No. 359 May term 1904 and September 1905 and recorded at Clearfield Oct. 9th 1905 in
the recorders office of said county in Sheriff deed Book Vol. 153 page 16 which upon
examination will more fully appear.

Together With, all and singular, the buildings, improvements, woods, ways, rights,
liberties, privileges, hereditaments and appurtenances to the same belonging, or in anywise appertaining, and the
reversion and reversions, remainder and remainders, rents, issues and profits thereof,
and of every part and parcel thereof and also on the estate, right, title, interest, property of said first party
Property, possession, claim and demand whatsoever. both, in law and equity of the said parties of the first part, of,
in and to the said premises, with the appurtenances: Surface only as the coal and all
other minerals are reserved and not included in this conveyance with the right of ingress

and egress and regress to mine and to use said minerals for market

To have and to hold The said premises, with all and singular

the appurtenances

unto the said party of the second part, his
heirs and assigns, to the only proper use benefit, and behoof of the said
party of the second part, his heirs and assigns forever

And the said

J. L. McGonigal and his wife, their

heirs, executors and administrators, do by these presents covenant, grant and agree, to and with the said
party of the second part, his heirs and assigns, forever,

that they the said party of the first part their

heirs, all and singular, the hereditaments and premises hereinabove described and granted, or mentioned and intended so to be,
with the appurtenances unto the said party of the second part, his

heirs and assigns, against them the said party of the first part their

heirs, and against all and every other person or persons
whomsoever lawfully claiming or to claim the same or any part thereof, by from or under them

SHALL and WILL by these presents WARRANT and forever DEFEND

In witness whereof The said parties of the first part to these presents

have hereunto set their hands and seals Dated the day and year first above written.

Signed, Sealed and delivered
in presence of
J. Wilson Rauch

J. L. McGonigal
Annie McGonigal



Received the day of the date of the above named Geo. Stiner One hundred and eighty
three dollars the within purchase money.

J. L. McGonigal

State of Pennsylvania)
County of Clearfield,) SS.

On this Fourth day of June A. D. 1907, before me, a Justice of the Peace, in
and for Clearfield county personally appeared the above named J. L. McGonigal and Annie his
wife and in due form of law acknowledged the above indenture to be their act and deed, and desired
that the same might be recorded as such.

Witness my hand and office seal the day and year aforesaid.

J. Wilson Rauch (J. P. Seal) J. P.

My Commission expires May 3, 1909

Entered of record Jan. 26 A. D. 191 6
2-P.M.

Recorded by [Signature] Recorder

Sheriff's Deed

James P. Staver
Shf.

To

James L. McConigal

Know all Men by these Presents,


That I, James P. Staver Sheriff of the County of
Clearfield, in the State of Pennsylvania, for and in consideration of the sum of
One Hundred and Seventy Nine dollars to
me in hand paid, do hereby grant and convey to James L. Mc-

Conigal, of the village of Hartmans, township of Hartmans
County of Clearfield, and state of Pennsylvania, his heirs
and assigns, All that certain tract of land situate in
the township of Hartmans, county of Clearfield, and
State of Pennsylvania, bounded and described as
follows: Beginning at a stone corner of William Hart
barger on line of land of J. L. McCloskey; thence South
85 $\frac{1}{4}$ ° east 54 rods and 2 feet to a post on public road
thence along said road South, 3 $\frac{1}{2}$ ° west 41 rods and
8 feet to a post corner of William Coles land: thence
along Coles land North 85 $\frac{3}{4}$ ° west 50 perches to stone
corner of Hirtsbarger lot: thence North, along the same,
3 $\frac{1}{2}$ ° east 41 rods and 8 feet to stones and place of
beginning, containing 14 acres seventeen rods and
2 feet more or less, having thereon erected three
small dwelling houses and three small barns.

the same having been sold by me to the said grantee, on the 8th day of September Anno Domini one thousand nine hundred and Five after due advertisement according to law, under and by virtue of a Writ Fieri Facias, issued on the 14th day of August Anno Domini 1905 out of the Court of Common Pleas of said County as of September Term one thousand nine hundred and Five Number 116 at the suit of F. P. Neuling

against W. B. Carley


In Witness Whereof, I have hereunto affixed my signature, this — day of September Anno Domini nineteen hundred and Five

James O. Staver 
Sheriff.

Commonwealth of Pennsylvania, ss:

Before the undersigned, Poll B. Thompson Prothonotary of the Court of Common Pleas of Clearfield County, personally appeared James O. Staver Sheriff of Clearfield County aforesaid, and in due form of law declared that the facts set forth in the foregoing deed are true, and that he acknowledged the same in order that said deed might be recorded.

Witness my hand and the seal of said Court this 27th day of September Anno Domini nineteen hundred and Five

Poll B. Thompson 
Prothonotary.

Recorded on the 9th day of Oct A. D. 1905

W. T. DeHaas
Recorder.

and intended to be, with the appearance unto the said
 A. V. Jones. has been and assigns, to and for the only purpose and
 and behalf of the said A. V. Jones has been and assigns, and
 the said George H. Bane, assigns as before and does covenant, promise
 and agree, to and with the said A. V. Jones, has been and assigns, by
 these presents, that he the said George H. Bane, assigns as before, and
 has not done, committed, or knowingly or willingly suffered to
 be done committed, any act matter or thing whatsoever whereby
 the promises hereby granted, or any part thereof, is or shall or may
 be impeached, changed or incumbered, in title, charge, estate or otherwise,
 howsoever. In Witness Whereof, the said George H. Bane, assigns as
 before has hereunto set his hand and seal the day and year above
 written.

Sealed and delivered
 In the presence of
 W. J. Seigler

Geo. H. Bane
 Assign of Jones, Seal and
 Company

Acute County ss

On the seventh day of October, in the year of our Lord one
 thousand eight hundred and ninety-two before me the undersigned
 a Notary Public in and for said County, personally came the
 above named George H. Bane, assign of O. Perry Jones and John C.
 Muel partners trading as Jones, Muel & Company, and acknowledged
 signed the foregoing instrument to his own use, and declared that
 same might be recorded as such. Witness my hand and Notary Public's
 Seal this 10th day of October 1892

Tested of Record Oct. 10, 1892
 Attest by D. R. Fullerton
 Recorder
 to each.

73-35

W. E. W.

Fred. M. Cardon Sheriff

— To —

M. B. Carley

Fred M. Cardon Esquire, High Sheriff
 of the County of Clearfield in the State
 of Pennsylvania To all to
 whom these presents shall come greeting
 Whereas, By virtue of a writ of Fieri
 Facias bearing date the 20. day of
 July A.D. 1890 The said Sheriff was
 commanded that of the goods and

chattel, lands and tenement of William Kennedy the late of
 said County Yeoman in his last will he should cause to be levied
 as well a certain debt of seventy three and three dollars (73 3/4)
 which I. C. McCloskey and son in our County Court of Common
 Pleas of the County of Clearfield before our Judges at Clearfield in
 court against him as also (22 45) dollars like money, which
 to the said Plaintiff in our said County Court was adjudged
 for their damage which to them had accrued by reason of the

30
detection of that debt: and that you should have the money
before our Judges at Clearfield at our County Court of
Common Pleas there to be held for the County of Clearfield on the
first Monday of September to render to the said Plaintiffs
for their debt and damages aforesaid whereof the said defend-
ant was aware at which day before our Judges at Clear-
field you returned that by virtue of the said writ to you di-
rected you had seized and taken in execution a certain tract of land
situate in Northham Township Clearfield County Pennsylvania
bounded and described as follows: All that certain piece or tract
of ground situate in the Township of Northham County of
Clearfield and State of Pennsylvania at a stone corner of
William Hartshorn's lot on line of D.C. Michelskey's land thence
South 85 3/4 degrees East or Road and 2 feet to a post on public
Road thence along said Road South 3 1/2 degrees East 41 Rods and 8 feet
to a post corner of William Cole's land thence along Cole's land North
85 1/2 degrees East 50 poles to stone corner of Hartshorn's lot
thence along the said 3 1/2 degrees East 41 Rods and 8 feet to stone
and place of beginning containing 14 Acres 17 Rods and 2 feet
More or less it being part of the premises with M. Cole
and Lavinia his wife by Indenture bearing date 11 day of December
1876 duly granted and conveyed to Clayton Hooper the same
being recorded in the office for recording of Deeds &c in Clear-
field County Pa in Deed Book No. 16 page 57 and being
part of the same premises that Clayton Hooper and Frances
his wife by Indenture bearing date 16 day of June 1880 duly
granted and conveyed to Joseph Peang the same being recorded
in the office for the recording of deeds at Clearfield in Deed
Book No. 28 pages 641 and 642 and being all the same premises
that Joseph Peang and Sarah his wife assigned to Christian Jui-
nors by assignment bearing date 16 January 1883 same being re-
corded in the office for recording of deeds at Clearfield on the
3 day of October 1883 in deed book No. 28 pages 641 & 642 the
said premises having thereon within stone walls enclosing house
and small stable which remained in hands unsold for want
of buyers and therefore he could not have the money in the said
writ mentioned at the day and place in the said writ specified
as therein he was commanded and that the return of the return
of the said writ appeared in a certain schedule or inquisition returned
purported by which schedule or inquisition it was found that the rent
issues and profits of the above described property in the said
return upon the said writ amounted, was not of a clear yearly one
all beyond all charges sufficient within the space of seven years
to satisfy the debt & damages in the said writ mentioned and
thereon by a certain writ of Vendition & fieri facias issued
out of the Court of Common Pleas of the County of Clearfield on
the 9 day of September Term 1892 No. 315 term. The said Sheriff
returning at Clearfield the 9 day of August one thousand
eight hundred and ninety two return commanding that the

premises above described, with the appurtenances I should have
to sale, and that I should have the money before the Judges at
Oleana at the said Court of Common Pleas for the County of
Oleana then to be held the first Monday of September then next to
render to the said Plaintiff for the debt & damages of money. I
thereupon whereof I the said Sheriff having given due and legal notice
of the time and place of sale, by advertisement in the public newspapers
and by hand bills put up on the premises and in the most public
places in my jurisdiction did on Thursday the eighth day of September
one thousand eight hundred and ninety two in the celebration at the
Court house in the borough of Oleana sell from the said premises
above described with the appurtenances to sale by public auction or outcry
and sold the same to W.B. Carley for the price or sum of Four
hundred and fifty dollars he being the highest and best bidder and
that the highest and best price bidder for the same now known to be
that I the said Fred M. Gordon Esquire High Sheriff of said County
in consideration of the aforesaid sum of Four hundred and fifty dol-
lars to me in hand paid by the said W.B. Carley at and before the
selling and delivery being the receipt whereof I do hereby acknowledge
have granted, bargained and sold, and by these presents, according to
the direction of the said writ and by force and virtue thereof, and
the abolition and Tans of this Commonwealth, in such case made
and provided do grant bargain and sell unto the said W.B.
Carley his heirs and assigns all that certain piece of land bounded
and being as heretofore particularly described together with
all and singular the hereditaments and appurtenant rights, liberties, fran-
chises, hereditaments and appurtenances whatsoever therunto belonging
or in any way appertaining, and the advowsons, vicarages, recto-
ries and profits thereof. To have and to hold all and singular
the hereditaments and premises hereby granted with the appurten-
ances unto the said W.B. Carley his heirs and assigns forever
for them and their only proper use and behoof forever according to
the form, form and effect of the law and usage of this Common-
wealth in such case made and provided. In Witness Whereof I
the said Sheriff have hereunto set my hand and affix my seal the
17th day of September in the year of our Lord one thousand eight hun-
dred and ninety two

Sealed and Delivered
In the presence of
D. F. Hertzberg

F. M. Gordon
Shiff

Received. The day of the date of the above within Due
Poll from the above named W.B. Carley the sum of Four
hundred and fifty dollars being the full consideration money
above mentioned.
F. M. Gordon Shiff

Clerk of Oleana
State of Pennsylvania

The above said piece was acknowledged

open Court of Common Pleas of Clearfield County Pa on the
19 day of September. Cases Docketed are thousand eight hun-
dred and ninety two and entered among the records thereof
in Skiff's Deed Book No. one page 238. Certified under my
hand and the seal of the said Court.

A. M. Bloom

(Seal)

Entered of Record Oct. 11, 1892

Prothonotary

Recorded by

D. R. Fullerton

Recorder

T. E. E. E.

DEED

Michael Dinningy

To

Joseph Solomsky et al.

This Indenture Made the 24.
day of September in the year of
our Lord one thousand eight hun-
dred and ninety two Between Michael
Dinningy and Bridget McHugh
Dinningy his wife of the Village
of Morris Run Township of

County of Perry and State of Penn-

sylvania of the first part, and Joseph Solomsky and Mary Solomsky
of Woodstock Township Clearfield County and State of Pennsylvania
of the second part: Witnesseth, That the said parties of the first
part for and in consideration of the sum of Three hundred and
fifty dollars unto them in hand paid by the said parties of
the second part, at and before the sealing and delivery of these
presente. The receipt and payment of which is hereby acknowledged
warranted, conveyed, and sold herein and confirmed, and
by these presente do grant, bargain and sell release and confirm
unto the said parties of the second part, their heirs and assigns, all
that certain Lot or piece of ground situate in the Borough
of Houtdale the County of Clearfield and State of Pennsylvania
bounded and described as follows viz. Fronting on Street fifty
feet (50) and running one hundred and fifty (150)
feet to Alley known and designated as Lot No. 9, in
the general plan of the said Borough. And being the
same premises conveyed by the Houtdale heirs by their deed
bearing date the 9. day of Nov 1878 to Dennis Fitzgerald
said Deed being recorded in Deed Book No. 16. page 293
in the Office for the Recording of Deeds of Clearfield County
and the same premises which said Dennis Fitzgerald
and wife by deed bearing date the 2. day of April A.D.
1883 conveyed to Michael Dinningy the grantee herein named
said Deed being recorded in Deed Book No. 26 page 89 in the
Recorder's Office of Clearfield County. Excepting and reserving there-
from unto the said parties of the first part their heirs and
assigns all the stone coal and other minerals underlying

Deed

Christian Zimmer

— D —

William Kennedy

This Indenture made the Fifth day of January in the year of our Lord one thousand eight hundred and Eighty four between Christian Zimmer and Augusta his wife of the first part, and William Kennedy of the Township of Snow Shoe County of Centre and State of Pennsylvania of the second part. That the said party of the first part for and in consideration of the sum of Two hundred and 20. dollar lawful money of the United States of America well and truly paid by the said party of the second part to the said party of the first part, and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, conveyed, released, conveyed and confirmed and by these presents do grant bargain, sell, alien, convey, release, convey and confirm unto the said party of the second part his heirs and assigns all that certain tract or piece of land situated in Harthorn Township County of Clearfield and State of Pennsylvania bounded and described as follows viz: Beginning at stone corner of William Harshbarger Lot, on line of L. & M. Chockey's Land, Thence South $85^{\circ}14'$ East, fifty four (54) Rods and 2 feet to post at Duble Road, thence along said road South $31^{\circ}2'$ West forty one and 1/2 Rods and 8 feet to post corner of W. M. Cole's Land, Thence along Cole's Land, North $85^{\circ}14'$ West fifty (50) Rods corner of Harshbarger Lot Thence along the same at $31^{\circ}2'$ East forty one (41) Rods and 8 feet to stone and place of beginning, containing fourteen (14) acres, Seventeen (17) Rods and two (2) feet more or less, It being part of the premises that Harthorn M. Cole and Lavania F. his wife by Indenture bearing date the 11th day of December A.D. 1876 did grant and confirm to Clayton Wooster, the same being recorded in the Office for the recording of deeds at Clearfield in the County of Clearfield in Deed Book No. 16 page 57. and being part of the same premises that Clayton Wooster and Francis his wife by Indenture bearing date the 16th day of June A.D. 1880 did grant and confirm to Joseph Peary, the same being recorded in the Office for the recording of Deeds at Clearfield in Deed Book No. 28. pages 641 & 642. and being all the same premises that Joseph Peary and Sarah his wife assigned to Christian Zimmer by assignment bearing date the 16th day of January A.D. 1883 the same being recorded in the Office for the recording of Deeds at Clearfield on the 3rd day of October A.D. 1883 in Deed Book No. 28. pages 641 & 642 which upon examination will more fully and at large appear together with all and singular the buildings, improvements, woods, ways, rights, liberties, franchises, advowsons and appurtenances to the same belonging or

in any and every appurtenance and the reversions and
 reversion, remainder and remainder rent, issues and
 profits thereof and of every part and parcel thereof and
 also all the estate, right title interest, property, pro-
 portion claim and demand whatsoever, both in law and
 equity of the said party of the first part of in and to
 the said premises, with the appurtenances. Reserving
 and Excepting from all the above described piece
 of land all the minerals under and upon said land
 the same not being granted by this deed to have and
 to hold the said premises, with all and singular the
 appurtenances unto the said party of the second part
 his heirs and assigns to the only proper use benefit and
 behoof of the said party of the second part, his heirs
 and assigns forever. And the said Christian Zimmer for
 himself his heirs executors and administrators does by these
 present covenant grant and agree to and with the
 said party of the second part his heirs and assigns that
 he the said Christian Zimmer and his heirs all
 and singular the benefitments and premises herein
 above described and granted, or mentioned and
 intended to be so with the appurtenances unto the
 said party of the second part, his heirs and assigns
 against them the said Christian Zimmer and his
 heirs and against all and every other person or
 persons whatsoever lawfully claiming or claiming
 the same or any part thereof shall and will by
 these presents warrant and forever defend in these
 things the said parties of the first part to these
 presents have hereunto set their hands and seals.
 Dated the day and year first above written.
 Signed, Sealed and Delivered } Christian Zimmer
 In presence of } Augusta Zimmer
 Alphonse }
 Charles Phares

Received the day of the date of the within Indenture of
 the within named party of the second part. Two hun-
 dred dollars the consideration mentioned within in fee
 Christian Zimmer.

State of Ohio }
 Hamilton County }

On the fifteenth day of January anno Domini
 1884 before me, Charles Phares a Notary Public duly
 commissioned in and for said County personally ap-
 peared the above named Christian Zimmer and Augusta
 Zimmer his wife and in due form of law acknowledged
 the above Indenture to be their and each of them and
 and did and desired the same might be recorded.

as such; and the said Augusta James being of full age and of legal and legal free her said husband by me thereon privately examined and the full content of the above Deed being by me first made known unto her and thereupon asked and say that she did voluntarily and of her own free will and accord sign and seal and as her act and deed, deliver the above written Indenture Deed or conveyance without any coercion or compulsion of her said husband, witness my hand and Notary seal the day and year aforesaid.

Chas. Sharies
Notary Public
Hamilton Co. Ohio

State of Ohio
Hamilton County { Sch.

I, Daniel J. Dalton Clerk of the Court of Common Pleas within and for said County of Hamilton do hereby certify that Chas. Sharies whose name is subscribed to the certificate here attached is and was at the time of subscribing the same a legally acting Notary Public in and for said County of Hamilton duly commissioned and duly qualified that even well acquainted with his handwriting and believe his said signature to be genuine and that he is authorized to take the depositions of witnesses and to administer of oaths &c and that the same is executed according to the laws of Ohio. In Testimony whereof I have hereunto set my hand and affixed the seal of the said Court at Cincinnati this Fifteenth day of January A.D. 1885

Daniel J. Dalton
Clerk N. C. C. P. C.

Entered of Record Aug. 3, 1887
Recorded by Dr. J. Ballington
for East

DEED
Jno. R. Davis assignor
To
R. D. Swoopes

This Indenture made the Eighteenth day of March in the year of our Lord one thousand eight hundred and eighty seven between John Davis of the Borough of Louisville in the County of Jefferson and State of Kentucky assignor of Isaac R. McNeil and Julia C. his wife of Jordan township in said County and State for the benefit of the Creditors of said Isaac R. McNeil and Julia C. his wife and Roland D. Swoopes of the Borough of Cincinnati in the County and State of Ohio party of the one part Whereas Isaac R.

his children and administration does by these presents convey
grant and agree to and with the said party of the second
part his heirs and assigns that he the said Clayton Hooper
and his heirs all and singular the hereditaments and premises
herein above described and granted, or mentioned and included
to be so with the aforementioned party of the second
part his heirs and assigns against him the said Clayton Hooper
and his heirs and against all and every other person or persons
whosoever lawfully claiming or to claim the same or any part
thereof by force or arms or any of them shall and will
by these presents warrant and power defend the title thereof
the said parties of the first part to these presents hereunto
with set our hands and seals Dated the day and year first
above written.

Sealed and Delivered
In presence of
C. Rankin
M. Rankin

Clayton Hooper
Frederic Hooper

Seal
Seal

On the 16th day of June anno Domini 1880 before me personally
appeared the above named Clayton Hooper and Frederic Hooper
his wife and in due form of law acknowledged the above declara-
tion to be their act and each of their acts and deeds and desired
the same might be recorded as such and the said Frederic
Hooper being of full age and separate and apart from her
said husband by me then personally examined under the great
contents of the above declaration being by me first read to her and he
and thereupon declare and say that she did voluntarily and of her
own free will and accord sign seal and as her act and deed
declare the above written declaration true or conveyance with
any concern or compulsion of her said husband witness my
hand and seal the day and year aforesaid

Andrew Rankin

Entered of Record Oct. 3. 1883

28-642

Assignment

Joseph Peary

—Do—

Christian Zimmer
Made in back of in
attention to foregoing
deed

The Joseph Peary and wife Jane
Peary do hereby transfer all our
right title and interest property
possessed claim and demand when
made in the above deed except to
and one half acre (2 1/2) on the
adjoining lands of J. B. McCloskey
which lies and one half acre
sold & deeded to William H. Hays

Range of Hartman Township, Clatsop Co. from the remaining balance of above piece of ground we transfer to Christian Zimmer, of Hartman Township, Clatsop County from for the sum of One hundred and fifty dollars (\$150.00) to be placed in the Registry and delivery of this transfer to the said Christian Zimmer signed this 16. day of January A.D. 1883

Witness Present
Joseph Little (seal)
J. H. Chatham

Joseph Henry (seal)
Sarah Henry (seal)

Be it then known January 16. 1883 of Christian Zimmer, One hundred and fifty dollars consideration for the above in full.
1883-
Joseph Henry

Clatsop County ss

On the 16. day of January current 1883 before me personally appeared the above named Joseph Henry and Sarah Henry his wife and in due form of law with them signed the above Indenture to be this and each of them acts and deeds and showed the same might be recorded as such and the said Sarah Henry being of full age and separate came about from her said husband by me then personally examined and the full contents of the above deed being by me read and made known unto the said Menapere children and saying that she did voluntarily and of her own free will and accord sign seal and as her act and deed claiming the above within Indian title deed or conveyance without any coercion or compulsion of her said husband. Witness my hand and seal the day and year aforesaid at Three Rivers.

H. F. Condit (seal)
J. P.

Entered of Record Oct. 3. 1883
Recorded by

Geo. M. Ferguson
Recorder
J. H. Cook

18-6-41 D.E.C.

Claton Throster and

— Do —

Joseph Peary

This Indenture, made the
day of _____ in the year of
our Lord one thousand eight hun-
dred and Eighty. Between Claton
Throster and Frances his wife of
Kathlamet Township, Clatsop County
and State of Oregon of the one part
and Joseph Peary of the
same County and State of the second part. Witness
all that the said party of the first part for and in consideration
of the sum of One hundred and six by five (\$165) dollars lawful
money of the United States of America well and lawfully paid by the
said party of the second part to the said party of the first part
at and before the making and delivery of these presents the
receipt whereof is hereby acknowledged have granted bargained
sold aliened conveyed released conveyed and confirmed and by
these presents do grant bargain sell alien convey release con-
vey and confirm unto the said party of the second part his
heirs and assigns all that certain messuage or tenement con-
tained of land situate in Kathlamet Township Clatsop County
and State of Oregon bounded and described as follows to-
wiz Beginning at a post on the James W. Lehigh Thence East sev-
enty five (75) feet to a stone corner and the Township road thence
South along the Township road and George Erickson's line
forty two (42) feet and Eleven (11) feet to stone corner thence
West seventy five (75) feet to a Black Oak corner on
line of John Richards thence North forty two (42) feet
and Eleven (11) feet to a post and place of beginning Com-
mencing Thence (20) feet to being the same premises which
thence Mr. Cook and Francis A. his wife by Indenture
bearing date the Eleventh day of December 1880 one thousand
eight hundred and seventy six for the consideration Thence
thence and grant and confirm to the said Claton
Throster (party first) his heirs and assigns forever as in
and by the said indenture recorded in the
Office for the recording of claims at Clatsop in and
for the County of Clatsop in Deed Book No. six ten
page fifty seven relation being thereunto here more
fully and at large appears. Together with all and singular
the buildings improvements woods ways rights liberties privi-
leges hereditaments and appurtenances to the same belonging
in anywise appertaining and the reversion and reversions
remainder and remainders whosoever shall or may profit therefrom
of any part and parcel thereof and also all the estate
rights title interest property possession claim and demands
whichever both in law and equity of the said party of the first
part then and to the said premises with the appurtenances re-
serving and Excepting out of and from all of the above
described piece of land all minerals under and upon the
described premises the same not being granted by this

done. To have and to hold the said premises with all its appurtenances unto the said party of the second part his heirs and assigns to the only proper use benefit & behoof of the said party of the second part his heirs and assigns forever and the said Colston Woods for himself his heirs and administrators along by these presents covenanted and agreed to and with the said party of the second part his heirs and assigns that he the said Colston Woods and his heirs and assigns the conditions and premises hereafter described and granted, or mentioned and to be so with the appurtenances unto the said party of the second part his heirs and assigns against him the said Colston Woods and his heirs and assigns all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof by him or under them or any of them shall ever well by these presents warrant and power confirm. In witness whereof the said parties of the first part to these presents have hereunto set their hands and seals dated the day and year first above written.

Severin Seabrook Esq. Solicitor
In presence of
A. R. Ricketts
M. C. Ricketts

Colston Woods
Frederic Woods
Sesal
Sesal

On the 16th day of June anno Domini 1880 before me personally appeared the above named Colston Woods and Frederic Woods his wife and in due form of law acknowledged the above instrument to be their act and deed and each of them and each declared that the same might be recorded as such and the said Frederic Woods being of full age and separate and apart from her said husband by me then personally examined under the pains and penalties of the above then being by me first made known unto her and thereupon declared and said that she did voluntarily and of her own free will and accord sign seal and assent as her act and deed before the above written Solicitation Clerk or carrying away without any coercion or compulsion of her said husband. Witness my hand and seal the day and year aforesaid.

Entered of Record Oct. 3. 1883

Andrew Ricketts Sesal

Assignment
Joseph Peary
Do

Christian Zimmer
Made in back of a
allusion to foregoing

The Joseph Peary and wife Sarah Peary do hereby transfer all our right title and interest property personal and real unto and demand what is due in the above claim Except the one half acres (2 1/2) we have our property claims of J. B. M. C. Ricketts which has been one half acres and 2000 & D. . . .

Do have and to hold the said piece of land hereditaments and premises hereby granted or mentioned and intended as to be with

thereunto belonging unto the said Clayton Hooster his heirs and assigns, to and for the only proper use, and behoof of the said Clayton Hooster his heirs and assigns forever,

And the said Wharton M. Cole for himself and his heirs, executors and administrators, doth by these presents covenant, grant and agree to and with the said Clayton Hooster his heirs and assigns,

that they the said Wharton M. Cole and his heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended as to be with the appurtenances, unto the said Clayton Hooster and his heirs and assigns, against them the said Wharton M. Cole and his

heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by force or under them or any of them SHALL and WILL by these presents WARRANT and forever DEFEND.

In Witness Whereof, the said part do. to these presents have hereunto interchangedly set their hand and seal 3 Dated the day and year first above written.

Sealed and delivered in the presence of us
 A. Rankin Wharton M. Cole
 Henry Ischman Laura M. Cole
 2000

Received, the day of the date of the within named Clayton Hooster the sum of Two hundred and fifty dollars the consideration mentioned in full

Witness: Wharton M. Cole Seal

Clayton County SS

On the 11th day of December Anno Domini 1876 before me a Justice of the Peace in and for said County personally appeared the above named Wharton M. Cole and Laura his wife and under force of law acknowledged the above indenture to be their own and each of them act and deed, and desired the same might be recorded as such, and the said Laura being of full age and separate and apart from her said husband by me thereon privately examined and the full contents of the above deed being by me first made known unto her did then upon declare and say that she did voluntarily and of her own free will and accord sign, seal and as her act and deed deliver the above within indenture, deed, or conveyance without any coercion or compulsion of her said husband Witness my hand and official seal the day and year of aforesaid.

A. Rankin

I hereby Certify that the above Deed was duly

Recorded May 17th A. D., 1880

L. J. Morgan Recorder.
 per E. K.

343

343

DEED.

Jacob C. Michaels Trustee.

To

William Michaels wife
Wharton Cook

This Indenture,

Made the thirteenth day of July in the year of our
Lord one thousand eight hundred and seventy
Between
Jacob C. Michaels, Trustee of the Herminette association
for the use of Sarah Michaels wife of William Michaels and
the said Sarah Michaels and William her husband and all of
Knox Township, Berks County, Pennsylvania.

of the one part, and Wharton Cook of Belmont County, Ohio

of the other part: Witnesseth, That the said parties of the first part
for and in consideration of the sum of Five Hundred
Dollars lawful money of the United States
of America, unto them well and truly paid by the said Wharton Cook

at and before the sealing and delivery of these presents, the receipt
whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released,
these presents and confirmed, and by
these presents do grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said Wharton Cook his
heirs and assigns, all that certain

piece of land, Situate in the Township of Knox and County of Berks
aforesaid, being part of a larger tract of land, surveyed in pursuance of a warrant
numbered No 4023 and being bounded and described as follows, Beginning at a
White Oak, thence West twenty five rods to a stone at South East corner of John
Michaels land, thence North one hundred and forty rods to a Post, thence East
along James Vazzy's line, twenty five rods to a post, thence South along line
of George Conway and the public road one hundred and forty rods to White Oak
place of beginning, containing sixty five acres and one hundred acres
and being same premises conveyed from Seabird B. Barger Administrative
of Seabird B. Barger by Deed dated July 29th A.D. 1869, to said William Michaels
and further conveyed from said William Michaels and Sarah his wife to said
Jacob C. Michaels by assignment dated the day of July A.D. 1869, for the
use and use of the said Sarah, which said Deed and assignment in Belmont
County aforesaid in Deed Book 190 page 120

Together with all and singular, the hereditaments improvements ways water water rights, liberties,
privileges, hereditaments and appurtenances, whatsoever thereto belonging, or in any wise appertaining, and the reversion
and remainder, rents issues and profits thereof,

all the estate, right, title, interest, property
claim and demand whatsoever, affili part of the first part in law equity or otherwise how
soever of, in, and to the same and every part thereof.

To have and to hold the said Place of Land Pennsylvania and premises hereby granted
on condition and intention as to be with the appurtenances,
thereunto belonging unto the said Wharton heir his
heirs and assigns, to the only proper use, and behoof of the said Wharton heir his
heirs and assigns forever.

And the said Jacob L. Michaels, Trustee William Michaels for themselves their
heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said Wharton heir his
that they the said Jacob L. Michaels, Trustee and William Michaels their
heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be
with the appurtenances, unto the said Wharton heir his
heirs, and assigns, against themselves the said Jacob L. Michaels, Trustee and William Michaels
their heirs, and against all and every other person or persons,
whosoever lawfully claiming or to claim the same or any part thereof, by force or arms, them or any of them
SHALL and WILL WARRANT and forever DEFEND.

In Witness Whereof, the said parties to these presents here hereunto
interchangeably set their hand's and seals Dated the day and year first above written.

Sealed and Delivered
in the presence of us

Daniel Myers
May Cass

Jacob L. Michaels
Sarah Michaels
William Michaels



Review the day of the act of the within or foregoing signature of the person named
Wharton heir his the sum of Six thousand dollars in full of the within mentioned consideration
Witness
Daniel Myers Sarah Michaels

State of Pennsylvania
County of Berks

On the first day of August Anno Domini 1870, before
me the Subscriber personally appeared Jacob L. Michaels, Trustee and Sarah Michaels
and William Michaels her husband, and in and from of law acknowledged the above indenture
to be their and each of their act and deed and avowed the same might be received
as such, and the said Sarah being of full age and separate and apart from her
said husband by me then or privately examined and the full contents of the
above Deed being by me first made known unto her, and thereupon she did
say that she did voluntarily and of her own free will and accord sign and seal
and her act and deed deliver the above written indenture, Deed or Conveyance
without any coercion or compulsion of her said husband, Witness my hand and
seal the day and year above said.

I hereby Certify that the above Deed was duly stamped with U. S. Revenue
Stamps, as required by law. Recorded February 2 A. D., 1871

Chas. L. Loe Recorder.
per 1115

their heirs or assigns to and for the only proper use and memory of the said W. H. Morrell and Andrew Addleman their heirs or assigns forever. And the said Mossof and his heirs the said interest in the said premises being the one undivided one third therein having assigned with the appurtenances unto the said W. H. Morrell - Andrew Addleman their heirs and assigns against the said Richard Mossof and his heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the said interest by from or under him them or any of them shall and will warrant and forever defend in writing whereof the said parties to these presents have hereunto interchangably set their hands and seals this 24 day of August 1869

Richard Mossof *[Signature]*
Margaret Mossof *[Signature]*

Before me a Justice of the Peace in for said County personally came the above named Richard Mossof & Margaret his wife and in due form of law acknowledged this assignment to be their act and deed that the same might be recorded. And the said Margaret being of full age & by me examined separate and apart from her husband the contents hereof being first made known by me unto her did say that she did voluntarily and of her own free will and accord sign seal & deliver this assignment without coercion or compulsion of her husband In testimony whereof I have hereunto set my hand and seal this 24 day of August 1869

Wm Porter *[Signature]*
Jr

Above said and assignment duly stamped according to Law. Entered of Record August 24th AD 1869. Recorded by

audu

Recorder

PD

520

目 任 任 目

Isaiah B Barger
Administrator of
Isaac Price
to
William Michael

This Indenture made the twenty ninth day of July Anno Domini one thousand eight hundred and sixty nine. Between Isaiah B Barger of the Town of Clearfield. County of Clearfield. Pennsylvania, Administrator of all and singular the goods and chattels rights and credits of Isaac Price late of Barthaus Township County and State of said deceased, of the one part and William Michael of the last mentioned place of the other part. Whereas the said Isaac Price by divers good conveyances and assurances duly executed became in his lifetime lawfully seized in fee of a certain tract of land situated in Barthaus Township Clearfield County Pennsylvania bounded by lands of John Michals James Mzels George Bonoway and others containing six by five acres and one hundred perches and being thereof seized did on the 12th day of June AD one thousand eight hundred and sixty eight by his contract in writing agree and

his act and deed and desired the same might be recorded as such
Witness my hand and seal the date above written.

John H. Hugert
Justice of the Peace

Assignment
Wm Michaels
To
Jacob Michaels
on back of fore-
going deed

Know all men by these presents that William Michaels the
grantee within named and Sarah his wife for and in con-
sideration of the sum of one dollar to them in hand paid
by Jacob Michaels of Clearfield County Pennsylvania in trust for
Sarah Michaels wife of William Michaels at and before the in-
sealing and delivery hereof, the receipt whereof is hereby acknowl-
edged, have granted, bargained, sold, assigned and set over unto
the said Jacob Michaels in trust for said Sarah Michaels her
heirs and assigns all that the within mentioned messuage
tenement and tract of land together with all and singular
the rights, members and appurtenances, whatsoever thereto
belonging or in anywise appertaining, and the recessions
and remainders, rents, issues and profits thereof, to have and
to hold the said messuage tenement and tract of land
in trust nevertheless for the use of the said Sarah Michaels
wife of William Michaels her heirs and assigns for the sole
proper use and behoof of the said Jacob Michaels in trust
nevertheless for the use of the said Sarah Michaels her heirs
and assigns forever. In witness whereof the said parties to the
presents have hereunto set their hands and seals this 19th
day of August A.D. 1869 one thousand eight hundred and sixty
nine.

Witness
Jacob Michaels

William Michaels
Sarah Michaels

State of Pennsylvania
County of Clearfield

On the 19th day of August A.D. 1869
before me a Justice of the Peace in and for said County per-
sonally appeared the above named William Michaels and
Sarah his wife and in due form of law, acknowledged the
above Indenture to be their act and deed and desired the same
might be recorded as such. The said Sarah being of full age and
able and apart from her said by me thereon, privately examined and
the full content of the foregoing Indenture being by me first made
known unto her did thereupon declare and say that she did enter
untarried and of her own free will sign, seal and, as her act and deed
deliver the same without any coercion or compulsion of her
said husband. Witness my hand and seal the day and year above written.

Daniel Morris

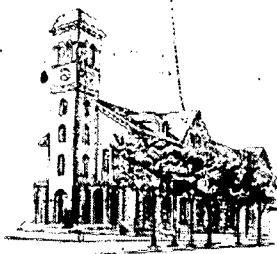
Above deeds duly stamped according to law.

Entered of Record August 24th 1869. Recorded by

FILED

SEP 05 2007

William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

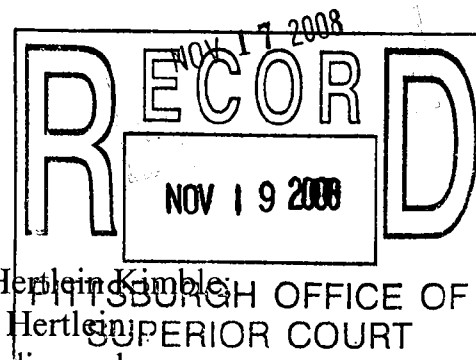
Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

November 4, 2008

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219



RE: Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein; Kimble
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein

vs

River Hill Coal Company, Inc., a Pennsylvania Corporation
and Leitzinger Land Company, Inc.
No. 2007-1448-CD
Superior Court No. 1254 WDA 2008

Dear Prothonotary:

Enclosed you will find a supplement to the above referenced record
appealed to your office.

Sincerely,

William A. Shaw
Prothonotary

Add'l (1)
page
reword

1254 WDA 2008

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

Eva Jane Hertlein Edith M. Hertlein
Patsy L. Hertlein Kimble
Frank T. Hertlein Jr. Glenn R. Hertlein
Timothy L. Hertlein
Louise E. Hertlein Kirkwood
G. Lee Hertlein Frank T. Hertlein
Ivy E. Hertlein

Vs.

Case No. 2007-01448-CD


River Hill Coal Company, Inc.
Leitzinger Land Company, Inc.

CERTIFICATE OF CONTENTS

NOW, this 4th day of November, 2008, the undersigned, Prothonotary or Deputy Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, the said Court of record, does hereby certify that attached is the original record of the case currently on Appeal.

An additional copy of this Certificate is enclosed with the original hereof and the Clerk or Prothonotary of the Superior Court is hereby directed to acknowledge receipt of the Appeal Record by executing such copy at the place indicated by forthwith returning the same to this Court.

By:



William A. Shaw, Prothonotary

Record, Etc. Received:

Date: _____

(Signature & Title)

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(c)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the Court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

2007-1448-CD

Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein

Vs.

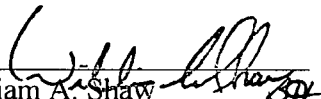
River Hill Coal Company, Inc., a Pennsylvania Corporation
and

Leitzinger Land Company, Inc.

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from No. 23 to 30, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is
November 4, 2008.


William A. Shaw
Prothonotary/Clerk of Courts

Date: 11/4/2008

Time: 04:16 PM

Page 1 of 3

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

Eva Jane Hertlein, et alvs.River Hill Coal Company, Inc., et al

Civil Other-COUNT

Date		Judge
9/5/2007	New Case Filed.	No Judge
	Filing: Complaint-Action for Declaratory Judgment, situated in Karthaus Township Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920556 Dated: 09/05/2007 Amount: \$85.00 (Check) 3CC Atty.	No Judge
10/4/2007	Filing: Praeipce to Reinstate Complaint Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920930 Dated: 10/04/2007 Amount: \$7.00 (Check) Filed by s/ James A. Naddeo, Esquire 1 Compl. reinstated to Sheriff	No Judge
10/8/2007	Praeipce For Entry of Appearance, filed on behalf of Leitzinger Land Company, Inc., filed by s/ Peter F. Smith, Esquire. No CC	No Judge
	Certificate of Service, copy of the Praeipce For Entry of Appearance served upon James A. Naddeo and David S. Ammerman by First Class Mail on 10-5-07. No CC	No Judge
10/23/2007	Certificate of Service, filed. That a true and correct copy of Important Notice was served on River Hill Coal Company on the 12th day of October 2007 by certified mail, filed by s/ James A. Naddeo Esq. 1CC Atty.	No Judge
10/24/2007	Certificate of Service, filed. Served a true and correct copy of the Answer filed on behalf of Leitzinger Land Co. Inc. by first class mail on James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge
	Answer Filed on Behalf of Leitzinger Land Co., Inc., filed by s/ Peter F. Smith, Esquire. 3CC Atty. P. Smith	No Judge
11/2/2007	Praeipce For Entry of Appearance, filed on behalf of River Hill Coal Company, Inc. Filed by s/ David S. Ammerman, Esquire. No CC	No Judge
	Certificate of Service, filed. Served a true and correct copy of the Praeipce for Entry of Appearance filed in this matter on Peter F. Smith Esq and James A. Naddeo Esq by first class mail, filed by s/ David S. Ammerman Esq. No CC.	No Judge
1/23/2008	Sheriff Return, September 20, 2007 at 1:44 pm Served the within Complaint for Declaratory Judgment on River Hill Coal Company Inc by handing to Ger Wood.	No Judge
	October 2, 2007 at 1:31 pm Served the within Complaint for Declaratory Judgment on Leitzinger Land Company Inc. by handing to James Leitzinger So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Naddeo \$62.96	No Judge
2/25/2008	Answer filed on behalf of River Hill Coal Company, Inc. filed by Atty. Ammerman 3 Cert. to Atty.	No Judge
	Certificate of Service, filed by Atty. Ammerman no cert. copies. Served copy of Answer on Atty. Naddeo & Atty. Smith.	No Judge
4/24/2008	Motion For Hearing, filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
4/29/2008	Order, this 25th day of April, 2008, this case will be heard before the Court on the 16th day of May, 2008, at 1:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Naddeo	Paul E. Cherry
4/30/2008	Certificate of Service, a certified copy of Motion for Hearing was served upon David S. Ammerman, Esquire, and Peter F. Smith, Esquire, by First-Class Mail on the 30th day of April, 2008. Filed by s/ James A. Naddeo, Esquire. No CC	Paul E. Cherry

Date: 11/4/2008

Time: 04:16 PM

Page 2 of 3

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

Eva Jane Hertlein, et alvs. River Hill Coal Company, Inc., et al

Civil Other-COUNT

Date		Judge
5/19/2008	Order, this 16th day of May, 2008, following hearing on the action for declaratory judgment, it is Ordered that counsel provide the Court with appropriate letter brief by no later than June 6, 2008. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys; Naddeo, D. Ammerman, P. Smith	Paul E. Cherry
7/14/2008	Motion for Reconsideration, filed by s/James A. Naddeo, Esq. Two CC Attorney Naddeo	Paul E. Cherry
7/28/2008	Filing: Notice of Appeal to High Court Paid by: Naddeo, James A. (attorney Paul E. Cherry for Hertlein, Eva Jane) Receipt number: 1925150 Dated: 7/28/2008 Amount: \$50.00 (Check) filed by s/James A. Naddeo, Esq. Six CC Attorney Naddeo One CC and check for \$60.00 to Superior Court	
7/30/2008	Order, AND NOW, this 29th day of July 2008, it is the ORDER of this Court that Status Conference with regard to this matter shall be and is hereby scheduled for the 8th day of August 2008, beginning at 9:00 a.m. in Judge's Chambers, of the Clearfield County Courthouse, Clearfield PA. BY THE COURT: /s/ Paul E. Cherry, Judge. 1CC Atty Naddeo, D. Ammerman and P Smith. (original to 06-903-CD)	Paul E. Cherry
8/11/2008	Appeal Docket Sheet, filed. No CC 1254 WDA 2008	Paul E. Cherry
9/4/2008	Transcript of Proceedings, with Exhibits, filed. Evidentiary Hearing, held before Paul E. Cherry, Judge, on May 16, 2008. Notice, if no objections are made to the text of the transcript within five days after such notice, the transcript will become part of the record upon being filed in the Prothonotary's Office. Filed by s/ Thomas D. Snyder, Court Reporter.	Paul E. Cherry
9/23/2008	September 23, 2008, Mailed Appeal to Superior Court. September 23, 2008, Letters, Re: Notification of mailing appeal mailed to James A. Naddeo, Esq; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931 (c).	Paul E. Cherry
	September 23, 2008, Mailed Appeal to Superior Court. September 23, 2008, Letter to Superior Court, Re: Appeal Mailed.	Paul E. Cherry
9/30/2008	Certificate of Contents, original record sent to superior Court on Sept. 23, 2008, and received by Superior Court on Sept. 25, 2008.	Paul E. Cherry
10/27/2008	Order, AND NOW, this 24th day of October, 2008, the Court being cognizan of defects in above-captioned case it is the Order of this Court as follows: 1. This Court's Order of June 27, 2008, filed to civil term and number 06-903-CD on the same date shall be filed to the above term and number. 2. The Prothonotary is directed to enter judgment in the above-captioned case in favor of Defendants and against Plaintiffs. 3. This Court's Order of July 29, 2008, filed to civil term and number 06-903-CD on July 30, 2008, shall be filed to the above term and number. 4. Appellants Concise Statement of Matters Complained of on appeal filed c August 20, 2008, to civil term and number 06-903-CD shall be filed to the above term and number by the Appellant. BY THE COURT: /s/Paul E. Cherry, Judge Three CC Attorney Naddeo	Paul E. Cherry

Civil Other-COUNT

Date	Judge
10/27/2008	Paul E. Cherry
Order, this 27th day of June, 2008, AGAIN, this court finds the approximate 20 acres conveyed to Clayton Wooster in 1876 was excluded from the 1950 lease agreement Frank Hertlein, Leitzinger Bros. Realty Company and Edward Redding. By The Court, /s/ Paul E. Cherry, Judge. Filed per Court Order of October 24, 2008.	
Order AND NOW, this 29th day of July 2008, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above captioned matter, it is the ORDER of this Court that Appellant file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days therefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure. Statement shall be filed of record and shall be served upon the Judge pursuant to paragraph (b)(1). Any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived. BY THE COURT: /s/ Paul E. Cherry, Judge. Filed per Court Order of October 24, 2008.	
10/29/2008	Paul E. Cherry
Praeipce to Enter Orders and Judgment, filed by Atty. Naddeo, 4 Cert. to Atty. Enter Order dated the 27th day of June, 2008 and Order dated the 29th day of July, 2008 to case number 06-903-CD. Judgment entered in favor of Defendants and against Plaintiffs	
Plaintiffs' Concise Statement of Matters Complained of on Appeal, filed by Atty. Naddeo 3 Cert. to Atty.	
11/4/2008	Paul E. Cherry
November 4, 2008, Mailed Supplement to Appeal to Superior Court. November 4, 2008, Letters, Re: Notification of mailing supplement to appeal mailed to James A. Naddeo, Esq.; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	

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

NOV 04 2008

Attest.

William L. Davis
Prothonetary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1448-CD

*Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein*

Vs.

*River Hill Coal Company, Inc., a Pennsylvania Corporation
and*

Leitzinger Land Company, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
23	09/23/2008	Letter to Superior Court, Re: Appeal Mailed September 23, 2008	05
24	09/30/2008	Certificate of Contents	01
25	10/27/2008	Order, Re: defects in case, Orders of June 27, 2008, and July 29, 2008, filed to 06-903-CD be filed to 07-1448-CD. Judgment entered. Appellants Concise Statement to be filed to 07-1448-CD by Appellant	02
26	10/27/2008	Order of June 27, 2008, Re: acreage excluded	01
27	10/27/2008	Order of July 29, 2008, Re: concise statement to be filed	01
28	10/29/2008	Praecipe to Enter Orders and Judgment	07
29	10/29/2008	Plaintiffs' Concise Statement of Matters Complained of on Appeal	05
30	11/04/2008	Letters, Re: Notification of mailing supplement to appeal mailed to James A. Naddeo, Esq.; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	06

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1448-CD

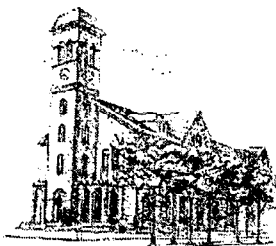
*Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein*

Vs.

*River Hill Coal Company, Inc., a Pennsylvania Corporation
and*

Leitzinger Land Company, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	09/05/2007	Complaint-Action for Declaratory Judgment	81
02	10/04/2007	Praecipe to Reinstate Complaint	02
03	10/08/2007	Praecipe for Entry of Appearance	01
04	10/08/2007	Certificate of Service	01
05	10/23/2007	Certificate of Service	03
06	10/24/2007	Certificate of Service	01
07	10/24/2007	Answer filed on behalf of Leitzinger Land Co., Inc.	05
08	11/02/2007	Praecipe for Entry of Appearance	01
09	11/02/2007	Certificate of Service	01
10	01/23/2008	Sheriff Return	03
11	02/25/2008	Answer filed on behalf of River Hill Coal Company	05
12	02/25/2008	Certificate of Service	01
13	04/24/2008	Motion for Hearing with Order scheduling hearing filed April 29, 2008	04
14	04/30/2008	Certificate of Service	02
15	05/19/2008	Order, Re: counsel to file appropriate letter brief	01
16	07/14/2008	Motion for Reconsideration	14
17	07/28/2008	Notice of Appeal to High Court	10
18	07/30/2008	Order, Re: Status Conference scheduled (Certified copy-original filed to 06-903-CD)	02
19	08/11/2008	Appeal Docket Sheet, 1254 WDA 2008	06
20	09/04/2008	Transcript of Proceedings with Exhibits, Re: Evidentiary Hearing held before Paul E. Cherry, Judge, on May 16, 2008	Separate Cover
21	09/04/2008	Notice, Re: Objections to Transcript	01
22	09/23/2008	Letters, Re: Notification of mailing appeal mailed to James A. Naddeo, Esq; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931 (c).	04
		Appeal Mailed to Superior Court September 23, 2008	



Clearfield County Office of the Prothonotary and Clerk of Courts

COPY

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

Paul E. Cherry, Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

James A. Naddeo, Esq.
PO Box 552
207 East Market St.
Clearfield, PA 16830

David S. Ammerman, Esq.
310 East Cherry Street
Clearfield, PA 16830

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

Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein

Vs.

River Hill Coal Company, Inc., a Pennsylvania Corporation
and
Leitzinger Land Company, Inc.

Court No. 07-1448-CD; Superior Court No. 1254 WDA 2008

Dear Counsel:

Please be advised that a supplement to the above referenced record was forwarded
to the Superior Court of Pennsylvania on November 4, 2008.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED
014:00874
NOV 04 2008

William A. Shaw
Prothonotary/Clerk of Courts

#30

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1448-CD

*Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein*

Vs.

*River Hill Coal Company, Inc., a Pennsylvania Corporation
and*

Leitzinger Land Company, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
23	09/23/2008	Letter to Superior Court, Re: Appeal Mailed September 23, 2008	05
24	09/30/2008	Certificate of Contents	01
25	10/27/08	Order, Re: defects in case, Orders of June 27, 2008, and July 29, 2008, filed to 06-903-CD be filed to 07-1448-CD. Judgment entered. Appellants Concise Statement to be filed to 07-1448-CD by Appellant	02
26	10/27/08	Order of June 27, 2008, Re: acreage excluded	01
27	10/27/08	Order of July 29, 2008, Re: concise statement to be filed	01
28	10/29/08	Praecipe to Enter Orders and Judgment	07
29	10/29/08	Plaintiffs' Concise Statement of Matters Complained of on Appeal	05

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1448-CD

**Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein**

Vs.

**River Hill Coal Company, Inc., a Pennsylvania Corporation
and
Leitzinger Land Company, Inc.**

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
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05	10/23/2007	Certificate of Service	03
06	10/24/2007	Certificate of Service	01
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08	11/02/2007	Praecipe for Entry of Appearance	01
09	11/02/2007	Certificate of Service	01
10	01/23/2008	Sheriff Return	03
11	02/25/2008	Answer filed on behalf of River Hill Coal Company	05
12	02/25/2008	Certificate of Service	01
13	04/24/2008	Motion for Hearing with Order scheduling hearing filed April 29, 2008	04
14	04/30/2008	Certificate of Service	02
15	05/19/2008	Order, Re: counsel to file appropriate letter brief	01
16	07/14/2008	Motion for Reconsideration	14
17	07/28/2008	Notice of Appeal to High Court	10
18	07/30/2008	Order, Re: Status Conference scheduled (Certified copy-original filed to 06-903-CD)	02
19	08/11/2008	Appeal Docket Sheet, 1254 WDA 2008	06
20	09/04/2008	Transcript of Proceedings with Exhibits, Re: Evidentiary Hearing held before Paul E. Cherry, Judge, on May 16, 2008	Separate Cover
21	09/04/2008	Notice, Re: Objections to Transcript	01
22	09/23/2008	Letters, Re: Notification of mailing appeal mailed to James A. Naddeo, Esq; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931 (c).	04
		Appeal Mailed to Superior Court September 23, 2008	

Eva Jane Hertlein, et alvs.River Hill Coal Company, Inc., et al

Civil Other-COUNT

Date		Judge
9/5/2007	New Case Filed.	No Judge
	Filing: Complaint-Action for Declaratory Judgment, situated in Karthaus Township Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920556 Dated: 09/05/2007 Amount: \$85.00 (Check) 3CC Atty.	No Judge
10/4/2007	Filing: Praeipce to Reinstate Complaint Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920930 Dated: 10/04/2007 Amount: \$7.00 (Check) Filed by s/ James A. Naddeo, Esquire 1 Compl. reinstated to Sheriff	No Judge
10/8/2007	Praeipce For Entry of Appearance, filed on behalf of Leitzinger Land Company, Inc., filed by s/ Peter F. Smith, Esquire. No CC	No Judge
	Certificate of Service, copy of the Praeipce For Entry of Appearance served upon James A. Naddeo and David S. Ammerman by First Class Mail on 10-5-07. No CC	No Judge
10/23/2007	Certificate of Service, filed. That a true and correct copy of Important Notice was served on River Hill Coal Company on the 12th day of October 2007 by certified mail, filed by s/ James A. Naddeo Esq. 1CC Atty.	No Judge
10/24/2007	Certificate of Service, filed. Served a true and correct copy of the Answer file on behalf of Leitzinger Land Co. Inc. by first class mail on James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge
	Answer Filed on Behalf of Leitzinger Land Co., Inc., filed by s/ Peter F. Smith, Esquire. 3CC Atty. P. Smith	No Judge
11/2/2007	Praeipce For Entry of Appearance, filed on behalf of River Hill Coal Company, Inc. Filed by s/ David S. Ammerman, Esquire. No CC	No Judge
	Certificate of Service, filed. Served a true and correct copy of the Praeipce f Entry of Appearance filed in this matter on Peter F. Smith Esq and James A Naddeo Esq by first class mail, filed by s/ David S. Ammerman Esq. No CC.	No Judge
1/23/2008	Sheriff Return, September 20, 2007 at 1:44 pm Served the within Complaint for Declaratory Judgment on River Hill Coal Company Inc by handing to Ger Wood.	No Judge
	October 2, 2007 at 1:31 pm Served the within Complaint for Declaratory Judgment on Leitzinger Land Company Inc. by handing to James Leitzinger So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Naddeo \$62.96	
2/25/2008	Answer filed on behalf of River Hill Coal Company, Inc. filed by Atty. Ammerman 3 Cert. to Atty.	No Judge
	Certificate of Service, filed by Atty. Ammerman no cert. copies. Served copy of Answer on Atty. Naddeo & Atty. Smith.	No Judge
4/24/2008	Motion For Hearing, filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
4/29/2008	Order, this 25th day of April, 2008, this case will be heard before the Court on the 16th day of May, 2008, at 1:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Naddeo	Paul E. Cherry
4/30/2008	Certificate of Service, a certified copy of Motion for Hearing was served upo David S. Ammerman, Esquire, and Peter F. Smith, Esquire, by First-Class Mail on the 30th day of April, 2008. Filed by s/ James A. Naddeo, Esquire. No CC	Paul E. Cherry

Civil Other-COUNT

Date		Judge
5/19/2008	Order, this 16th day of May, 2008, following hearing on the action for declaratory judgment, it is Ordered that counsel provide the Court with appropriate letter brief by no later than June 6, 2008. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys; Naddeo, D. Ammerman, P. Smith	Paul E. Cherry
7/14/2008	Motion for Reconsideration, filed by s/James A. Naddeo, Esq. Two CC Attorney Naddeo	Paul E. Cherry
7/28/2008	Filing: Notice of Appeal to High Court Paid by: Naddeo, James A. (attorney Paul E. Cherry for Hertlein, Eva Jane) Receipt number: 1925150 Dated: 7/28/2008 Amount: \$50.00 (Check) filed by s/James A. Naddeo, Esq. Six CC Attorney Naddeo One CC and check for \$60.00 to Superior Court	
7/30/2008	Order, AND NOW, this 29th day of July 2008, it is the ORDER of this Court that Status Conference with regard to this matter shall be and is hereby scheduled for the 8th day of August 2008, beginning at 9:00 a.m. in Judge's Chambers, of the Clearfield County Courthouse, Clearfield PA. BY THE COURT: /s/ Paul E. Cherry, Judge. 1CC Atty Naddeo, D. Ammerman and P Smith. (original to 06-903-CD)	Paul E. Cherry
3/11/2008	Appeal Docket Sheet, filed. No CC 1254 WDA 2008	Paul E. Cherry
3/4/2008	Transcript of Proceedings, with Exhibits, filed. Evidentiary Hearing, held before Paul E. Cherry, Judge, on May 16, 2008. Notice, if no objections are made to the text of the transcript within five days after such notice, the transcript will become part of the record upon being filed in the Prothonotary's Office. Filed by s/ Thomas D. Snyder, Court Reporter.	Paul E. Cherry
3/23/2008	September 23, 2008, Mailed Appeal to Superior Court. September 23, 2008, Letters, Re: Notification of mailing appeal mailed to James A. Naddeo, Esq; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931 (c).	Paul E. Cherry
	September 23, 2008, Mailed Appeal to Superior Court. September 23, 2008, Letter to Superior Court, Re: Appeal Mailed.	Paul E. Cherry
3/30/2008	Certificate of Contents, original record sent to superior Court on Sept. 23, 2008, and received by Superior Court on Sept. 25, 2008.	Paul E. Cherry
10/27/2008	Order, AND NOW, this 24th day of October, 2008, the Court being cognizan of defects in above-captioned case it is the Order of this Court as follows: 1. This Court's Order of June 27, 2008, filed to civil term and number 06-903-CD on the same date shall be filed to the above term and number. 2. The Prothonotary is directed to enter judgment in the above-captioned case in favor of Defendants and against Plaintiffs. 3. This Court's Order of July 29, 2008, filed to civil term and number 06-903-CD on July 30, 2008, shall be filed to the above term and number. 4. Appellants Concise Statement of Matters Complained of on appeal filed c August 20, 2008, to civil term and number 06-903-CD shall be filed to the above term and number by the Appellant. BY THE COURT: /s/Paul E. Cherry, Judge Three CC Attorney Naddeo	Paul E. Cherry

Date: 11/4/2008

Time: 04:05 PM

Page 3 of 3

Cleaveland County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

Eva Jane Hertlein, et alvs.River Hill Coal Company, Inc., et al

Civil Other-COUNT

Date	Judge
10/27/2008	Paul E. Cherry
<p>Order, this 27th day of June, 2008, AGAIN, this court finds the approximatel Paul E. Cherry 20 acres conveyed to Clayton Wooster in 1876 was excluded from the 1950 lease agreement Frank Hertlein, Leitzinger Bros. Realty Company and Edward Redding. By The Court, /s/ Paul E. Cherry, Judge. Filed per Court Order of October 24, 2008.</p> <p>Order AND NOW, this 29th day of July 2008, the Court having been notified Paul E. Cherry of Appeal to the Superior Court of Pennsylvania in the above captioned matter, it is the ORDER of this Court that Appellant file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days therefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure. Statement shall be filed of record and shall be served upon the Judge pursuant to paragraph (b)(1). Any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived. BY THE COURT: /s/ Paul E. Cherry, Judge. Filed per Cour Order of October 24, 2008.</p>	
10/29/2008	Paul E. Cherry
<p>Praecept to Enter Orders and Judgment, filed by Atty. Naddeo, 4 Cert. to Paul E. Cherry Atty.</p> <p>Enter Order dated the 27th day of June, 2008 and Order dated the 29th day of July, 2008 to case number 06-903-CD. Judgment entered in favor of Defendants and against Plaintiffs</p> <p>Plaintiffs' Concise Statement of Matters Complained of on Appeal, filed by Paul E. Cherry Atty. Naddeo 3 Cert. to Atty.</p>	

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

NOV 04 2008

Attest.

William L. Brown
Prothonotary/
Clerk of Court

FILED

NOV 04 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,

and

LEITZINGER LAND COMPANY,
INC.,
Defendants.

Defendants.

No. 07-1448-CD

FILED

OCT 29 2008

0/3:50/w
William A. Shaw
Prothonotary/Clerk of Courts

4 CENTS TO ATT

Type of Pleading:
**PLAINTIFFS' CONCISE
STATEMENT OF MATTERS
COMPLAINED OF ON APPEAL**

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: October 29, 2008

#29

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,

and

LEITZINGER LAND COMPANY,
INC.,

Defendants.

No. 07-1448-CD

PLAINTIFFS' CONCISE STATEMENT
OF MATTERS COMPLAINED OF ON APPEAL


NOW COME, the Plaintiffs, by and through their attorneys, NADDEO & LEWIS, LLC, and file this Concise Statement of Matters Complained of on Appeal in accordance with Court Order of July 29, 2008 filed to the above-captioned term and number on October 29, 2008.

Appellants preface this statement by stating that they cannot readily discern the basis of the Judge's Opinion and

Order of June 27, 2008 and complain of the following matters, generally.

1. The Court erred in concluding (in its June 27, 2008 Order of Court) that the "approximately 20 acres conveyed to Clayton Wooster in 1876 was excluded from the 1950 lease agreement between Leitzinger Bros. Realty Company and Edward Redding, parties of the first part, and Frank J. Hertlein, party of the second part in that said conclusion is contradictory to its prior Order and Opinion of June 5, 2007.
2. The Court erred in permitting, to be entered to the record, testimony and evidence on the merits of the underlying action which resulted in the order which Plaintiffs were seeking a declaratory judgment from the Court in the instant action.

Respectfully submitted by,

By 
James A. Naddeo, Esquire
Attorney for the Plaintiffs

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,
and

LEITZINGER LAND COMPANY,
INC.,

Defendants.

No. 06-903-CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Concise Statement of Matters Complained of on
Appeal was served on the following and in the following manner
on the 29 day of October, 2008:

First-Class Mail, Postage Prepaid

The Honorable Paul E. Cherry
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

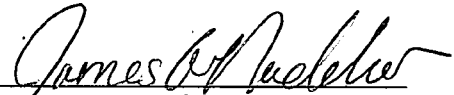
David S. Ammerman, Esquire
310 East Cherry Street
Clearfield, PA 16830

and

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

NADDEO & LEWIS, LLC

By



James A. Naddeo

Attorney for Plaintiffs

William A. Shaw
Prothonotary/Clerk of Courts

OCT 29 2008

FILED

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
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E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,

and

LEITZINGER LAND COMPANY,
INC.,
Defendants.

Defendants.

No. 07-1448-CD

FILED ^(F)

OCT 29 2008

0/3:50/

William A. Shaw
Prothonotary/Clerk of Courts

3 cent to ATT

Type of Pleading:

PRAECIPE

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: October 29, 2008

#28

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T.
HERTLEIN and IVY E.
HERTLEIN,

Plaintiffs,

v.

RIVER HILL COAL COMPANY,
INC., A Pennsylvania
corporation,

and

LEITZINGER LAND COMPANY,
INC.,

Defendants.


No. 07-1448-CD

PRAECIPE TO ENTER ORDERS AND JUDGMENT

TO THE PROTHONOTARY:

Pursuant to Court Order of October 24, 2008, please
file Court Order entered June 27, 2008 (filed to civil term and
number 06-903-CD) to the above-captioned term and number; please
enter judgment in the above-captioned case in favor of Defendants
and against Plaintiffs; please file Court Order entered July 29,
2008 (filed to civil term and number 06-903-CD on July 30, 2008)
to the above term and number. Copies of the Orders to be entered

are attached hereto.


James A. Naddeo, Esquire
Attorney for Plaintiffs

Date: October 29, 2008

JUN 30 2008

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T HERTLEIN, JR.,
GLENN R. HERTLEIN, TIMOTHY L.
HERTLEIN, LOUISE E. HERTLEIN
KIRKWOOD, and G LEE HERTLEIN,
Individually, and as Attorney-in-Fact
for the heirs of FRANK T HERTLEIN
and IVY E. HERTLEIN,

Plaintiffs,

vs.

RIVER HILL COAL COMPANY, INC.,
A Pennsylvania Corporation
and
LEITZINGER LAND COMPANY, INC.,
Defendants

NO. 06-903-CD

ORDER

NOW, this 27th day of June, 2008, upon further consideration of the clear language and meaning of the original opinion, issued the 5th day of June, 2007; AGAIN, this Court finds the approximately 20 acres conveyed to Clayton Wooster in 1876 was excluded from the 1950 lease agreement Frank Hertlein, Leitzinger Bros. Realty Company and Edward Redding.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY
Judge

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

JUN 27 2008

Attest.

William A. B.
Prothonotary/
Clerk of Courts

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T. HERTLEIN and
EVY E. HERTLEIN,
Plaintiffs

NO. 06-903-CD

V.

RIVER HILL COAL COMPANY, INC.,
A Pennsylvania Corporation,

and

LEITZINGER LAND COMPANY, INC.,
Defendants

ORDER

AND NOW, this 29th day of July, 2008, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above captioned matter, it is the ORDER of this Court that Appellant file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure. It is the further ORDER of this Court that the Statement shall be filed of record and shall be served upon the Judge pursuant to paragraph (b)(1).

Any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.

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

JUL 30 2008

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY,
JUDGE

Attest.

William L. Brown
Prothonotary/
Clerk of Courts

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

EVA JANE HERTLEIN, EDITH M.	*	
HERTLEIN, PATSY L. HERTLEIN	*	
KIMBLE, FRANK T. HERTLEIN,	*	
JR., GLENN R. HERTLEIN,	*	
TIMOTHY L. HERTLEIN, LOUISE	*	
E. HERTLEIN KIRKWOOD, and G.	*	No. 07-1448-CD
LEE HERTLEIN, Individually,	*	
and as Attorney-in-Fact for	*	
the heirs of FRANK T.	*	
HERTLEIN and IVY E.	*	
HERTLEIN,	*	
Plaintiffs,	*	
	*	
v.	*	
	*	
RIVER HILL COAL COMPANY,	*	
INC., A Pennsylvania	*	
corporation,	*	
	*	
and	*	
	*	
LEITZINGER LAND COMPANY,	*	
INC.,	*	
Defendants.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Praeceptum was served on the following and in the following manner on the 29 day of October, 2008:

First-Class Mail, Postage Prepaid

David S. Ammerman, Esquire
310 East Cherry Street
Clearfield, PA 16830

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

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Plaintiffs

FILED
OCT 29 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T. HERTLEIN,
JR., GLENN R. HERTLEIN,
TIMOTHY L. HERTLEIN, LOUISE
E. HERTLEIN KIRKWOOD, and G.
LEE HERTLEIN, Individually,
and as Attorney-in-Fact for
the heirs of FRANK T. HERTLEIN and
EVY E. HERTLEIN,
Plaintiffs

V.

RIVER HILL COAL COMPANY, INC.,
A Pennsylvania Corporation,

and

LEITZINGER LAND COMPANY, INC.,
Defendants

NO. 06-903-CD

FILED
OCT 27 2008

William A. Shaw
Prothonotary/Clerk of Courts
Filed per Court Order of
10/24/08

07-1448-CD

ORDER

AND NOW, this 29th day of July, 2008, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above captioned matter, it is the ORDER of this Court that Appellant file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure. It is the further ORDER of this Court that the Statement shall be filed of record and shall be served upon the Judge pursuant to paragraph (b)(1).

Any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.

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

JUL 30 2008

BY THE COURT,

/s/ Paul E. Cherry
PAUL E. CHERRY,
JUDGE

Attest.

William A. Shaw
Prothonotary/
Clerk of Courts

27

JUN 30 2008

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

FILED

9/10/26
OCT 27 2008

William A. Shaw
Prothonotary/Clerk of Courts
Filed per Court Order of
10/24/08

Boat

S

07-1448-CD

EVA JANE HERTLEIN, EDITH M.
HERTLEIN, PATSY L. HERTLEIN
KIMBLE, FRANK T HERTLEIN, JR.,
GLENN R. HERTLEIN, TIMOTHY L.
HERTLEIN, LOUISE E. HERTLEIN
KIRKWOOD, and G LEE HERTLEIN,
Individually, and as Attorney-in-Fact
for the heirs of FRANK T HERTLEIN
and IVY E. HERTLEIN,

Plaintiffs,

vs.

RIVER HILL COAL COMPANY, INC.,
A Pennsylvania Corporation
and
LEITZINGER LAND COMPANY, INC.,
Defendants

NO. 06-903-CD

ORDER

NOW, this 27th day of June, 2008, upon further consideration of the clear language and meaning of the original opinion, issued the 5th day of June, 2007; AGAIN, this Court finds the approximately 20 acres conveyed to Clayton Wooster in 1876 was excluded from the 1950 lease agreement Frank Hertlein, Leitzinger Bros. Realty Company and Edward Redding.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY
Judge

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

JUN 27 2008

Attest.

William A. Shaw
Prothonotary/
Clerk of Courts

#26

FILED

OCT 27 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

EVA JANE HERTLEIN, EDITH M. *
HERTLEIN, PATSY L. HERTLEIN *
KIMBLE, FRANK T. HERTLEIN, *
JR., GLENN R. HERTLEIN, *
TIMOTHY L. HERTLEIN, LOUISE *
E. HERTLEIN KIRKWOOD, and G. *
LEE HERTLEIN, Individually, *
and as Attorney-in-Fact for *
the heirs of FRANK T. *
HERTLEIN and IVY E. *
HERTLEIN, *

Plaintiffs, *

v. *

RIVER HILL COAL COMPANY, *
INC., A Pennsylvania *
corporation, *

and *

LEITZINGER LAND COMPANY, *
INC., *

Defendants. *

No. 07-1448-CD

FILED

OCT 27 2008

William A. Shaw
Prothonotary/Clerk of Courts
3cc Amy Radde

ORDER

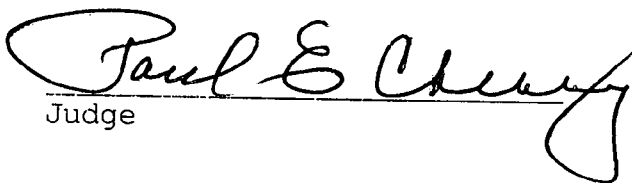
AND NOW this 24th day of October 2008, the
Court being cognizant of defects in above-captioned case it is
the ORDER of this Court as follows:

1. This Court's Order of June 27, 2008 filed to civil
term and number 06-903-CD on the same date shall be
filed to the above term and number.
2. The Prothonotary is directed to enter judgment in the
above-captioned case in favor of Defendants and
against Plaintiffs.

(105)

3. This Court's Order of July 29, 2008 filed to civil term and number 06-903-CD on July 30, 2008 shall be filed to the above term and number.
4. Appellants Concise Statement of Matters Complained of on Appeal filed on August 20, 2008 to civil term and number 06-903-CD shall be filed to the above term and number by the Appellant.

BY THE COURT,


Judge

FILED

OCT 27 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/27/08

☒ 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
CLEARFIELD COUNTY, PENNSYLVANIA

Eva Jane Hertlein; Edith M. Hertlein; Patsy
L. Hertlein Kimble; Frank T. Hertlein, Jr.;
Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee
Hertlein, indiv. and as Attorney-in-fact for
the heirs of Frank T. Hertlein and Ivy E.
Hertlein

FILED

110-576N
SEP 30 2008

William A. Shaw
Prothonotary/Clerk of Courts

Vs.

Case No. 2007-01448-CD

River Hill Coal Company, Inc. and
Leitzinger Land Company, Inc.

CERTIFICATE OF CONTENTS

NOW, this 23rd day of September, 2008, the undersigned, Prothonotary or Deputy
Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, the said Court
of record, does hereby certify that attached is the original record of the case currently on Appeal.

An additional copy of this Certificate is enclosed with the original hereof and the Clerk or
Prothonotary of the Superior Court is hereby directed to acknowledge receipt of the Appeal
Record by executing such copy at the place indicated by forthwith returning the same to this
Court.

By: William A. Shaw

William A. Shaw, Prothonotary

Record, Etc. Received:

Date: SEP 25 2008

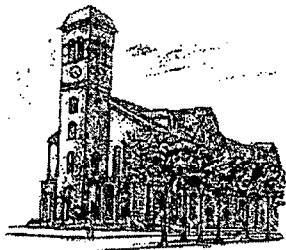
(Signature & Title)

#24

FILED

SEP 30 2008

William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

COPY

September 23, 2008

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

RE: Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein

vs

River Hill Coal Company, Inc., a Pennsylvania Corporation
and
Leitzinger Land Company, Inc.
No. 2007-1448-CD
Superior Court No. 1254 WDA 2008

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed
to your office. Please also find enclosed one transcript with exhibits.

Sincerely,

William A. Shaw
Prothonotary

FILED
010:5484
SEP. 23 2008

William A. Shaw
Prothonotary/Clerk of Courts

#23

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(c)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the Court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

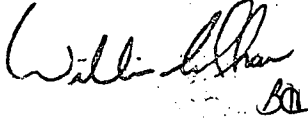
**Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein
VS.**

**River Hill Coal Company, Inc., a Pennsylvania Corporation
and
Leitzinger Land Company, Inc.
07-1448-CD**

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from No. 1 to 22 and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is September 23, 2008.



William A. Shaw
Prothonotary/Clerk of Courts

(seal)

Date: 9/23/2008

Time: 10:29 AM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

Eva Jane Hertlein, et alvs.River Hill Coal Company, Inc., et al

Civil Other-COUNT

Date		Judge
9/5/2007	New Case Filed.	No Judge
	Filing: Complaint-Action for Declaratory Judgment, situated in Karthaus Township Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920556 Dated: 09/05/2007 Amount: \$85.00 (Check) 3CC Atty.	No Judge
10/4/2007	Filing: Praecipe to Reinstate Complaint Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920930 Dated: 10/04/2007 Amount: \$7.00 (Check) Filed by s/ James A. Naddeo, Esquire 1 Compl. reinstated to Sheriff	No Judge
10/8/2007	Praecipe For Entry of Appearance, filed on behalf of Leitzinger Land Company, Inc., filed by s/ Peter F. Smith, Esquire. No CC	No Judge
	Certificate of Service, copy of the Praecipe For Entry of Appearance served upon James A. Naddeo and David S. Ammerman by First Class Mail on 10-5-07. No CC	No Judge
10/23/2007	Certificate of Service, filed. That a true and correct copy of Important Notice was served on River Hill Coal Company on the 12th day of October 2007 by certified mail, filed by s/ James A. Naddeo Esq. 1CC Atty.	No Judge
10/24/2007	Certificate of Service, filed. Served a true and correct copy of the Answer filed on behalf of Leitzinger Land Co. Inc. by first class mail on James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge
	Answer Filed on Behalf of Leitzinger Land Co., Inc., filed by s/ Peter F. Smith, Esquire. 3CC Atty. P. Smith	No Judge
11/2/2007	Praecipe For Entry of Appearance, filed on behalf of River Hill Coal Company, Inc. Filed by s/ David S. Ammerman, Esquire. No CC	No Judge
	Certificate of Service, filed. Served a true and correct copy of the Praecipe for Entry of Appearance filed in this matter on Peter F. Smith Esq and James A. Naddeo Esq by first class mail, filed by s/ David S. Ammerman Esq. No CC.	No Judge
1/23/2008	Sheriff Return, September 20, 2007 at 1:44 pm Served the within Complaint for Declaratory Judgment on River Hill Coal Company Inc by handing to Ger Wood.	No Judge
	October 2, 2007 at 1:31 pm Served the within Complaint for Declaratory Judgment on Leitzinger Land Company Inc. by handing to James Leitzinger So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Naddeo \$62.96	No Judge
2/25/2008	Answer filed on behalf of River Hill Coal Company, Inc. filed by Atty. Ammerman 3 Cert. to Atty.	No Judge
	Certificate of Service, filed by Atty. Ammerman no cert. copies. Served copy of Answer on Atty. Naddeo & Atty. Smith.	No Judge
1/24/2008	Motion For Hearing, filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
1/29/2008	Order, this 25th day of April, 2008, this case will be heard before the Court on the 16th day of May, 2008, at 1:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Naddeo	Paul E. Cherry
1/30/2008	Certificate of Service, a certified copy of Motion for Hearing was served upon David S. Ammerman, Esquire, and Peter F. Smith, Esquire, by First-Class Mail on the 30th day of April, 2008. Filed by s/ James A. Naddeo, Esquire. No CC	Paul E. Cherry

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1448-CD

*Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein*

Vs.

*River Hill Coal Company, Inc., a Pennsylvania Corporation
and
Leitzinger Land Company, Inc.*

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	09/05/2007	Complaint-Action for Declaratory Judgment	81
02	10/04/2007	Praecipe to Reinstate Complaint	02
03	10/08/2007	Praecipe for Entry of Appearance	01
04	10/08/2007	Certificate of Service	01
05	10/23/2007	Certificate of Service	03
06	10/24/2007	Certificate of Service	01
07	10/24/2007	Answer filed on behalf of Leitzinger Land Co., Inc.	05
08	11/02/2007	Praecipe for Entry of Appearance	01
09	11/02/2007	Certificate of Service	01
10	01/23/2008	Sheriff Return	03
11	02/25/2008	Answer filed on behalf of River Hill Coal Company	05
12	02/25/2008	Certificate of Service	01
13	04/24/2008	Motion for Hearing with Order scheduling hearing filed April 29, 2008	04
14	04/30/2008	Certificate of Service	02
15	05/19/2008	Order, Re: counsel to file appropriate letter brief	01
16	07/14/2008	Motion for Reconsideration	14
17	07/28/2008	Notice of Appeal to High Court	10
18	07/30/2008	Order, Re: Status Conference scheduled (Certified copy-original filed to 06-903-CD)	02
19	08/11/2008	Appeal Docket Sheet, 1254 WDA 2008	06
20	09/04/2008	Transcript of Proceedings with Exhibits, Re: Evidentiary Hearing held before Paul E. Cherry, Judge, on May 16, 2008	Separate Cover
21	09/04/2008	Notice, Re: Objections to Transcript	01
22	09/23/08	Letters, Re: Notification of mailing appeal mailed to James A. Naddeo, Esq; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931 (c).	04

FILED

SEP 23 2008

William A. Shaw
Prothonotary/Clerk of Courts



Superior Court of Pennsylvania

Western District

Karen Reid Bramblett, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
(412) 565-7592
www.superior.court.state.pa.us

CERTIFICATE OF REMITTAL/REMAND OF RECORD

TO: Mr. Shaw
Prothonotary

RE: Hertlein, E. v. River Hill Coal Company
1254 WDA 2008
Trial Court: Clearfield County Court of Common Pleas
Trial Court Docket No: No 07-1448-CD

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572 is the entire record for the above matter.

Original Record contents:

Item	Filed Date	Description
Original Record	September 25, 2008	1 Part
Transcript	September 25, 2008	1 with exhibits attached
Additional Part of Record	November 19, 2008	1

Additional Item(s): Superior Court Memorandum

Remand/Remittal Date: 11/20/2009

ORIGINAL RECIPIENT ONLY - Please acknowledge receipt by signing, dating, and returning the enclosed copy of this certificate to our office. Copy recipients (noted below) need not acknowledge receipt.

Very truly yours,

Eleanor R. Valecko
Deputy Prothonotary

/bni

Enclosure

cc: David S. Ammerman, Esq.
The Honorable Paul E. Cherry, Judge
James A. Naddeo, Esq.
Peter Fortune Smith, Esq.

FILED

NOV 24 2009

William A. Shaw
Prothonotary/Clerk of Courts

FILED

NOV 24 2009

William A. Shaw
Prothonotary/Clerk of Courts

NOV 24 2009

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

EVA JANE HERTLEIN, EDITH M. : IN THE SUPERIOR COURT OF
HERTLEIN, PATSY L. HERTLEIN KIMBLE, : PENNSYLVANIA
FRANK T. HERTLEIN, JR., GLENN R. :
HERTLEIN, TIMOTHY L. HERTLEIN, :
LOUISE E. HERTLEIN KIRKWOOD, and :
G. LEE HERTLEIN, Individually and as :
Attorney-in-Fact for the Heirs of FRANK :
T. HERTLEIN and IVY E. HERTLEIN, :

Appellants

v.

RIVER HILL COAL COMPANY, INC., a
Pennsylvania Corporation, and
LEITZINGER LAND COMPANY, INC.

Appellees

: No. 1254 WDA 2008

Appeal from the Order dated June 27, 2008,
Court of Common Pleas, Clearfield County,
Civil Division at No. 07-1448-CD

BEFORE: BOWES, DONOHUE and POPOVICH, JJ.

MEMORANDUM:

FILED: August 3, 2009

Eva Jane Hertlein, Edith M. Hertlein, Patsy L. Hertlein Kimble, Frank T. Hertlein, Jr., Glenn R. Hertlein, Timothy L. Hertlein, Louis E. Hertlein Kirkwood and G. Lee Hertlein (collectively, "the Hertlein Group") appeal from the trial court's declaratory judgment order of June 27, 2008. After careful review, we affirm.

The relevant facts and procedural history of this case are as follows. In 1950, the Hertlein Group's father, Frank T. Hertlein ("Hertlein"), leased approximately 1,500 acres of property from Edward Redding ("Redding") and

07-1448-CD

FILED NO CC
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JUN 24 2009 @10
William A. Shaw
Prothonotary/Clerk of Courts

argued that in the Original Action the only land found by the trial court to be excepted from the Lease Agreement was the Wharton Cole Tract, and that the Wooster Tract had not been excepted. ***Id.*** at 6. Leitzinger, on the other, claimed that the trial court had ruled in the Original Action that both the Wooster Tract and the Wharton Cole Tract had been excepted. ***Id.*** at 6-7.

The trial court held an evidentiary hearing and accepted briefs from the parties. On June 27, 2008, it issued a declaratory judgment order in which it ruled that the Wooster Tract was excluded from the Lease Agreement. ***See*** Trial Court Order, 6/27/08. The Hertlein Group filed a motion for reconsideration of the trial court's order, which was denied.

This timely appeal followed, in which the Hertlein Group raises two issues for our review:

1. Did the trial court err in permitting testimony and evidence to be heard upon the merits of an underlying claim that had been previously decided and was *res judicata*?
2. Did the trial court err in finding the approximately 20 acres conveyed to Clayton Wooster in 1876 was excluded from the 1950 lease agreement [between] Frank Hertlein, Letzinger Bros. Realty Company and Edward Redding?

The Hertlein Group's Brief at 4.

We will address these two issues together, as they both present the same basic question³: whether the trial court erred in the Declaratory Judgment Action by not applying the doctrine of *res judicata* to clarify its decision in the Original Action regarding whether the Wooster Tract was (or was not) excluded from the lands subject to the Lease Agreement.⁴ After review, we conclude that the doctrine of *res judicata*, which bars repetitious litigation of the same cause of action,⁵ has no application to this case, and

³ On its face, the second issue appears to question the trial court's resolution of Declaratory Judgment Action on its merits, *i.e.*, whether the Wooster Tract was in fact excluded from the Lease Agreement. The Hertlein Group's appellate brief, however, contains no argument to support this contention and instead focuses exclusively on the trial court's failure to apply the doctrine of *res judicata* under the circumstances presented. As such, to the extent the Hertlein Group intended to dispute the trial court's resolution of the Declaratory Judgment Action on its merits, we find this issue to be waived. **See, e.g., Giant Food Stores, LLC v. THF Silver Spring**, 959 A.2d 438, 444 (Pa. Super. 2008).

⁴ When reviewing the decision of the trial court in a declaratory judgment action, pursuant to our standard of review, we are limited to determining whether the trial court's findings are supported by substantial evidence, whether an error of law was committed or whether the trial court abused its discretion. **Forest Glen Condominium Ass'n v. Forest Green Common Ltd. Partnership**, 900 A.2d 859, 861 (Pa. Super. 2006).

⁵ "A final valid judgment upon the merits by a court of competent jurisdiction bars any future suit between the same parties or their privies on the same cause of action." **Stevens Painton Corp. v. First State Ins. Co.**, 746 A.2d 649, 654 (Pa. Super. 2000). The purpose of the *res judicata* doctrine is "to minimize the judicial energy devoted to individual cases, establish certainty and respect for court judgments, and protect the party relying on the previous adjudication from vexatious litigation." **Id.**

Application of the doctrine requires that the two actions possess the following common elements: (1) identity of the thing sued upon; (2) identity

J. A12009/09

that accordingly the trial court did not err in its resolution of the Declaratory Judgment Action.

In the Original Action, the Hertlein Group and Leitzinger disagreed regarding which lands were excepted from the Lease Agreement. When the trial court issued its opinion and order in the Original Action, it found that the Wharton Cole Tract was excepted from the Lease Agreement. With regard to the Wooster Tract, it stated only that:

Wharton Coal [sic] conveyed approximately 20 acres of the approximately 65 acres he had in 1876 to a Clayton Wooster. The deed to Clayton Wooster did not except or reserve any portion of the land nor did it except or reserve any of the subsurface or mineral rights. This would mean that following the conveyance to Wooster, Wharton Coal had approximately 45 acres remaining. In 1880 Wharton Coal conveyed the 'oils, coal, fire clay, iron ore, and other minerals' to Weaver and Betts by agreement dated March 3, 1880. In 1880, Wharton Coal would have only had available to him approximately 45 acres to convey subsurface rights to, as he had sold 20 acres to Clayton Wooster in 1876. In fact, in the conveyance to John Savel ... that purports to convey approximately 65 acres there is a paragraph that excepts and reserves the 20 acres conveyed to Clayton Wooster from the deed.

Trial Court Opinion, 6/5/07, at 5 (record citations omitted).

Careful review of this portion of the order shows that while the trial court found that the Wooster Tract was not a part of the Wharton Cole Tract,

of the cause of action; (3) identity of the parties; and (4) identity of the capacity of the parties. The essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding where the parties had an opportunity to appear and assert their rights. ***Id.***

it made ***no determination*** regarding whether the Wooster Tract was a part of the lands subject to the Lease Agreement. The Hertlein Group did not appeal this ruling. When the Hertlein Group filed its Declaratory Judgment Action asking the trial court to "clarify" whether or not the Wooster Tract was a part of the lands subject to the Lease Agreement, it therefore raised a ***new issue*** not decided in the original case. As a result, the Declaratory Judgment Action did not involve a re-litigation of any of the issues decided in the Original Action. Accordingly, we conclude that the *res judicata* doctrine does not apply, and that the trial court acted within its discretion to take new evidence before issuing its ruling in the Declaratory Judgment action.

Order affirmed.

Judgment Entered:

Eleanor K. Valecko

Deputy Prothonotary

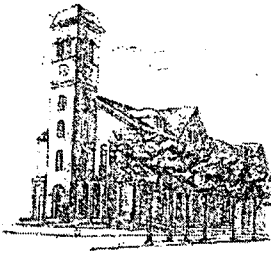
DATE: August 3, 2009

FILED

NOV 24 2009

William A. Shaw
Prothonotary/Clerk of Courts





COPY

Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

November 4, 2008

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

RE: Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein

vs

River Hill Coal Company, Inc., a Pennsylvania Corporation
and Leitzinger Land Company, Inc.

No. 2007-1448-CD

Superior Court No. 1254 WDA 2008

Dear Prothonotary:

Enclosed you will find a supplement to the above referenced record
appealed to your office.

Sincerely,

William A. Shaw
Prothonotary

FILED

NOV 04 2008

9
Bert
Shaw

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

Eva Jane Hertlein Edith M. Hertlein
Patsy L. Hertlein Kimble
Frank T. Hertlein Jr. Glenn R. Hertlein
Timothy L. Hertlein
Louise E. Hertlein Kirkwood
G. Lee Hertlein Frank T. Hertlein
Ivy E. Hertlein

Copy
FILED
NOV 21 2008
10:15/4
William A. Shaw
Prothonotary/Clerk of Courts

Vs.

Case No. 2007-01448-CD

River Hill Coal Company, Inc.
Leitzinger Land Company, Inc.

CERTIFICATE OF CONTENTS

NOW, this 4th day of November, 2008, the undersigned, Prothonotary or Deputy Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, the said Court of record, does hereby certify that attached is the original record of the case currently on Appeal.

An additional copy of this Certificate is enclosed with the original hereof and the Clerk or Prothonotary of the Superior Court is hereby directed to acknowledge receipt of the Appeal Record by executing such copy at the place indicated by forthwith returning the same to this Court.

By: *William A. Shaw*
William A. Shaw, Prothonotary

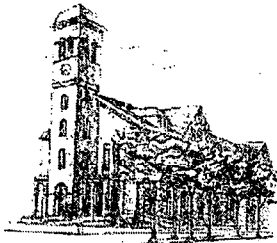
Record, Etc. Received:

NOV 19 2008

Date:

Barbara J. Decker
(Signature & Title)

FILED
NOV 21 2008
Prothonotary/Clerk of Courts
William A. Shaw



COPY

Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

Paul E. Cherry, Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

James A. Naddeo, Esq.
PO Box 552
207 East Market St.
Clearfield, PA 16830

David S. Ammerman, Esq.
310 East Cherry Street
Clearfield, PA 16830

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

Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein

Vs.

River Hill Coal Company, Inc., a Pennsylvania Corporation
and
Leitzinger Land Company, Inc.

Court No. 07-1448-CD; Superior Court No. 1254 WDA 2008

Dear Counsel:

Please be advised that a supplement to the above referenced record was forwarded
to the Superior Court of Pennsylvania on November 4, 2008.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1448-CD

**Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
Attorney-in-fact for the heirs of Frank T. Hertlein and Ivy E. Hertlein**

Vs.

**River Hill Coal Company, Inc., a Pennsylvania Corporation
and**

Leitzinger Land Company, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
23	09/23/2008	Letter to Superior Court, Re: Appeal Mailed September 23, 2008	05
24	09/30/2008	Certificate of Contents	01
25	10/27/08	Order, Re: defects in case, Orders of June 27, 2008, and July 29, 2008, filed to 06-903-CD be filed to 07-1448-CD. Judgment entered. Appellants Concise Statement to be filed to 07-1448-CD by Appellant	02
26	10/27/08	Order of June 27, 2008, Re: acreage excluded	01
27	10/27/08	Order of July 29, 2008, Re: concise statement to be filed	01
28	10/29/08	Praecipe to Enter Orders and Judgment	07
29	10/29/08	Plaintiffs' Concise Statement of Matters Complained of on Appeal	05

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1448-CD

**Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
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Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
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Vs.

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18	07/30/2008	Order, Re: Status Conference scheduled (Certified copy-original filed to 06-903-CD)	02
19	08/11/2008	Appeal Docket Sheet, 1254 WDA 2008	06
20	09/04/2008	Transcript of Proceedings with Exhibits, Re: Evidentiary Hearing held before Paul E. Cherry, Judge, on May 16, 2008	Separate Cover
21	09/04/2008	Notice, Re: Objections to Transcript	01
22	09/23/2008	Letters, Re: Notification of mailing appeal mailed to James A. Naddeo, Esq; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931 (c).	04
		Appeal Mailed to Superior Court September 23, 2008	

Civil Other-COUNT

Date		Judge
9/5/2007	New Case Filed.	No Judge
	Filing: Complaint-Action for Declaratory Judgment, situated in Karthaus Township Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920556 Dated: 09/05/2007 Amount: \$85.00 (Check) 3CC Atty.	No Judge
10/4/2007	Filing: Praecipe to Reinstate Complaint Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920930 Dated: 10/04/2007 Amount: \$7.00 (Check) Filed by s/ James A. Naddeo, Esquire 1 Compl. reinstated to Sheriff	No Judge
10/8/2007	Praecipe For Entry of Appearance, filed on behalf of Leitzinger Land Company, Inc., filed by s/ Peter F. Smith, Esquire. No CC	No Judge
	Certificate of Service, copy of the Praecipe For Entry of Appearance served upon James A. Naddeo and David S. Ammerman by First Class Mail on 10-5-07. No CC	No Judge
10/23/2007	Certificate of Service, filed. That a true and correct copy of Important Notice was served on River Hill Coal Company on the 12th day of October 2007 by certified mail, filed by s/ James A. Naddeo Esq. 1CC Atty.	No Judge
10/24/2007	Certificate of Service, filed. Served a true and correct copy of the Answer filed on behalf of Leitzinger Land Co. Inc. by first class mail on James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge
	Answer Filed on Behalf of Leitzinger Land Co., Inc., filed by s/ Peter F. Smith, Esquire. 3CC Atty. P. Smith	No Judge
11/2/2007	Praecipe For Entry of Appearance, filed on behalf of River Hill Coal Company, Inc. Filed by s/ David S. Ammerman, Esquire. No CC	No Judge
	Certificate of Service, filed. Served a true and correct copy of the Praecipe for Entry of Appearance filed in this matter on Peter F. Smith Esq and James A. Naddeo Esq by first class mail, filed by s/ David S. Ammerman Esq. No CC.	No Judge
1/23/2008	Sheriff Return, September 20, 2007 at 1:44 pm Served the within Complaint for Declaratory Judgment on River Hill Coal Company Inc by handing to Ger Wood.	No Judge
	October 2, 2007 at 1:31 pm Served the within Complaint for Declaratory Judgment on Leitzinger Land Company Inc. by handing to James Leitzinger So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Naddeo \$62.96	No Judge
2/25/2008	Answer filed on behalf of River Hill Coal Company, Inc. filed by Atty. Ammerman 3 Cert. to Atty.	No Judge
	Certificate of Service, filed by Atty. Ammerman no cert. copies. Served copy of Answer on Atty. Naddeo & Atty. Smith.	No Judge
4/24/2008	Motion For Hearing, filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
4/29/2008	Order, this 25th day of April, 2008, this case will be heard before the Court on the 16th day of May, 2008, at 1:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Naddeo	Paul E. Cherry
4/30/2008	Certificate of Service, a certified copy of Motion for Hearing was served upon David S. Ammerman, Esquire, and Peter F. Smith, Esquire, by First-Class Mail on the 30th day of April, 2008. Filed by s/ James A. Naddeo, Esquire. No CC	Paul E. Cherry

Civil Other-COUNT

Date		Judge
5/19/2008	Order, this 16th day of May, 2008, following hearing on the action for declaratory judgment, it is Ordered that counsel provide the Court with appropriate letter brief by no later than June 6, 2008. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys; Naddeo, D. Ammerman, P. Smith	Paul E. Cherry
7/14/2008	Motion for Reconsideration, filed by s/James A. Naddeo, Esq. Two CC Attorney Naddeo	Paul E. Cherry
7/28/2008	Filing: Notice of Appeal to High Court Paid by: Naddeo, James A. (attorney Paul E. Cherry for Hertlein, Eva Jane) Receipt number: 1925150 Dated: 7/28/2008 Amount: \$50.00 (Check) filed by s/James A. Naddeo, Esq. Six CC Attorney Naddeo One CC and check for \$60.00 to Superior Court	Paul E. Cherry
7/30/2008	Order, AND NOW, this 29th day of July 2008, it is the ORDER of this Court that Status Conference with regard to this matter shall be and is hereby scheduled for the 8th day of August 2008, beginning at 9:00 a.m. in Judge's Chambers, of the Clearfield County Courthouse, Clearfield PA. BY THE COURT: /s/ Paul E. Cherry, Judge. 1CC Atty Naddeo, D. Ammerman and P Smith. (original to 06-903-CD)	Paul E. Cherry
3/11/2008	Appeal Docket Sheet, filed. No CC 1254 WDA 2008	Paul E. Cherry
3/4/2008	Transcript of Proceedings, with Exhibits, filed. Evidentiary Hearing, held before Paul E. Cherry, Judge, on May 16, 2008. Notice, if no objections are made to the text of the transcript within five days after such notice, the transcript will become part of the record upon being filed in the Prothonotary's Office. Filed by s/ Thomas D. Snyder, Court Reporter.	Paul E. Cherry
3/23/2008	September 23, 2008, Mailed Appeal to Superior Court. September 23, 2008, Letters, Re: Notification of mailing appeal mailed to James A. Naddeo, Esq; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931 (c).	Paul E. Cherry
	September 23, 2008, Mailed Appeal to Superior Court. September 23, 2008, Letter to Superior Court, Re: Appeal Mailed.	Paul E. Cherry
3/30/2008	Certificate of Contents, original record sent to superior Court on Sept. 23, 2008, and received by Superior Court on Sept. 25, 2008.	Paul E. Cherry
10/27/2008	Order, AND NOW, this 24th day of October, 2008, the Court being cognizant of defects in above-captioned case it is the Order of this Court as follows: 1. This Court's Order of June 27, 2008, filed to civil term and number 06-903-CD on the same date shall be filed to the above term and number. 2. The Prothonotary is directed to enter judgment in the above-captioned case in favor of Defendants and against Plaintiffs. 3. This Court's Order of July 29, 2008, filed to civil term and number 06-903-CD on July 30, 2008, shall be filed to the above term and number. 4. Appellants Concise Statement of Matters Complained of on appeal filed c August 20, 2008, to civil term and number 06-903-CD shall be filed to the above term and number by the Appellant. BY THE COURT: /s/Paul E. Cherry, Judge Three CC Attorney Naddeo	Paul E. Cherry

Date: 11/4/2008

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 04:05 PM

ROA Report

Page 3 of 3

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

Eva Jane Hertlein, et alvs.River Hill Coal Company, Inc., et al

Civil Other-COUNT

Date Judge

10/27/2008 Order, this 27th day of June, 2008, AGAIN, this court finds the approximatel Paul E. Cherry 20 acres conveyed to Clayton Wooster in 1876 was excluded from the 1950 lease agreement Frank Hertlein, Leitzinger Bros. Realty Company and Edward Redding. By The Court, /s/ Paul E. Cherry, Judge. Filed per Court Order of October 24, 2008.

Order AND NOW, this 29th day of July 2008, the Court having been notified Paul E. Cherry of Appeal to the Superior Court of Pennsylvania in the above captioned matter, it is the ORDER of this Court that Appellant file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days therefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure. Statement shall be filed of record and shall be served upon the Judge pursuant to paragraph (b)(1). Any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived. BY THE COURT: /s/ Paul E. Cherry, Judge. Filed per Cour Order of October 24, 2008.

10/29/2008 Praeipce to Enter Orders and Judgment, filed by Atty. Naddeo, 4 Cert. to Paul E. Cherry Atty.

Enter Order dated the 27th day of June, 2008 and Order dated the 29th day of July, 2008 to case number 06-903-CD. Judgment entered in favor of Defendants and against Plaintiffs

Plaintiffs' Concise Statement of Matters Complained of on Appeal, filed by Paul E. Cherry Atty. Naddeo 3 Cert. to Atty.

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

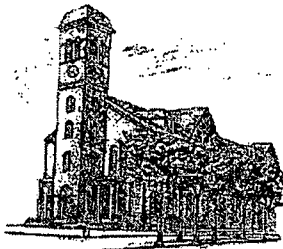
NOV 04 2008

Attest.

William A. Bane
Prothonotary/
Clerk of Courts

Civil Other-COUNT

Date	Selected Items	Judge
9/23/2008	September 23, 2008, Mailed Appeal to Superior Court. September 23, 2008, Letters, Re: Notification of mailing appeal mailed to James A. Naddeo, Esq; David S. Ammerman, Esq.; and Peter F. Smith, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931 (c). 22	Paul E. Cherry
	September 23, 2008, Mailed Appeal to Superior Court. September 23, 2008, Letter to Superior Court, Re: Appeal Mailed. 5	Paul E. Cherry
9/30/2008	Certificate of Contents, original record sent to superior Court on Sept. 23, 2008, and received by Superior Court on Sept. 25, 2008. 24	Paul E. Cherry
10/27/2008	Order, AND NOW, this 24th day of October, 2008, the Court being cognizant of defects in above-captioned case it is the Order of this Court as follows: 1. This Court's Order of June 27, 2008, filed to civil term and number 06-903-CD on the same date shall be filed to the above term and number. 2. The Prothonotary is directed to enter judgment in the above-captioned case in favor of Defendants and against Plaintiffs. 2 3. This Court's Order of July 29, 2008, filed to civil term and number 06-903-CD on July 30, 2008, shall be filed to the above term and number. 4. Appellants Concise Statement of Matters Complained of on appeal filed c August 20, 2008, to civil term and number 06-903-CD shall be filed to the above term and number by the Appellant. BY THE COURT: /s/Paul E. Cherry, Judge Three CC Attorney Naddeo Order, this 27th day of June, 2008, AGAIN, this court finds the approximate 20 acres conveyed to Clayton Wooster in 1876 was excluded from the 1950 lease agreement Frank Hertlein, Leitzinger Bros. Realty Company and Edward Redding. By The Court, /s/ Paul E. Cherry, Judge. Filed per Court Order of October 24, 2008. 26 Order AND NOW, this 29th day of July 2008, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above captioned matter, it is the ORDER of this Court that Appellant file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days therefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure. Statement shall be filed of record and shall be served upon the Judge pursuant to paragraph (b)(1). Any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived. BY THE COURT: /s/ Paul E. Cherry, Judge. Filed per Court Order of October 24, 2008. 27	Paul E. Cherry
10/29/2008	Praecipe to Enter Orders and Judgment, filed by Atty. Naddeo, 4 Cert. to Atty. 7 Enter Order dated the 27th day of June, 2008 and Order dated the 29th day of July, 2008 to case number 06-903-CD. Judgment entered in favor of Defendants and against Plaintiffs Plaintiffs' Concise Statement of Matters Complained of on Appeal, filed by Atty. Naddeo 3 Cert. to Atty. 5	Paul E. Cherry



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

Paul E. Cherry, Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

James A. Naddeo, Esq.
PO Box 552
207 East Market St.
Clearfield, PA 16830

David S. Ammerman, Esq.
310 East Cherry Street
Clearfield, PA 16830

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

COPY

Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
Louise E. Hertlein Kirkwood; and G. Lee Hertlein, indiv. and as
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Vs.

River Hill Coal Company, Inc., a Pennsylvania Corporation
and
Leitzinger Land Company, Inc.

Court No. 07-1448-CD; Superior Court No. 1254 WDA 2008

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on September 23, 2008.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-1448-CD

**Eva Jane Hertlein; Edith M. Hertlein; Patsy L. Hertlein Kimble;
Frank T. Hertlein, Jr.; Glenn R. Hertlein; Timothy L. Hertlein;
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Date: 9/23/2008

Time: 10:08 AM

Page 2 of 2

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

User: BHUDSON

Date: 9/23/2008

Time: 10:08 AM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

User: BHUDSON

Eva Jane Hertlein, et alvs.River Hill Coal Company, Inc., et al

Civil Other-COUNT

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10/4/2007	Filing: Praecipe to Reinstate Complaint Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920930 Dated: 10/04/2007 Amount: \$7.00 (Check) Filed by s/ James A. Naddeo, Esquire 1 Compl. reinstated to Sheriff	No Judge
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	Certificate of Service, copy of the Praecipe For Entry of Appearance served upon James A. Naddeo and David S. Ammerman by First Class Mail on 10-5-07. No CC	No Judge
10/23/2007	Certificate of Service, filed. That a true and correct copy of Important Notice was served on River Hill Coal Company on the 12th day of October 2007 by certified mail, filed by s/ James A. Naddeo Esq. 1CC Atty.	No Judge
10/24/2007	Certificate of Service, filed. Served a true and correct copy of the Answer file on behalf of Leitzinger Land Co. Inc. by first class mail on James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge
	Answer Filed on Behalf of Leitzinger Land Co., Inc., filed by s/ Peter F. Smith, Esquire. 3CC Atty. P. Smith	No Judge
11/2/2007	Praecipe For Entry of Appearance, filed on behalf of River Hill Coal Company, Inc. Filed by s/ David S. Ammerman, Esquire. No CC	No Judge
	Certificate of Service, filed. Served a true and correct copy of the Praecipe for Entry of Appearance filed in this matter on Peter F. Smith Esq and James A. Naddeo Esq by first class mail, filed by s/ David S. Ammerman Esq. No CC.	No Judge
1/23/2008	Sheriff Return, September 20, 2007 at 1:44 pm Served the within Complaint for Declaratory Judgment on River Hill Coal Company Inc by handing to Ger Wood.	No Judge
	October 2, 2007 at 1:31 pm Served the within Complaint for Declaratory Judgment on Leitzinger Land Company Inc. by handing to James Leitzinger So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Naddeo \$62.96	No Judge
2/25/2008	Answer filed on behalf of River Hill Coal Company, Inc. filed by Atty. Ammerman 3 Cert. to Atty.	No Judge
	Certificate of Service, filed by Atty. Ammerman no cert. copies. Served copy of Answer on Atty. Naddeo & Atty. Smith.	No Judge
4/24/2008	Motion For Hearing, filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
4/29/2008	Order, this 25th day of April, 2008, this case will be heard before the Court on the 16th day of May, 2008, at 1:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Naddeo	Paul E. Cherry
4/30/2008	Certificate of Service, a certified copy of Motion for Hearing was served upon David S. Ammerman, Esquire, and Peter F. Smith, Esquire, by First-Class Mail on the 30th day of April, 2008. Filed by s/ James A. Naddeo, Esquire. No CC	Paul E. Cherry

Date: 9/16/2008

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:09 PM

ROA Report

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Case: 2007-01448-CD

Current Judge: Paul E. Cherry

Eva Jane Hertlein, et alvs.River Hill Coal Company, Inc., et al

Civil Other-COUNT

Date		Judge
9/5/2007	New Case Filed.	No Judge
	Filing: Complaint-Action for Declaratory Judgment, situated in Karthaus Township Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920556 Dated: 09/05/2007 Amount: \$85.00 (Check) 3Ct Atty.	No Judge 81
10/4/2007	Filing: Praecipe to Reinstate Complaint Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1920930 Dated: 10/04/2007 Amount: \$7.00 (Check) Filed by s/ James A. Naddeo, Esquire 1 Compl. reinstated to Sheriff	No Judge 2
10/8/2007	Praecipe For Entry of Appearance, filed on behalf of Leitzinger Land Company, Inc., filed by s/ Peter F. Smith, Esquire. No CC	No Judge 1
	Certificate of Service, copy of the Praecipe For Entry of Appearance served upon James A. Naddeo and David S. Ammerman by First Class Mail on 10-5-07. No CC	No Judge 1
10/23/2007	Certificate of Service, filed. That a true and correct copy of Important Notice was served on River Hill Coal Company on the 12th day of October 2007 by certified mail, filed by s/ James A. Naddeo Esq. 1CC Atty.	No Judge 3
10/24/2007	Certificate of Service, filed. Served a true and correct copy of the Answer file on behalf of Leitzinger Land Co. Inc. by first class mail on James A. Naddeo Esq., filed by s/ Peter F. Smith Esq. No CC.	No Judge 1
	Answer Filed on Behalf of Leitzinger Land Co., Inc., filed by s/ Peter F. Smith, Esquire. 3CC Atty. P. Smith	No Judge 5
11/2/2007	Praecipe For Entry of Appearance, filed on behalf of River Hill Coal Company, Inc. Filed by s/ David S. Ammerman, Esquire. No CC	No Judge 1
	Certificate of Service, filed. Served a true and correct copy of the Praecipe f Entry of Appearance filed in this matter on Peter F. Smith Esq and James A Naddeo Esq by first class mail, filed by s/ David S. Ammerman Esq. No CC.	No Judge 1
1/23/2008	Sheriff Return, September 20, 2007 at 1:44 pm Served the within Complaint for Declaratory Judgment on River Hill Coal Company Inc by handing to Ger Wood.	No Judge 3
	October 2, 2007 at 1:31 pm Served the within Complaint for Declaratory Judgment on Leitzinger Land Company Inc. by handing to James Leitzinger So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Naddeo \$62.96	
2/25/2008	Answer filed on behalf of River Hill Coal Company, Inc. filed by Atty. Ammerman 3 Cert. to Atty.	No Judge 5
	Certificate of Service, filed by Atty. Ammerman no cert. copies. Served copy of Answer on Atty. Naddeo & Atty. Smith.	No Judge 1
4/24/2008	Motion For Hearing, filed by s/ James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge 4
4/29/2008	Order, this 25th day of April, 2008, this case will be heard before the Court on the 16th day of May, 2008, at 1:30 p.m. Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Naddeo	Paul E. Cherry
4/30/2008	Certificate of Service, a certified copy of Motion for Hearing was served upo David S. Ammerman, Esquire, and Peter F. Smith, Esquire, by First-Class Mail on the 30th day of April, 2008. Filed by s/ James A. Naddeo, Esquire. No CC	Paul E. Cherry 2

Date: 9/16/2008

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:09 PM

ROA Report

Page 2 of 2

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

Eva Jane Hertlein, et alvs.River Hill Coal Company, Inc., et al

Civil Other-COUNT

Date		Judge
5/19/2008	(15) Order, this 16th day of May, 2008, following hearing on the action for declaratory judgment, it is Ordered that counsel provide the Court with appropriate letter brief by no later than June 6, 2008. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys; Naddeo, D. Ammerman, P. Smith	Paul E. Cherry
7/14/2008	(16) Motion for Reconsideration, filed by s/James A. Naddeo, Esq. Two CC Attorney Naddeo	14 Paul E. Cherry
7/28/2008	(17) Filing: Notice of Appeal to High Court Paid by: Naddeo, James A. (attorney for Hertlein, Eva Jane) Receipt number: 1925150 Dated: 7/28/2008 Amount: \$50.00 (Check) filed by s/James A. Naddeo, Esq. Six CC Attorney Naddeo One CC and check for \$60.00 to Superior Court	10 Paul E. Cherry
7/30/2008	(18) Order, AND NOW, this 29th day of July 2008, it is the ORDER of this Court that Status Conference with regard to this matter shall be and is hereby scheduled for the 8th day of August 2008, beginning at 9:00 a.m. in Judge's Chambers, of the Clearfield County Courthouse, Clearfield PA. BY THE COURT: /s/ Paul E. Cherry, Judge. 1CC Atty Naddeo, D. Ammerman and P Smith. (original to 06-903-CD)	2 Paul E. Cherry
8/11/2008	(19) Appeal Docket Sheet, filed. No CC 1254 WDA 2008	CC Paul E. Cherry
9/4/2008	(20) Transcript of Proceedings, with Exhibits, filed. Evidentiary Hearing, held before Paul E. Cherry, Judge, on may 16, 2008.	slc Paul E. Cherry
	(21) Notice, if no objections are made to the text of the transcript within five days after such notice, the transcript will become part of the record upon being filed in the Prothonotary's Office. Filed by s/ Thomas D. Snyder, Court Reporter.	1 Paul E. Cherry

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

User: DPETERS

Civil Other-COUNT

Date		Judge
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9/2008

9:36 AM

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Clearfield County Court of Common Pleas

ROA Report

Case: 2007-01448-CD

Current Judge: Paul E. Cherry

User: DPETERS

Civil Other-COUNT

Date		Judge
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7/14/2008	Motion for Reconsideration, filed by s/James A. Naddeo, Esq. Two CC Attorney Naddeo	Paul E. Cherry
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