

Glantz  
Lucas



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

SNOW SHOE TOWNSHIP	)	
Plaintiff	)	
	)	
vs.	)	No. 2009-0237
	)	
RESOURCE RECOVERY, LLC	)	
Defendant	)	

**ORDER**

AND NOW, this 11<sup>th</sup> day of May, 2010, the above referenced case is being transferred to the February, 2011 term of Court.

Civil Pre-Trial Conference will be scheduled for January, 2011.

BY THE COURT:

Bradley P. Lunsford, Judge

Louis Glantz, Esquire  
Ronald M. Lucas, Esquire

FILED FOR RECORD  
2010 MAY 13 PM 12:40  
DEBRA C. JENSEN  
PROthonotary  
CENTRE COUNTY, PA.

No. 3942 P. 1

Nov. 5. 2010 11:56AM



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

SNOW SHOE TOWNSHIP, :  
Plaintiff : No. 2009 - 237  
vs. :  
: - IN REM  
RESOURCE RECOVERY, LLC, :  
Defendant :

FILED FOR RECORD  
2009 JAN 26 A 10:22  
DEBORA C. MITCHELL  
CLERK OF COURT

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an 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 claims 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.

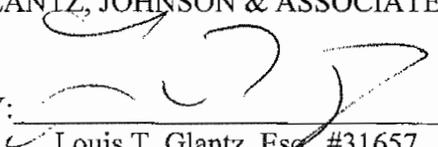
**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.  
IF YOU DO NOT HAVE A LAWYER OR CAN NOT AFFORD ONE,  
GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO  
FIND OUT WHERE YOU CAN GET LEGAL HELP.**

**Court Administrator's Office  
Centre County Courthouse  
Bellefonte, PA 16823  
814-355-6727**

Respectfully submitted:

GLANTZ, JOHNSON & ASSOCIATES

BY:

  
Louis T. Glantz, Esq. #31657  
1901 E. College Ave.  
State College, PA 16801  
(814) 238-2491  
(814) 238-8016 fax  
louis.glantz@gmail.com

Dated: 1/23/09

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

SNOW SHOE TOWNSHIP, :  
Plaintiff : No. 2009 - **Z37**  
vs. :  
: - IN REM  
RESOURCE RECOVERY, LLC, :  
Defendant :

FILED FOR RECORD  
2009 JAN 26 A 10:22  
DELOA C. JIMMEL  
CLERK OF COURT  
CENTRE COUNTY, PA

COMPLAINT

1. Snow Shoe Township, hereinafter referred to as "Township" is a Pennsylvania second class township doing business at 268 Oldside Road, Clarence, PA 16829.

2. Resource Recovery LLC, hereinafter referred to as "Resource", is a Pennsylvania limited liability corporation who's registered address is 3925 Columbia Ave., Mountville, PA 17554-0525.

3. On or about February 8, 2006, the parties, Resource and Township, entered into a Cooperation Agreement which is attached as Exhibit "A" and made a part by this reference.

4. Upon signing the Agreement, to the present day, the Township has honored its commitments under the Agreement specifically Township has supported Resource in securing permits and approvals for construction of the I-80 interchange.

5. On or about August 1, 2008, Attorney Mark Bradshaw wrote to the Township a letter titled "Notice of Material Breach and Opportunity to Cure." A copy of the letter is attached as Exhibit "B" and made a part by this reference.

6. In response to the Bradshaw letter, the Township solicitor, Louis Glantz, replied by letter dated August 15, 2008 wherein the Township made it clear it was willing to continue to

honor its obligation to support an I-80 interchange but not in any way support a landfill as expressly provided, in bold type, in #2 of the Cooperation Agreement. A copy of the Township's response dated August 15, 2008 is attached as Exhibit "C" and made a part by this reference.

7. By letter dated September 24, 2008, Resource, by its attorney Mark Bradshaw, advised Township it intended to not honor its obligations under the Agreement and not make any further payments to Township.

8. Resource is in violation of the Cooperation Agreement in the following particulars:

A. Failing to continue to pay the impact host fee of \$500 per month as provided for in #3 of the Cooperation Agreement (Exhibit "A");

B. Resource has failed to take all reasonable actions to secure approvals for and to construct a new interchange on I-80 as provided for in #1 of the Cooperation Agreement (Exhibit "A");

C. Resource has submitted plans to the County Planning Office indicating its intention to use Gorton Road as an access route to the site in direct violation of #1 of the Cooperation Agreement (Exhibit "A");

D. Resource remains obligated to improve Gorton Road as provided for in #2 of the Cooperation Agreement (Exhibit "A");

E. Resource, by its breach of the Agreement, has expressed its refusal to pay all other fees, including the host impact fee set forth in #3 of the Cooperation Agreement (Exhibit "A").

#### **COUNT I**

9. Paragraphs 1-8 above are hereby incorporated by this reference.

10. The actions of Resource constitute an actionable breach of the Cooperation Agreement between the parties (Exhibit "A").

11. Township has incurred losses including:

- A. \$500 per month beginning in October of 2008 and continuing to the present;
- B. Reasonable attorneys fees incurred by Township in fulfilling its obligation pursuant to Paragraph #2 of the Cooperation Agreement (Exhibit "A");
- C. One thousand (\$1,000) Dollars for each truck that may use Gorton Road as access to the site in direct violation of #1 of the Cooperation Agreement (Exhibit "A").

WHEREFORE, Township demands judgment against Resource in an amount exceeding \$25,000 plus interest and costs of this action and such other relief as deemed appropriate by this Court.

**COUNT II  
IN REM**

- 12. Paragraphs 1-11 above are hereby incorporated by this reference.
- 13. The Cooperation Agreement between the parties, Exhibit "A", impose significant restrictions upon the use of lands of Resource including, but not limited to, the following:
  - A. No trucks utilize Gorton Road as the access route to the site - Agreement Paragraph #1;
  - B. Failure to make improvements to Gorton Road and post bonds as required under Paragraph #1 and #3 of the Cooperation Agreement (Exhibit "A");
  - C. Failure to "take all reasonable actions to secure approvals for, and to construct, (at Resources expense) a new interchange on I-80."
- 14. The attempt by Resource to unilaterally rescind a binding agreement between the parties combined with Resources submission of plans evidencing their intention to use Gorton Road as access for other than construction vehicles to the Resource site constitutes a direct violation of the Cooperation Agreement (Exhibit "A").

15. The Cooperation Agreement (Exhibit "A") creates obligations upon Resource and lands of Resource as specifically set forth above.

16. As a direct and proximate result of the actions of Resource, Resource has violated the covenants and restrictions imposed on lands of Resource as set forth more specifically above.

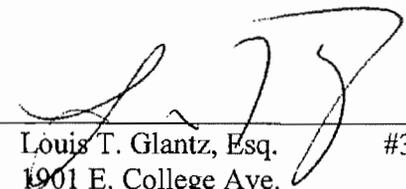
WHEREFORE, Township demands judgment against Resource in an amount exceeding \$25,000 plus a finding that Resource be required to honor all commitments pertaining to the use of lands of Resource specifically including:

- A. Gorton Road not be used for any traffic with the exception of construction traffic until the I-80 interchange is completed;
- B. Restrictions barring the use of any refuse traffic along Gorton Road;
- C. Plus interest, court fees, attorneys fees, and such other relief as deemed appropriate by this Court.

Respectfully submitted:

GLANTZ, JOHNSON & ASSOCIATES

Dated: 4/23/09

BY:   
Louis T. Glantz, Esq. #31657  
1901 E. College Ave.  
State College, Pa 16801  
(814) 238-2491  
(814) 238-8016 fax  
louis.glantz@gmail.com  
Solicitor for Snow Shoe Township

## COOPERATION AGREEMENT

This agreement is between Resource Recovery, LLC ("Resource") and the Township of Snow Shoe, Centre County, Pa, ("Township").

Resource holds an equitable interest in land located in both Rush Township and Snow Shoe Township more particularly identified in a deed recorded February 1, 1988 in the Centre County Recorder's Office at Book 461, page 235, being tax parcels 2-10-1 and 5-4-2 (total property area is approximately 5,840 acres). On the portion of those lands located within Rush Township, Resource plans to construct and operate an economic development project which will include a multi-phase landfill ("Landfill") an industrial park and such other land uses as may be allowed from time-to-time by Rush Township.

The purpose of this Cooperation Agreement is to set forth the agreements between Resource and Township with respect to payment of an Impact Fee by Resource to the Township.

Resource and Township, with intent to be legally bound, hereby agree as follows:

1. Access to the Property Described Above.

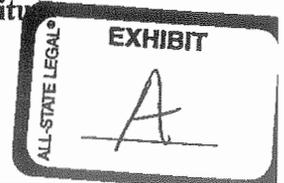
The only public road providing access in Snow Shoe Township to the proposed site is Gorton Road. Resource will use Gorton Road to handle I-80 Interchange and initial phase landfill construction traffic (construction traffic only if contemporaneous with construction of I-80 Interchange) and Resource will, at its expense, make any improvements reasonably necessary to Gorton Road to accommodate construction traffic and repair of any damage done by construction vehicles, as determined by Snow Shoe Township. Upon determination of the extent of the necessary improvements to Gorton Road, Resource will provide Township with a security bond in an amount equal to 110% of the estimated cost of those roadway improvements. Truck use of Gorton Road will cease when the I-80 interchange is opened.

Resource will take all reasonable actions to secure approvals for, and to construct (at Resources expense) a new interchange on route I-80. All waste haulers will be required to use only the I-80 interchange as the ingress and egress route to the site. Resource will include provisions in all waste hauler contracts requiring refuse trucks to access the site via the I-80 interchange and Resource will be responsible for enforcing those contract provisions.

To assure that no trucks utilize Gorton Road as the access route to the site, Township shall impose a fine on Resource of \$1000 for each refuse truck which accesses the site from Gorton Road. Resource hereby assents to the amount of that fine.

2. Township Cooperation.

The parties concur with the conclusion of the point of access study regarding local road access. Therefore, Township agrees that it will support Resource in securing permits and approvals for construction of the I-80 interchange. Resource agrees to reimburse Township all reasonable attorney fees incurred by Township in fulfilling this obligation. **While this Agreement shall not constitute**



**nor shall it require support for the landfill** by Township, provided all landfill traffic will be via I-80 interchange access, the Township will not oppose permitting of the Landfill.

Township further agrees that after constructing the I-80 Interchange and initial phase of Landfill construction by way of Gorton Road, Resource will, at the Township's request, place a stone leveling course, as necessary, and 3½ inches of asphalt binder course with 1½ inches of asphalt wearing course over 18 feet in width (where possible) on Gorton Road from Rte. 53 to the Rush Township line. Other improvements to Gorton Road will require agreement of both parties. Truck use of Gorton Road shall cease upon opening of the I-80 Interchange.

Resource and Township agree during the term of this Agreement no application for development of any road access, with the exception of the I-80 interchange or Gorton "Construction" Road, shall be made. The pending application for zoning determination regarding access to Route 53 shall be held in abeyance without approval or denial and without any further action by either party.

3. Payment of Impact Host Fee.

Resource will pay to the Township an Impact Fee of \$500.00 per month beginning on the first day following signing this Agreement and continuing monthly thereafter until such time as the impact fees set forth in this section exceeds \$500.00 per month.

Provide the I-80 interchange is constructed, Resource will pay Township an impact fee of .8333% of the gross tipping fee for all waste deposited in the proposed Landfill. Impact fees will be paid on a quarterly basis for the total quantity of waste deposited during the prior calendar quarter.

Residential trash disposal will be provided by Resource in the Landfill without charge by Resource for its portion of the tipping fees realized by Resource for residential trash collected from bona fide Township and Snow Shoe Borough residents. Residents and haulers will, however, be responsible for all governmental taxes and fees on such disposal.

4. Term of Agreement.

This Agreement will go into effect immediately upon execution by both parties, and will remain in effect until (a) the date when any permit or approval necessary for construction of the I-80 interchange is officially denied by the Federal Highway Administration or PennDot (Resource, in its sole discretion, may, at any time, determine the I-80 application is effectively denied by the Federal Highway Administration or PennDot), or (b) the date when Resource permanently closes the Landfill to acceptance of waste after operation has begun. In the event the I-80 interchange is not constructed and opened, this Agreement shall not constitute approval by Township to use Gorton Road or any other existing roads in Township to access Resource Landfill.

This Agreement shall be binding upon the parties, their heirs, executors, and assigns, and as such, any future owner or operator of the Landfill site, will be obligated to make the required payments to Township.

5. Dispute Resolution.

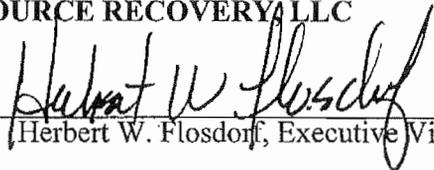
All disputes between the parties arising from or related to this Agreement shall be subject to litigation in the Centre County Court of Common Pleas. The

parties to this Agreement hereby waive any objections to jurisdiction and venue of said Court in the above-referenced matters.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year below written.

**RESOURCE RECOVERY LLC**

Date: FEB 8 2006

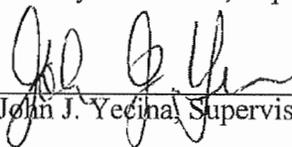
By:   
Herbert W. Flosdorf, Executive Vice President

**SNOW SHOE TOWNSHIP**

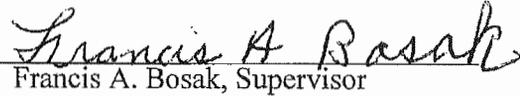
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Rodney Preslovich, Supervisor

Date: 2/7/06

By:   
John J. Yecina, Supervisor

Date: 2/7/06

By:   
Francis A. Bosak, Supervisor

**STEVENS & LEE**  
**LAWYERS & CONSULTANTS**

17 North Second Street  
16th Floor  
Harrisburg, PA 17101  
(717) 234-1090 Fax (717) 234-1099  
www.stevenslee.com

Direct Dial: (717) 255-7357  
Email: mdb@stevenslee.com  
Direct Fax: (610) 371-7362

August 1, 2008

**VIA FAX (814-238-8016) AND MAIL**

Louis T. Glantz  
Glantz, Johnson & Associates  
1901 East College Avenue  
State College, PA 16801

**Re: NOTICE OF MATERIAL BREACH AND OPPORTUNITY TO CURE**

Dear Mr. Glantz:

This firm represents Resource Recovery, LLC ("RRL"). This correspondence is directed to you in your capacity as solicitor of Snow Shoe Township (the "Township").

RRL has repeatedly requested that the Township honor its obligations under that certain Cooperation Agreement dated February 8, 2006 (copy attached). As you know, all that would be required in order for the Township to fulfill its contractual obligations would be to sign the Joint Petition directed to Centre County, seeking amendment of the Centre County Comprehensive Plan, as requested by Rush Township in March, 2007. (the "Joint Petition")

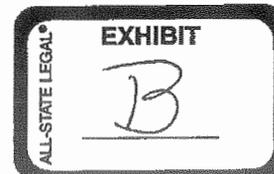
RRL has met all of its obligations under the Cooperation Agreement, including, but not limited to, timely paying the Township \$500 per month as required by the Cooperation Agreement. However, the Township remains in material breach of its obligation to support RRL in securing permits and approvals for construction of the Interstate 80 interchange. RRL will not allow this breach to continue. The Township is hereby afforded one final opportunity to cure its breach, by signing the Joint Petition no later than September 2, 2008.

Should the undersigned not receive a copy of the Joint Petition duly executed by the Township, we will file suit seeking specific performance of the Cooperation Agreement by the Township. The expense of defending this action can be easily avoided if the Township will simply discharge its contractual obligations by signing the Joint Petition.

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Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

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SL1 856381v1/000000.00000



cc. TWP  
8/15/08

STEVENS & LEE  
LAWYERS & CONSULTANTS

Louis T. Glantz  
August 1, 2008  
Page 2

Your previous letters to RRL did not provide any explanation as to why the Cooperation Agreement would not obligate the Township to sign the Joint Petition. If you believe the Township has no such obligation, it is incumbent upon you to explain the basis of your position.

We look forward to timely receipt of the executed Joint Petition. Otherwise, kindly advise if you are authorized to accept service of the Complaint to be filed on September 3, 2008.

Very truly yours,

STEVENS & LEE



Mark D. Bradshaw

MDB:mrh

Enclosures

cc: Georges Test, Jr., Esquire  
Ed Abel  
George W. Rettew, Jr., P.E.

## COOPERATION AGREEMENT

This agreement is between Resource Recovery, LLC ("Resource") and the Township of Snow Shoe, Centre County, Pa, ("Township").

Resource holds an equitable interest in land located in both Rush Township and Snow Shoe Township more particularly identified in a deed recorded February 1, 1988 in the Centre County Recorder's Office at Book 461, page 235, being tax parcels 2-10-1 and 5-4-2 (total property area is approximately 5,840 acres). On the portion of those lands located within Rush Township, Resource plans to construct and operate an economic development project which will include a multi-phase landfill ("Landfill") an industrial park and such other land uses as may be allowed from time-to-time by Rush Township.

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Resource and Township, with intent to be legally bound, hereby agree as follows:

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To assure that no trucks utilize Gorton Road as the access route to the site, Township shall impose a fine on Resource of \$1000 for each refuse truck which accesses the site from Gorton Road. Resource hereby assents to the amount of that fine.

2. Township Cooperation.

The parties concur with the conclusion of the point of access study regarding local road access. Therefore, Township agrees that it will support Resource in securing permits and approvals for construction of the I-80 interchange. Resource agrees to reimburse Township all reasonable attorney fees incurred by Township in fulfilling this obligation. **While this Agreement shall not constitute**

**nor shall it require support for the landfill** by Township, provided all landfill traffic will be via I-80 interchange access, the Township will not oppose permitting of the Landfill.

Township further agrees that after constructing the I-80 Interchange and initial phase of Landfill construction by way of Gorton Road, Resource will, at the Township's request, place a stone leveling course, as necessary, and 3½ inches of asphalt binder course with 1½ inches of asphalt wearing course over 18 feet in width (where possible) on Gorton Road from Rte. 53 to the Rush Township line. Other improvements to Gorton Road will require agreement of both parties. Truck use of Gorton Road shall cease upon opening of the I-80 Interchange.

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This Agreement will go into effect immediately upon execution by both parties, and will remain in effect until (a) the date when any permit or approval necessary for construction of the I-80 interchange is officially denied by the Federal Highway Administration or PennDot (Resource, in its sole discretion, may, at any time, determine the I-80 application is effectively denied by the Federal Highway Administration or PennDot), or (b) the date when Resource permanently closes the Landfill to acceptance of waste after operation has begun. In the event the I-80 interchange is not constructed and opened, this Agreement shall not constitute approval by Township to use Gorton Road or any other existing roads in Township to access Resource Landfill.

This Agreement shall be binding upon the parties, their heirs, executors, and assigns, and as such, any future owner or operator of the Landfill site, will be obligated to make the required payments to Township.

5. Dispute Resolution.

All disputes between the parties arising from or related to this Agreement shall be subject to litigation in the Centre County Court of Common Pleas. The

parties to this Agreement hereby waive any objections to jurisdiction and venue of said Court in the above-referenced matters.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year below written.

RESOURCE RECOVERY, LLC

Date: FEB 8, 2006

By: Herbert W. Flosdorf  
Herbert W. Flosdorf, Executive Vice President

SNOW SHOE TOWNSHIP

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Rodney Preslovich, Supervisor

Date: 2/7/06

By: John J. Yecina  
John J. Yecina, Supervisor

Date: 2/7/06

By: Francis A. Bosak  
Francis A. Bosak, Supervisor

LAW OFFICES  
**GLANTZ, JOHNSON & ASSOCIATES**

1901 EAST COLLEGE AVENUE  
STATE COLLEGE, PA 16801

(814) 238-2401  
FAX (814) 238-8016

LOUIS T. GLANTZ  
JAMES P. JOHNSON

**File Copy**

Writer's Direct Dial No.:  
(814) 238-0221

**FAXED**  
August 15, 2008

Mark D. Bradshaw, Esquire  
STEVENS & LEE  
17 North Second St., 16<sup>th</sup> Fl.  
Harrisburg, PA 17101

RE: Snow Shoe Township/Resource Recovery

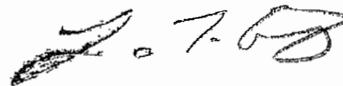
Dear Mr. Bradshaw:

The Cooperation Agreement signed by Snow Shoe Township, in #2, is limited to "...support Resource in securing permits and approvals for construction of the I-80 interchange." The paragraph goes on to say, "**While this Agreement shall not constitute nor shall it require support for the landfill** by Township, provided all landfill traffic will be via I-80 interchange access, the Township will not oppose permitting of the Landfill."

It is my understanding the document you are requesting the Township to sign includes much more than an I-80 interchange and, therefore, is not within the parameters of the Cooperation Agreement signed by the Township.

Your letter to me does not provide any explanation as to why the Township is in any way obligated to sign the document requested. It is incumbent upon you, not the Township, to explain the basis of your position or risk a bad faith counter-claim against your client and attorney's fees as provided for in #2 of the Agreement.

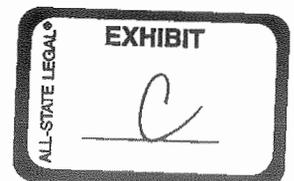
Sincerely,



Louis T. Glantz

LTG/ldn

CC: Snow Shoe Township



**STEVENS & LEE**  
**LAWYERS & CONSULTANTS**

17 North Second Street  
16th Floor  
Harrisburg, PA 17101  
(717) 234-1090 Fax (717) 234-1099  
www.stevenslee.com

Direct Dial: (717) 255-7357  
Email: mdb@stevenslee.com  
Direct Fax: (610) 371-7362

September 24, 2008

**VIA FAX (814-238-8016) AND MAIL**

Louis T. Glantz, Esquire  
Glantz, Johnson & Associates  
1901 East College Avenue  
State College, PA 16801

Dear Mr. Glantz:

As you know, this firm represents Resource Recovery, LLC ("RRL"). This correspondence is directed to you in your capacity as solicitor of Snow Shoe Township (the "Township").

RRL has repeatedly requested that the Township honor its obligations under that certain Cooperation Agreement dated February 8, 2006. It is now abundantly clear that the Township will not honor its obligations to RRL. We are therefore terminating the Cooperation Agreement effective immediately. No further payments will be forthcoming.

Very truly yours,

STEVENS & LEE



Mark D. Bradshaw

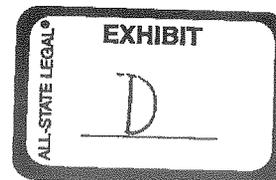
MDB:aak

cc: Georges Test, Jr., Esquire  
Mr. George W. Rettew, Jr., P.E.  
Mr. Edward Abel

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Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

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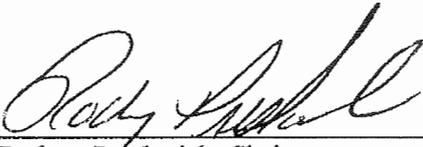


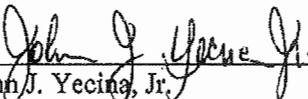
*cc client 10/1/08*

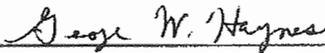
**VERIFICATION**

Snow Shoe Township hereby states that it is the Plaintiff in this action and that the statements of fact made in the foregoing document are true and correct to the best of its knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

Date: 1/20/09

  
\_\_\_\_\_  
Rodney Preslovich, Chairman

  
\_\_\_\_\_  
John J. Yecina, Jr.

  
\_\_\_\_\_  
George W. Haynes