

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLIFTON G. SWIGER,
865 Laurel Run Road
Fairview, West Virginia 26570,

Plaintiff,

v.

ALLEGHENY ENERGY, INC.,
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601,

ALLEGHENY ENERGY SUPPLY CO., LLC,
4350 Northern Pike
Monroeville, Pennsylvania 15146,

ALLEGHENY ENERGY SERVICE CORP.,
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601, and,

MORGAN, LEWIS & BOCKIUS, LLP,
1701 Market Street
Philadelphia, Pennsylvania 19103,

Defendants.

CIVIL ACTION

NO. _____

COMPLAINT

PARTIES

1. Plaintiff Clifton G. Swiger is an individual residing in Fairview, West Virginia.
2. Defendant Allegheny Energy, Inc. (“Allegheny Energy”) is a corporation incorporated in Maryland with its principal place of business in Greensburg, Pennsylvania.

3. Defendant Allegheny Energy Supply Co., LLC (“Allegheny Energy Supply”) is a limited liability company registered in Delaware with its principal place of business in Monroeville, Pennsylvania. Allegheny Energy Supply is a majority-owned subsidiary of Allegheny Energy.

4. Defendant Allegheny Energy Service Corp. (“Allegheny Energy Service”) is a corporation incorporated in Maryland with its principal place of business in Greensburg, Pennsylvania. Allegheny Energy Service is a wholly-owned subsidiary of Allegheny Energy.

5. The defendant Morgan, Lewis & Bockius, LLP (“Morgan, Lewis & Bockius”) is a limited liability general partnership registered in Pennsylvania with its principal place of business in Philadelphia, Pennsylvania.

6. At all relevant times, the defendants acted through their employees and authorized agents, acting within the scope of their agency.

SUBJECT MATTER JURISDICTION

7. The plaintiff is a citizen of West Virginia. The defendants are citizens of states other than West Virginia. The matter in controversy exceeds, exclusive of interest and costs, \$75,000. The Court has jurisdiction under 28 U.S.C. § 1332(a)(1).

FACTS

8. Yahoo!, Inc. (“Yahoo!”) is a portal on the World Wide Web that provides a variety of free services to the public.

9. Among the public services provided by Yahoo! are electronic message boards. Using the electronic message-board service, the general public can post comments and opinions about publicly traded companies. Yahoo! hosts a separate message board for each publicly traded company, including Allegheny Energy.

10. Prior to posting on its message boards, Yahoo! prompts users to fill out an online registration form. The online registration form asks users to select a unique “Yahoo! ID,” and to enter personal information including first and last name, birth date, zip code, and email address. Yahoo! also allows users to select a nickname to identify themselves when posting messages. Most users post their messages using nicknames that do not reveal their actual identities.

11. Yahoo! requires all new users to agree to its privacy policy. In its privacy policy, Yahoo! agrees not to share personal information with other people or nonaffiliated companies except under certain limited circumstances.

12. The majority of the comments posted on Yahoo! message boards are colloquial in tone, opinionated, speculative, and frequently caustic and derogatory. The comments tend to resemble informal spoken conversation more than formal written communication.

13. Prior to July 23, 2003, the Yahoo! public electronic message board devoted to Allegheny Energy (which trades under the symbol “AYE”) contained numerous

anonymous postings from Yahoo! members regarding a recent decline in Allegheny Energy's stock price. From a high of more than fifty dollars per share in May 2001, Allegheny Energy's stock price had declined to less than ten dollars per share in July 2003. Many of the postings on the message board were hostile in tone and extremely critical of Allegheny Energy and its management.

14. On July 23, 2003, the plaintiff posted an anonymous message on the Yahoo! public electronic message board devoted to Allegheny Energy (the "message-board posting"), while using an account he shared with his wife, Mary Jo Swiger.

15. At the time he made the message-board posting, the plaintiff was employed by Allegheny Energy Service as an Engineering Technician at the Rivesville Power Station in Rivesville, West Virginia. The plaintiff had been continuously employed by Allegheny Energy Service or one of its affiliates since July 1, 1987.

16. The plaintiff's message-board posting was made from his home computer in Fairview, West Virginia, on his personal time and without the use of any company resources.

17. In the message-board posting, the plaintiff strongly criticized Allegheny Energy's management. Among other things, the plaintiff accused Allegheny's management of "turn[ing] [a] respectable Blue Chip into a POS [piece of shit]." He also criticized the company's diversity program using a racially offensive term, writing: "[W]e were force fed 'love thy n*gger' with [Allegheny Energy's] DIVERSITY program. Yet another brainstorm that was going to bring on tremendous growth, high

dividends, and astronomical profits!” A complete copy of the message-board posting is attached as Exhibit A.

18. The plaintiff posted the message-board posting using the nickname “ayeyawn” and did not reveal his actual identity. The plaintiff identified himself only as follows: “I work for this company (non-exempt) and have a lot of years under my belt.” Based solely on the content of the post, none of the defendants could have distinguished the plaintiff from other similarly situated employees.

19. The plaintiff made the message-board posting with the reasonable expectation that Yahoo! would keep his identity anonymous. At no time did the plaintiff knowingly or voluntarily waive his rights to privacy or anonymous speech.

20. On October 16, 2003, Allegheny Energy, through its attorneys Steven R. Wall and Joseph N. Frabizzio of Morgan, Lewis & Bockius, filed a Praecipe for Issuance of Writ of Summons in the Court of Common Pleas of Philadelphia County, initiating under the Pennsylvania Rules of Civil Procedure a civil action by Allegheny Energy against the plaintiff. The plaintiff was identified in the Praecipe only as “John Doe.” A copy of the Praecipe is attached as Exhibit B.

21. Attached to the Praecipe for Issuance of Writ of Summons, Allegheny Energy, through its attorney Joseph N. Frabizzio of Morgan, Lewis & Bockius, filed an accompanying Civil Cover Sheet characterizing the cause of action as a tort claim for “Breach of Fiduciary Duty and Breach of Duty of Loyalty.” A copy of the Civil Cover Sheet is attached as Exhibit C.

22. There was no basis in fact or law to support a claim by Allegheny Energy against the plaintiff for breach of a duty of loyalty or breach of fiduciary duty, or to support any other claim by Allegheny Energy against the plaintiff. Neither Allegheny Energy nor Morgan, Lewis & Bockius could have believed that any such facts or law existed.

23. On October 16, 2003, the Prothonotary of Philadelphia County, Pennsylvania issued a writ of summons directed to the plaintiff under the name “John Doe.”

24. Allegheny Energy and Morgan, Lewis & Bockius failed to make any effort to notify the plaintiff of the civil action against him as required by Pennsylvania law. In particular, neither defendant posted a notice on the Yahoo! public electronic message board devoted to Allegheny Energy. As a result, the plaintiff was unaware of the civil action against him.

25. On October 17, 2003, Allegheny Energy, through its attorneys Steven R. Wall, Joseph N. Frabizzio, and Pam R. Jenoff of Morgan, Lewis & Bockius, filed an “Emergency Motion for Issuance of a Commission Directing the Issuance of a Subpoena Duces Tecum Outside the Commonwealth of Pennsylvania” (the “emergency motion”) in the Court of Common Pleas of Philadelphia County. A copy of the emergency motion is attached as Exhibit D.

26. Although the emergency motion was filed nearly three months after the message-board posting, Allegheny Energy, through its attorneys at Morgan, Lewis & Bockius, stated that it “file[d] [the] Motion on an emergency basis in order to prevent

[John Doe] from posting any additional messages that would breach [John Doe's] fiduciary duty or duty of loyalty to [Allegheny Energy].”

27. In the emergency motion, Allegheny Energy, through its attorneys at Morgan, Lewis & Bockius, averred that “it is apparent that [John Doe] is an employee of [Allegheny Energy] and may be a high-ranking employee.” Allegheny Energy and Morgan, Lewis & Bockius did not attach the complete text of the message-board posting to the emergency motion, and did not inform the court that the plaintiff had identified himself as a “non-exempt” employee—meaning that he was likely an hourly worker and not a “high-ranking employee.”

28. Allegheny Energy, through its attorneys at Morgan, Lewis & Bockius, further averred in the emergency motion that “[John Doe's] disclosure of this information on the Yahoo! message board violated [Allegheny Energy's] anti-harassment policy and constitutes a breach of [John Doe's] duty of loyalty to plaintiff [Allegheny Energy].”

29. Allegheny Energy and Morgan, Lewis & Bockius failed to make any effort to notify the plaintiff of the emergency motion to give him an opportunity to respond. In particular, neither defendant posted a notice on the Yahoo! public electronic message board devoted to Allegheny Energy. As a result, the plaintiff was unaware of the emergency motion and of the civil action against him.

30. On October 17, 2003, the Prothonotary of Philadelphia County issued a commission directing the issuance of a subpoena duces tecum in California to the custodian of records of Yahoo!

31. On October 28, 2003, Allegheny Energy, through its attorney Brian L. Johnsrud of Morgan, Lewis & Bockius, filed the commission and an accompanying declaration by Johnsrud (the “declaration”) in the Superior Court of California, County of Santa Clara. In the declaration, Brian L. Johnsrud stated his intention to subpoena Yahoo! in accordance with the commission. A copy of the declaration is attached as Exhibit E.

32. In the declaration, Brian L. Johnsrud declared under penalty of perjury that “[t]he documents sought by the subpoena are relevant to the subject matter involved in the action.”

33. On October 29, 2003, Allegheny Energy, through its attorney Brian L. Johnsrud of Morgan, Lewis & Bockius, served a subpoena on the Custodian of Records of Yahoo!, Inc. at 701 First Avenue, Sunnyvale, California, requesting the plaintiff’s registration information, including the plaintiff’s identity, address, phone number, and email address. A copy of the subpoena is attached as Exhibit F.

34. Allegheny Energy and Morgan, Lewis & Bockius failed to make any effort to notify the plaintiff of the subpoena. In particular, neither defendant posted a notice on the Yahoo! public electronic message board devoted to Allegheny Energy. As a result, the plaintiff was unaware of the subpoena and of the civil action against him.

35. Yahoo! claims to have sent an email on October 31, 2003, to an email address owned by the plaintiff notifying him that Yahoo! had been served with a subpoena requiring disclosure of information related to his user account. A copy of the email produced by Yahoo! states that Yahoo! would respond to the subpoena in fifteen

days unless a motion to quash the subpoena was filed or the matter was otherwise resolved.

36. The plaintiff either never received the email notice sent by Yahoo!, or, if he did receive the email, inadvertently deleted it without reading it. As a result, the plaintiff remained unaware of the subpoena and of the civil action against him.

37. Based on the information released by Yahoo! in response to the subpoena, agents of Allegheny Energy, Allegheny Energy Supply, and Allegheny Energy Service (the “Allegheny Energy defendants”) became aware that the nickname “ayeyawn” belonged to Clifton G. Swiger, an employee of Allegheny Energy Service.

38. Even after identifying the plaintiff, Allegheny Energy and Morgan, Lewis & Bockius failed to make any effort to notify the plaintiff of the proceedings against him.

39. On November 25, 2003, Allegheny Energy, through its attorneys Steven R. Wall and Joseph N. Frabizzio of Morgan, Lewis & Bockius, pursuant to Pa.R.C.P. No. 229, filed a Praecipe to Discontinue Without Prejudice in the Court of Common Pleas of Philadelphia County in its civil action against the plaintiff. A copy of the Praecipe to Discontinue Without Prejudice is attached as Exhibit G.

40. On December 8, 2003, the plaintiff was called into a conference room by the plant manager of the Rivesville Power Station, Jonathan W. Smith, at his place of employment in Rivesville, West Virginia. Also present in the conference room were regional manager Jim Laughner, Director of Employee Relations Debra West, and an unidentified security official. Jonathan W. Smith, Jim Laughner, Debra West, and the

unidentified security official were all employees of Allegheny Energy, Allegheny Energy Supply, or Allegheny Energy Service.

41. At the December 8, 2003, meeting, Debra West showed the plaintiff a copy of the message-board posting and stated that the company had discovered through a subpoena to Yahoo! that the account used to post the message-board posting was registered in the name of the plaintiff's wife, Mary Jo Swiger. Debra West then stated that, based on the fact that the account was registered in the name of the plaintiff's wife, Allegheny Energy had concluded that the message-board posting was made by the plaintiff.

42. Debra West informed the plaintiff that his use of a racially offensive term was in violation of the company's diversity policy. Jim Laughner then stated that he was placing the plaintiff on indefinite suspension without pay until further notice.

43. The December 8, 2003, meeting was the first time that the plaintiff became aware of the civil action against him.

44. On December 10, 2003, Jim Laughner sent a letter to the plaintiff on behalf of Allegheny Energy Supply notifying the plaintiff that his suspension had been converted to a discharge. The reason given in the letter for the discharge was "placing a racially derogatory posting on the Yahoo[!] message board in violation of Allegheny Energy's Positive Work Environment expectations, including Policy 80-16, Workplace Harassment and the Diversity philosophy." A copy of the letter from Jim Laughner to the plaintiff is attached as Exhibit H.

45. Allegheny Energy's Policy 80-16 provides, in relevant part: "The company is committed to maintaining a work environment free from harassment."

46. The message-board posting did not constitute harassment within the "work environment" because it was made from the plaintiff's home computer on his personal time, without the use of any company resources.

47. Allegheny Energy's "Diversity Philosophy" provides:

Allegheny Energy will create an atmosphere that supports and values employees, recognizing that it is our contributions that provide Allegheny with a competitive advantage. By creating a culture that is inclusive, flexible, and respectful, we demonstrate our commitment to encouraging creativity, appreciating differences, and helping employees to achieve their potential. The diversity philosophy is embedded in our employment processes, work/life programs, community relations efforts, and all activities, behaviors, and values that make up Allegheny's culture.

48. The "Diversity Philosophy" states the vision of Allegheny Energy, but does not create any duties or obligations on the part of any employees.

49. Versions of Allegheny Energy's Workplace Harassment policy and Diversity Philosophy are included within the Power Station Employees' Manual. The first page of the Power Station Employee's Manual states that "[t]he rules and policies set forth in this manual do not constitute an express or implied contract."

50. The plaintiff did not violate any of Allegheny Energy's policies.

51. At the time of his suspension, the plaintiff had worked for Allegheny Energy Service or its affiliates for nearly sixteen and one half years, and had completed nearly thirteen years of perfect attendance.

52. During his employment with Allegheny Energy Service and its affiliates, the plaintiff received only positive employment evaluations and was never reprimanded or disciplined.

53. Between December 21, 2003, and February 2, 2005, the plaintiff made repeated but unsuccessful attempts to find an equivalent position at another company. During this period, the plaintiff remained unemployed.

54. On February 2, 2005, the plaintiff accepted employment with Dynatec Energy, Inc. as a Land Man/Permit Specialist for a salary substantially below the salary he received while employed by Allegheny Energy Service.

55. On May 2, 2005, the plaintiff accepted a position with the State of West Virginia as an environmental inspector for a salary substantially below the salary he received while employed by Allegheny Energy Service.

FIRST CLAIM FOR RELIEF

ABUSE OF PROCESS AGAINST ALLEGHENY ENERGY AND MORGAN, LEWIS & BOCKIUS

56. The Praecipe for Issuance of Writ of Summons, the emergency motion, and the subpoena to Yahoo! each constitute forms of legal process against the plaintiff.

57. Allegheny Energy and Morgan, Lewis & Bockius, acting jointly, separately, severally, or in the alternative, used each of these forms of process primarily for the purpose of revealing the identity of the plaintiff, a purpose for which the process was not designed.

58. As a result of the foregoing conduct of Allegheny Energy and Morgan, Lewis & Bockius, the plaintiff was terminated from his job, was unemployed for a period of time, and now earns a substantially lower salary. In addition, the plaintiff suffered other damages, including an invasion of his right to privacy and of his First Amendment right to speak anonymously, emotional distress, humiliation, and loss of reputation.

SECOND CLAIM FOR RELIEF

WRONGFUL USE OF CIVIL PROCEEDINGS (42 Pa. C.S. § 8351) AGAINST ALLEGHENY ENERGY AND MORGAN, LEWIS & BOCKIUS

59. Allegheny Energy and Morgan, Lewis & Bockius, acting jointly, separately, severally, or in the alternative, took part in the procurement, initiation, and continuation of the civil proceedings against the plaintiff.

60. The civil proceedings terminated in the plaintiff's favor when Allegheny Energy, through its attorneys at Morgan, Lewis & Bockius, filed a Praecipe to Discontinue Without Prejudice pursuant to Pa.R.C.P. No. 229.

61. The civil proceedings were procured, initiated, and continued by Allegheny Energy and Morgan, Lewis & Bockius in a grossly negligent manner and without probable cause.

62. The primary purpose for which Allegheny Energy and Morgan, Lewis & Bockius procured, initiated, and continued the proceedings was to reveal the identity of the plaintiff, and not to secure the proper discovery, joinder of parties, or adjudication of the claim on which the proceedings were based.

63. As a result of the foregoing conduct of Allegheny Energy and Morgan, Lewis & Bockius, the plaintiff was damaged as detailed in ¶ 58, *supra*.

THIRD CLAIM FOR RELIEF

INVASION OF PRIVACY (INTRUSION UPON SECLUSION) AGAINST ALLEGHENY ENERGY AND MORGAN, LEWIS & BOCKIUS

64. The plaintiff had a reasonable expectation of privacy in the confidentiality of his identity.

65. Allegheny Energy and Morgan, Lewis & Bockius, acting jointly, separately, severally, or in the alternative, intentionally intruded upon the plaintiff's seclusion and private affairs and concerns by initiating and pursuing civil proceedings against the plaintiff for the purpose of revealing his identity.

66. Allegheny Energy's and Morgan, Lewis & Bockius's intrusion into the plaintiff's seclusion would be highly offensive to a reasonable person

67. As a result of the foregoing conduct of Allegheny Energy and Morgan, Lewis & Bockius, the plaintiff was damaged as detailed in ¶ 58, *supra*.

FOURTH CLAIM FOR RELIEF

INVASION OF PRIVACY (PUBLICATION OF PRIVATE FACTS) AGAINST ALLEGHENY ENERGY, ALLEGHENY ENERGY SUPPLY, AND ALLEGHENY ENERGY SERVICE

68. The plaintiff's identity as the author of the message-board posting was a private fact in which the plaintiff had a reasonable expectation of privacy.

69. Allegheny Energy, Allegheny Energy Supply, and Allegheny Energy Service, acting jointly, separately, severally, or in the alternative, publicly identified the

plaintiff as the author of the message-board posting in an email sent to company employees, in a posting on the company's internal web page, and in various company meetings.

70. The publication of the plaintiff's identity would be highly offensive to a reasonable person, and not of legitimate concern to the public.

71. As a result of the foregoing conduct of the Allegheny Energy defendants, the plaintiff was damaged as detailed in ¶ 58, *supra*.

FIFTH CLAIM FOR RELIEF

WRONGFUL DISCHARGE AGAINST ALLEGHENY ENERGY, ALLEGHENY ENERGY SUPPLY, AND ALLEGHENY ENERGY SERVICE

72. The plaintiff was an at-will employee of Allegheny Energy Service.

73. The plaintiff was discharged by Allegheny Energy, Allegheny Energy Supply, and Allegheny Energy Service, acting jointly, separately, severally, or in the alternative.

74. The means by which the Allegheny Energy defendants discharged the plaintiff involved malicious prosecution, abuse of process, and invasion of the plaintiff's privacy, and thereby violated the plaintiff's rights and public policy.

75. As a result of the foregoing conduct of the Allegheny Energy defendants, the plaintiff was damaged as detailed in ¶ 58, *supra*.

DEMAND FOR RELIEF

76. The plaintiff demands judgment in the amount of his actual damages in an amount exceeding \$150,000 exclusive of interest and costs, punitive damages, and such other relief as the Court finds appropriate.

Date: October 26, 2005

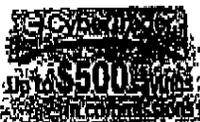
Respectfully submitted,

s/ Mark R. Cuker (electronically filed)

Mark R. Cuker
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Williams, Cuker & Berezofsky
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Gregory A. Beck
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Attorneys for the plaintiff, Clifton G. Swiger



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[Options](#) - [Edit Public Profile](#) - [Sign Out](#)

Yahoo! Message Boards: AYE

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< [Previous](#) | [Next](#) > [[First](#) | [Last](#) | [Msg List](#)] Msg #: [Go](#)

Reply Post

[Recommend this Post](#) - This post has 6 recommendations [Ignore this User](#) | [Report Abuse](#)

Bull Crap Here

07/23/03 09:33 pm
Msg: 9679 of 11592

by: [aveyawn](#) (37/F)

Long-Term Sentiment: Strong Sell (deleted)

Go ahead, pound on joyost. Sure, joyost is probably shorting AYE. So what REALLY makes the difference? Do you longs (fools) or shorts (probably not as foolish) think ANYTHING you spout here has ANY bearing on this stock, the company, the new hires, or management decision making?

I work for this company (non-exempt) and have a lot of years under my belt. Yes, A.N. and his cronies turned this respectable Blue Chip into a POS. He and they ruined a good chunk of my 401K. Now I have to delay retiring. They offered up all sorts of crap on a silver plated tray for us to swallow. AYE made me feel like a child with its "NICK" programs which were a total failure, childish (as we all know), and absolutely moronic. Just like AYE's Work Management horse manure which which has done nothing more than take the tools out of workers' hands and created a non productive pile of dung. Another STUPID program that AYE probably spent millions on for nothing, absolutely nothing. Then we were force fed "love thy n*gger" with AYE's DIVERSITY program. Yet another brainstorm that was going to bring on tremendous growth, high dividends, and astronomical profits!

This company axed those CEOs that didn't want to go along with the new way of thinking: Pete, Don and others. Now, the axe is heading back the other direction and I hope it falls hard. Good and hard on the A**holes who screwed me, all my employee brothers, and the stockholders.

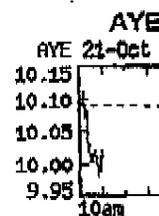
There was a time when this board was dull, uninteresting and saw very few posts. Some were weeks between one another. Now, it has become the arena of the day traders and shorts. I don't blame either of you for gambling on my company. But, I do blame the idiot CEOs who instigated this whole mess. Too bad they're probably not going to get what they deserve. However, I'm taking the hit for their bone-headed manuevers and speculation. So A.N., R.G, H.M., M.M., and all the BOD.....thanks for NOTHING!

[Message Thread](#) [[View](#)]

Profanity filter is Off [[Turn On](#)]

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Reply Post



AYE 10.0

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[Messages](#), [News](#), [Pro](#)

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MORGAN, LEWIS & BOCKIUS LLP
Steven R. Wall
PA I.D. No. 39012
Joseph N. Frabizzio
PA I.D. No. 84583
1701 Market Street
Philadelphia, PA 19103-2921
215.963.5000

JUL 06 2004

DISCOVERY DEADLINE: _____

Attorneys for Plaintiff Allegheny Energy, Inc.

Allegheny Energy, Inc.
Plaintiff,

v.

John Doe

Defendant.

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY,
PENNSYLVANIA

OCTOBER 2003

CIVIL ACTION

NO. 001615

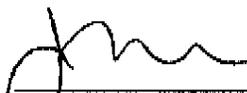
OCTOBER TERM, 2003

PRAECIPE FOR ISSUANCE OF WRIT OF SUMMONS

Code – Breach of Fiduciary Duty and Breach of Duty of Loyalty

To: Prothonotary

Kindly issue a Writ of Summons against the defendant in the above-referenced action.



MORGAN, LEWIS & BOCKIUS LLP
Steven R. Wall
PA I.D. No. 39012
Joseph N. Frabizzio
PA I.D. No. 84583
1701 Market Street
Philadelphia, PA 19103-2921

Dated: October 16, 2003

Court of Common Pleas of Philadelphia County
 Trial Division
Civil Cover Sheet

For Prothonotary Use Only
OCTOBER 2003
001615

| | |
|---|---------------------------------------|
| PLAINTIFF'S NAME Allegheny Energy, Inc. | DEFENDANT'S NAME John Doe |
| PLAINTIFF'S ADDRESS Greensburg Corporate Center 800 Cabin Hill Drive Greensburg, PA 15601 | DEFENDANT'S ADDRESS Unknown |
| PLAINTIFF'S NAME | DEFENDANT'S NAME |
| PLAINTIFF'S ADDRESS | DEFENDANT'S ADDRESS |
| PLAINTIFF'S NAME | DEFENDANT'S NAME |
| PLAINTIFF'S ADDRESS | DEFENDANT'S ADDRESS |

| | | |
|--|-------------------------------------|--|
| TOTAL NUMBER OF PLAINTIFFS 1 | TOTAL NO. OF DEFENDANTS 1 | COMMENCEMENT OF ACTION <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition Action <input type="checkbox"/> Transfer From Other Jurisdictions <input type="checkbox"/> Notice of Appeal |
|--|-------------------------------------|--|

| | | | | |
|--|--|--|--|---|
| AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00 | COURT PROGRAMS <input type="checkbox"/> Arbitration <input checked="" type="checkbox"/> Jury <input checked="" type="checkbox"/> Non-Jury <input type="checkbox"/> Other | <input type="checkbox"/> Mass Tort <input type="checkbox"/> Savings Action <input type="checkbox"/> Petition | <input type="checkbox"/> Commerce <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Statutory Appeals | <input type="checkbox"/> Settlement <input type="checkbox"/> Minors <input type="checkbox"/> W/D/Survival |
|--|--|--|--|---|

CASE TYPE AND CODE (SEE INSTRUCTIONS)
Tort - Other - Breach of Fiduciary Duty and Breach of Duty of Loyalty
1-0

STATUTORY BASIS FOR CAUSE OF ACTION (SEE INSTRUCTIONS)

| | | | | | | | | | |
|--|--|-----|----|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER) | IS CASE SUBJECT TO COORDINATION ORDER? | | | | | | | | |
| | <table border="1"> <tr> <td>Yes</td> <td>No</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table> | Yes | No | <input type="checkbox"/> |
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TO THE PROTHONOTARY:
 Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant:
 Papers may be served at the address set forth below.

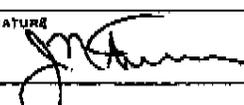
| | |
|--|---|
| NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY Joseph N. Frabizzio | ADDRESS (SEE INSTRUCTIONS) Morgan Lewis & Bockius LLP 1701 Market Street Philadelphia, PA 19103 |
| PHONE NUMBER 215-963-5348 | FAX NUMBER 215-963-5001 |
| SUPREME COURT IDENTIFICATION NO. 84583 | E-MAIL ADDRESS jfrabizzio@morganlewis.com |
| SIGNATURE  | DATE October 16, 2003 |

Exhibit C

MORGAN, LEWIS & BOCKIUS LLP
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Attorneys for Plaintiff Allegheny Energy, Inc.

Allegheny Energy, Inc.
Plaintiff,

v.

John Doe

Defendant.

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY,
PENNSYLVANIA

CIVIL ACTION

NO. 001615

OCTOBER TERM, 2003

**EMERGENCY MOTION FOR ISSUANCE OF A COMMISSION
DIRECTING THE ISSUANCE OF A SUBPOENA DUCES TECUM
OUTSIDE THE COMMONWEALTH OF PENNSYLVANIA**

Plaintiff, Allegheny Energy, Inc., by and through its undersigned counsel, hereby moves the Court pursuant to 42 Pa.C.S.A. § 5325, for the issuance of a commission directed to any Notary Public, Judge or Officer authorized to issue subpoenas duces tecum by the laws of the State of California, to subpoena the user account records of Defendant John Doe, a.k.a. "ayeyawn," as identified in Attachment "A" to Subpoena, (attached hereto as Exhibit 1), from the Yahoo! Custodian of Records, located at 701 First Avenue, Sunnyvale, CA 94089. In support of this motion, plaintiff avers as follows:

Exhibit D

1. On October 16, 2003, plaintiff commenced this action for breach of fiduciary duty and breach of duty of loyalty in the Court of Common Pleas of Philadelphia County against defendant John Doe.

2. Under the alias "ayeyawn," defendant has posted messages on a Yahoo! message board dedicated to comments about plaintiff, which allege, inter alia, that plaintiff terminated certain high-ranking individuals who advanced a diversity program and other company initiatives, that plaintiff force-fed employees a "love thy n*gger" program, and that these programs have had a negative performance on the company's stock.

3. Based on the content of the messages, it is apparent that defendant is an employee of plaintiff and may be a high-ranking employee. Defendant's disclosure of this information on the Yahoo! message board violated plaintiff's anti-harassment policy and constitutes a breach of defendant's fiduciary duty to plaintiff and a breach of defendant's duty of loyalty to plaintiff.

4. To determine defendant's identity, plaintiff must subpoena the user account records for "ayeyawn" from Yahoo! The user account records of defendant are relevant and important to the issues in this case, so that plaintiff may determine defendant's identity and the nature of the breach of fiduciary duty and breach of duty of loyalty.

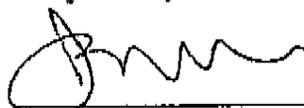
5. The Yahoo! user account records are located in Sunnyvale, California, making a California court the only proper court to issue a subpoena directing the production of these records.

6. It is necessary that a commission be issued under the seal of this Court pursuant to 42 Pa.C.S.A. § 5325 to compel the production of these user account records under the laws of Pennsylvania and California.

7. Plaintiff files this Motion on an emergency basis in order to prevent defendant from posting any additional messages that would breach defendant's fiduciary duty or duty of loyalty to plaintiff.

WHEREFORE, plaintiff respectfully requests that this Court authorize the issuance of a commission directing any Notary Public, Judge or Officer authorized by the laws of the State of California to issue a subpoena to produce documents, on the Yahoo! Custodian of Records, 701 First Avenue, Sunnyvale, CA 94089, to produce the documents set forth in Attachment "A" to Subpoena, attached hereto as Exhibit 1.

Respectfully Submitted,



MORGAN, LEWIS & BOCKIUS LLP
Steven R. Wall
PA I.D. No. 39012
Joseph N. Frabizzio
PA I.D. No. 84583
Pam R. Jenoff
PA I.D. No. 87821
1701 Market Street
Philadelphia, PA 19103-2921

Dated: October 16, 2003

1 BRIAN L. JOHNSRUD, State Bar No. 184474
2 MORGAN, LEWIS & BOCKIUS LLP
2 Palo Alto Square
3 3000 El Camino Real, Suite 900
Palo Alto, CA 94306-2212
4 Tel: 650.843.4000
Fax: 650.843.4001

5 Attorneys for Allegheny Energy, Inc.

 UCS

FILED Santa Clara Co
10/28/03 4:05pm
Kiri Torre
Clerk Of Court
By: estelias disclerk
R#200300045396
CK \$274.50
TL \$274.50
Case: 1-03-CV-007978

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10 **103 CV007978**

11 In the Matter of the Deposition of
12 Yahoo!, Inc.

**DECLARATION OF BRIAN L.
JOHNSRUD IN SUPPORT OF ISSUANCE
OF DEPOSITION SUBPOENA
REGARDING DEPOSITION FOR USE
OUTSIDE OF CALIFORNIA**

13
14
15 I, Brian L. Johnsrud, declare:

16 1. I am an attorney representing Allegheny Energy, Inc., who is the Plaintiff in an
17 action entitled *Allegheny Energy, Inc., Plaintiff v. John Doe, Defendant*, now pending in the
18 Court of Common Pleas, Philadelphia County, Pennsylvania, Civil Action No. 001615 (the
19 "action").

20 2. The Court of Common Pleas in which the action is pending has duly issued a
21 Commission directing the issuance of a subpoena outside The Commonwealth of Pennsylvania to
22 the Custodian of Records of Yahoo!, Inc. The original Commission is attached hereto as Exhibit
23 A and made a part hereof. In light of this Commission, Plaintiff intends to serve a subpoena
24 duces tecum under California Code of Civil Procedure Section 2029.

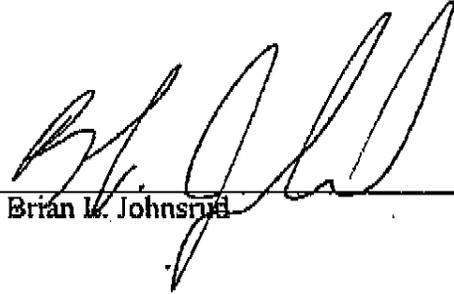
25 3. The Custodian of Records for Yahoo!, Inc. resides at 701 First Avenue,
26 Sunnyvale, CA 94089, which is within 75 miles of the place specified for the subpoenaed
27 documents to be produced. The documents sought by the subpoena are relevant to the subject
28 matter involved in the action.

1-PA/2007636.1

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 28, 2003



Brian L. Johnsrud

| | |
|--|---------------------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): BRIAN L. JOHNSRUD (SBN 184474) MORGAN LEWIS & BOCKIUS LLP 2 Palo Alto Square 3000 El Camino Real, Suite 900 Palo Alto, CA 94306-2212 TELEPHONE NO. (650) 843-4000 FAX NO. (650) 843-4001 ATTORNEY FOR (Name): Allegheny Energy, Inc. | FOR COURT USE ONLY |
| NAME OF COURT: SUPERIOR COURT OF CALIFORNIA, SANTA CLARA CO. STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: | |
| PLAINTIFF/PETITIONER: Allegheny Energy, Inc. DEFENDANT/RESPONDENT: John Doe | |
| DEPOSITION SUBPOENA For Production of Business Records | CASE NUMBER: 1-03-CV-007976 |

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Custodian of Records at Yahoo! Inc., 701 First Avenue, Sunnyvale, CA 94089, phone: (408) 349-3300

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in Item 3, as follows:

| |
|---|
| To (name of deposition officer): LSC Data Solutions, Inc. On (date): November 18, 2003 At (time): 10:00 a.m. Location (address): 809 San Antonio Road, Suite 3, Palo Alto CA 94303 Do not release the requested records to the deposition officer prior to the date and time stated above. |
|---|

- a. by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
 - b. by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
 - c. by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in Item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows:

Continued on attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.8 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date Issued: **October 29, 2003**
 Brian L. Johnsrud
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PERSON ISSUING SUBPOENA)
Attorneys for Allegheny Energy, Inc.
 (TITLE)

(Proof of service on reverse)

Form adopted for mandatory use
 Judicial Council of California
 982(a)(15.2) (Rev. January 1, 2000)

DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

Legal Solutions & Plus

Code of Civil Procedure
 §§ 2020, 2026
 Government Code § 68097.1

MORGAN, LEWIS & BOCKIUS LLP
Steven R. Wall
PA I.D. No. 39012
Joseph N. Frabizzio
PA I.D. No. 84583
1701 Market Street
Philadelphia, PA 19103-2921
215.963.5000

PRESENTED FOR REVIEW
2003 NOV 24 PM 2:45
PRO PROTHY

Attorneys for Plaintiff Allegheny Energy, Inc.

Allegheny Energy, Inc.
Plaintiff,

v.

John Doe

Defendant.

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY,
PENNSYLVANIA

CIVIL ACTION

NO. 001615

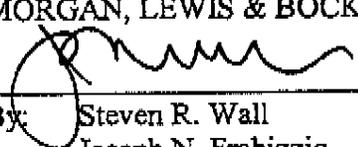
OCTOBER TERM, 2003

PRAECIPE TO DISCONTINUE WITHOUT PREJUDICE

To the Prothonotary:

Pursuant to Rule 229 of the Pennsylvania Rules of Civil Procedure and Rule 229(A) of the Philadelphia County Court Rules, please discontinue, without prejudice, the above-captioned matter on behalf of Plaintiff Allegheny Energy, Inc.

MORGAN, LEWIS & BOCKIUS LLP

By: 
Steven R. Wall
Joseph N. Frabizzio
1701 Market Street
Philadelphia, PA 19103-2921
215-963-5000

Attorneys for Plaintiff Allegheny Energy, Inc.

FILED
PROPROTHY
NOV 25 2003
T. BARBER!



December 10, 2003

Clifton G. Swiger
865 Laurel Run Road
Fairview, WV 26570

Dear Cliff:

This letter is to notify you that effective December 10, 2003, your indefinite suspension from work has been converted to discharge for placing a racially derogatory posting on the Yahoo message board in violation of Allegheny Energy's Positive Work Environment expectations, including Policy 80-16, Workplace Harassment and the Diversity philosophy.

Your final paycheck, as well as information regarding benefits entitlement and continuation, will be sent to you under separate cover. In addition, any personal belongings that were left at the station will be mailed to you.

Any questions are to be directed to Debbie West at 724-838-6640. Also, the Employee Assistance Program, administered by Gateway Rehabilitation Center, is available for your confidential use by calling 1-800-566-5933.

Sincerely,

Jim Laughner

cc: Jim Garlick
Jonathan Smith
Debbie West
Jan Hanks

Exhibit H