

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 59 CD 2020

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June 1, 2020



CAPTION

Michelle H. Kichline, Kathi Cozzone
and Terence Farrell in their
official capacities as the
Commissioners of
Chester County and
the County of Chester,
Pennsylvania,
Appellants

v.

Sunoco Pipeline, L.P.

CASE INFORMATION

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: May 6, 2020 Awaiting Appellant Paperbooks

Journal Number:

Case Category: Civil Case Type(s): Equity

CONSOLIDATED CASES

RELATED CASES

Docket No / Reason	Type	Docket No / Reason	Type
67 CD 2020 Same Party	Consolidated	67 CD 2020 Same Party	Related

COUNSEL INFORMATION

Appellant Kichline, Michelle H.

Pro Se: No

IFP Status:

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Law Firm: Buckley Brion McGuire & Morris LLP
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Attorney: Kirk, Kristen
Law Firm: Chester County Solicitor's Office
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COUNSEL INFORMATION

Appellant Kichline, Michelle H.

Pro Se: No

IFP Status:

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Attorney: Long, Jonathan Richard
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COUNSEL INFORMATION

Appellant Farrell, Terence

Pro Se: No

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Attorney: Long, Jonathan Richard
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COUNSEL INFORMATION

Appellant Cozzone, Kathi

Pro Se: No

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Attorney: Gill, Michael Steven
Law Firm: Buckley, Brion, McGuire, Morris & Sommer, L.L.P.
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Phone No: (610) 436-4400 Fax No: (610) 436-8305

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Law Firm: Buckley Brion McGuire & Morris LLP
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Attorney: Long, Jonathan Richard
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COUNSEL INFORMATION

Appellee Sunoco Pipeline, L.P.

Pro Se: No

IFP Status:

Attorney: Byer, Robert L.
 Law Firm: Duane Morris LLP
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Attorney: Kroculick, George John
 Law Firm: Duane Morris LLP
 Address: 30 S 17TH St
 Philadelphia, PA 19103-4196

Phone No: (215) 979-1386 Fax No:

Attorney: Sutherland, Shannon Hampton
 Law Firm: Duane Morris LLP
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Phone No: (215) 979-1104 Fax No:

Attorney: Moriarty, John Everett
 Law Firm: Duane Morris LLP
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Phone No: (215) 979-1922 Fax No: (215) 689-2176

Attorney: Amerikaner, David Benjamin
 Law Firm: Duane Morris LLP
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FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
01/23/2020	Notice of Appeal	90.25	01/30/2020	2020-CMW-H-000240	90.25

AGENCY/TRIAL COURT INFORMATION

Order Appealed From: January 23, 2020 Notice of Appeal Filed: January 23, 2020
 Order Type: Order
 Documents Received: January 24, 2020

Court Below: Chester County Court of Common Pleas
 County: Chester Division: Chester County Civil Division
 Judge: Griffith, Edward OTN:
 Docket Number: No. 2019-03488-MJ Judicial District: 15

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
Trial Court Record	April 24, 2020	1 Box
Supplemental Record	April 29, 2020	

Date of Remand of Record:

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BRIEFING SCHEDULE

Appellant Kichline, Michelle H. Brief	Appellee Sunoco Pipeline, L.P. Brief
Due: June 15, 2020	Filed:
Reproduced Record	
Due: June 15, 2020	Filed:

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
January 23, 2020	Notice of Appeal Filed Kichline, Michelle H. Cozzone, Kathi Farrell, Terence		Appellant Appellant Appellant	
January 26, 2020	Application for Emergency Relief Kupperman, Louis B. Kupperman, Louis B. Kupperman, Louis B. Gill, Michael Steven Koopman, Ellen Blood Gill, Michael Steven Gill, Michael Steven Koopman, Ellen Blood Koopman, Ellen Blood Kirk, Kristen Long, Jonathan Richard Whiteman, Thomas L. Kirk, Kristen Kirk, Kristen Long, Jonathan Richard Long, Jonathan Richard Whiteman, Thomas L. Whiteman, Thomas L.	Farrell, Terence Kichline, Michelle H. Cozzone, Kathi Farrell, Terence Farrell, Terence Cozzone, Kathi Kichline, Michelle H. Cozzone, Kathi Kichline, Michelle H. Farrell, Terence Farrell, Terence Cozzone, Kathi Kichline, Michelle H. Cozzone, Kathi Kichline, Michelle H. Cozzone, Kathi Kichline, Michelle H.	Appellant Appellant Appellant Appellant Appellant Appellant Appellant Appellant Appellant Appellant Appellant Appellant Appellant Appellant Appellant Appellant Appellant Appellant	
	Document Name: Appellants' Emergency Application for an Injunction Pending Appeal Pursuant to Rule 1732(b)			

January 27, 2020	Order Filed Brobson, P. Kevin			01/27/2020
	Document Name: upon consideration of Appellants' Emergency Application for an Injunction Pending			
	Comment: Appeal Pursuant to Rule 1732(b), a hearing is scheduled for February 5, 2020 at 10:00 a.m., in Courtroom 3001, Third Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania.			

Appellee Sunoco Pipeline L.P. is directed to file and serve a response to the Emergency Application no later than 4:00 p.m. on January 30, 2020.

In anticipation of the hearing, the parties shall file and serve a list of witnesses expected to testify and a list of exhibits no later than 4:00 p.m. on February 3, 2020.

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
January 27, 2020	Praecepte			
	Long, Jonathan Richard	Farrell, Terence	Appellant	
	Long, Jonathan Richard	Cozzone, Kathi	Appellant	
	Long, Jonathan Richard	Kichline, Michelle H.	Appellant	
Document Name: Praecepte to File Corrected Proof of Service for NOA filed 1-23-20				
January 30, 2020	Answer to Application for Relief			
	Byer, Robert L.	Sunoco Pipeline, L.P.	Appellee	
Document Name: Sunoco Pipeline L.P.'s Opposition to Appellants' Emergency Application for an Injunction				
Comment: Pending Appeal Pursuant to Rule 1732(b).				
January 30, 2020	Exhibit			
	Byer, Robert L.	Sunoco Pipeline, L.P.	Appellee	
January 30, 2020	Entry of Appearance			
	Moriarty, John Everett	Sunoco Pipeline, L.P.	Appellee	
February 3, 2020	Notice of Docketing Appeal Exited			02/03/2020
	Commonwealth Court Filing Office			
February 3, 2020	Filed - Other			
	Byer, Robert L.	Sunoco Pipeline, L.P.	Appellee	
	Amerikaner, David Benjamin	Sunoco Pipeline, L.P.	Appellee	
	Moriarty, John Everett	Sunoco Pipeline, L.P.	Appellee	
	Sutherland, Shannon Hampton	Sunoco Pipeline, L.P.	Appellee	
Document Name: Verification of Ronald T. Cummings with Exhibits as Filed in Trial Court				
February 3, 2020	Filed - Other			
	Long, Jonathan Richard	Farrell, Terence	Appellant	
	Long, Jonathan Richard	Kichline, Michelle H.	Appellant	
	Long, Jonathan Richard	Cozzone, Kathi	Appellant	
	Whiteman, Thomas L.	Cozzone, Kathi	Appellant	
	Whiteman, Thomas L.	Kichline, Michelle H.	Appellant	
	Gill, Michael Steven	Farrell, Terence	Appellant	
	Koopman, Ellen Blood	Farrell, Terence	Appellant	
	Kupperman, Louis B.	Farrell, Terence	Appellant	
	Whiteman, Thomas L.	Farrell, Terence	Appellant	
	Gill, Michael Steven	Cozzone, Kathi	Appellant	
	Gill, Michael Steven	Kichline, Michelle H.	Appellant	
	Koopman, Ellen Blood	Cozzone, Kathi	Appellant	
	Koopman, Ellen Blood	Kichline, Michelle H.	Appellant	
	Kupperman, Louis B.	Cozzone, Kathi	Appellant	
	Kupperman, Louis B.	Kichline, Michelle H.	Appellant	
	Kirk, Kristen	Farrell, Terence	Appellant	
	Kirk, Kristen	Cozzone, Kathi	Appellant	
	Kirk, Kristen	Kichline, Michelle H.	Appellant	
	Document Name: Appellants' Witness List for Hearing on February 5, 2020			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
February 3, 2020	Filed - Other			
	Byer, Robert L.	Sunoco Pipeline, L.P.	Appellee	
	Amerikaner, David Benjamin	Sunoco Pipeline, L.P.	Appellee	
	Kroculick, George John	Sunoco Pipeline, L.P.	Appellee	
	Moriarty, John Everett	Sunoco Pipeline, L.P.	Appellee	
	Sutherland, Shannon Hampton	Sunoco Pipeline, L.P.	Appellee	
	Document Name: Sunco Pipeline L.P.'s Witness List			
February 3, 2020	Filed - Other			
	Byer, Robert L.	Sunoco Pipeline, L.P.	Appellee	
	Amerikaner, David Benjamin	Sunoco Pipeline, L.P.	Appellee	
	Moriarty, John Everett	Sunoco Pipeline, L.P.	Appellee	
	Sutherland, Shannon Hampton	Sunoco Pipeline, L.P.	Appellee	
	Document Name: Sunoco Pipeline L.P.'s Exhibit List			
February 3, 2020	Memorandum of Law Filed			
	Kichline, Michelle H.		Appellant	
	Cozzone, Kathi		Appellant	
	Farrell, Terence		Appellant	
	Document Name: Memo of Law in Support of Emergency Application for an Injunction			
February 3, 2020	Filed - Other			
	Gill, Michael Steven	Farrell, Terence	Appellant	
	Koopman, Ellen Blood	Farrell, Terence	Appellant	
	Kupperman, Louis B.	Farrell, Terence	Appellant	
	Long, Jonathan Richard	Farrell, Terence	Appellant	
	Whiteman, Thomas L.	Farrell, Terence	Appellant	
	Gill, Michael Steven	Cozzone, Kathi	Appellant	
	Gill, Michael Steven	Kichline, Michelle H.	Appellant	
	Koopman, Ellen Blood	Cozzone, Kathi	Appellant	
	Koopman, Ellen Blood	Kichline, Michelle H.	Appellant	
	Kupperman, Louis B.	Cozzone, Kathi	Appellant	
	Kupperman, Louis B.	Kichline, Michelle H.	Appellant	
	Long, Jonathan Richard	Cozzone, Kathi	Appellant	
	Long, Jonathan Richard	Kichline, Michelle H.	Appellant	
	Whiteman, Thomas L.	Cozzone, Kathi	Appellant	
	Whiteman, Thomas L.	Kichline, Michelle H.	Appellant	
	Document Name: PAC-FILED Appellants' Exhibit List for Hearing on February 5, 2020			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
February 4, 2020	Exhibit			
	Long, Jonathan Richard	Farrell, Terence	Appellant	
	Long, Jonathan Richard	Kichline, Michelle H.	Appellant	
	Long, Jonathan Richard	Cozzone, Kathi	Appellant	
	Gill, Michael Steven	Farrell, Terence	Appellant	
	Koopman, Ellen Blood	Farrell, Terence	Appellant	
	Kupperman, Louis B.	Farrell, Terence	Appellant	
	Whiteman, Thomas L.	Farrell, Terence	Appellant	
	Gill, Michael Steven	Cozzone, Kathi	Appellant	
	Gill, Michael Steven	Kichline, Michelle H.	Appellant	
	Koopman, Ellen Blood	Cozzone, Kathi	Appellant	
	Koopman, Ellen Blood	Kichline, Michelle H.	Appellant	
	Kupperman, Louis B.	Cozzone, Kathi	Appellant	
	Kupperman, Louis B.	Kichline, Michelle H.	Appellant	
	Whiteman, Thomas L.	Cozzone, Kathi	Appellant	
	Whiteman, Thomas L.	Kichline, Michelle H.	Appellant	
February 6, 2020	Docketing Statement Filed			
	Long, Jonathan Richard	Cozzone, Kathi	Appellant	
	Long, Jonathan Richard	Farrell, Terence	Appellant	
	Long, Jonathan Richard	Kichline, Michelle H.	Appellant	

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
February 18, 2020	Memorandum Opinion Filed Wojcik, Michael H.			02/18/2020

Document Name: Memorandum Opinion (8 pages) Before the Court is Appellants' Michelle H. Kichline,



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
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Comment: Kathi Cozzone, and Terence Farrell, in their official capacities as the Commissioners of Chester County (collectively, Commissioners), 1 Emergency Application for an Injunction Pending Appeal Pursuant to Rule 1732(b) of the Pennsylvania Rules of Appellate Procedure (Emergency Application), and Sunoco Pipeline, L.P.'s (Sunoco) response in opposition thereto. Because Commissioners failed to satisfy the stringent requirements for an injunction pending appeal under Pa. R.A.P. 1732(b), the Emergency Application is denied.

The relevant facts, as discerned from the parties' filings, are as follows. On February 2, 2017, Sunoco and Chester County (County) entered into two permanent easement agreements (Easements) to facilitate Sunoco's construction of its Mariner East 2 Pipeline (Pipeline) under and across County-owned lands. Sunoco's Opposition to Emergency Application, Ex. A. The Easements provide that Sunoco shall install the Pipeline using the horizontal direction drilling method, which does not disturb the surface of the land, unless conditions beyond Sunoco's reasonable control necessitate the use of an alternate method. Id., Ex. A, § 2. At some point following the execution of the Easements, it was determined that Sunoco's use of the horizontal direction drilling method had the potential to adversely impact the County's public water supply well.

On September 29, 2017, Sunoco sent a letter to Commissioners explaining the adverse impacts the horizontal direction drilling method may have on the County's public water supply, and advising that it applied to the Department of Environmental Protection (DEP) to modify its Erosion and Sediment Control Permit (E&S Permit) to allow for a change in installation methodology. Id., Ex. F. Sunoco's application requested permission to use an open trench installation method, which causes a disturbance to the land's surface, but would avoid interference with the County's public water lines. Id. On April 16, 2018, the DEP issued a press release notifying the public of Sunoco's application to alter the installation methodology and scheduling a public hearing thereon. Id., Ex. H. Thereafter, on August 16, 2018, the DEP approved Sunoco's application and modified its E&S Permit to allow installation of the Pipeline via the open trench installation method. Id., Ex. D.

On April 9, 2019, Commissioners filed a Complaint in the Court of Common Pleas of Chester County (trial court) seeking declaratory and permanent injunctive relief to prevent Sunoco from installing the Pipeline via the open trench method. The Complaint alleged that the plain language of the Easements required the County's consent to any change in installation methodology, and Sunoco had yet to receive such consent. Accordingly, Commissioners sought to permanently enjoin Sunoco from using the traditional open trench method to install the Pipeline before receiving County approval.

On January 10, 2020, while the above litigation remained pending in the trial court, Sunoco sent Commissioners a letter indicating its intent to commence construction of the Pipeline on January 24, 2020. Commissioners responded by filing an Emergency Petition for a Preliminary Injunction (Preliminary Injunction) in the trial court. Following a hearing, on January 23, 2020, the trial court denied Commissioners' request for a Preliminary Injunction on the basis that it lacked subject matter jurisdiction over the case.² Commissioners' Emergency Application, Ex. D. Commissioners appealed the trial court's order to this Court and filed the instant Emergency Application seeking an injunction pending appeal pursuant to Pennsylvania Rule of Appellate Procedure I 732(b).³ This Court heard oral argument on February 5, 2020, and the Emergency Application is not ready disposition.

In *Tri-State Asphalt v. Department of Transportation*, 582 A.2d 55 (Pa. Cmwlth. 1990), this Court announced the standards a party must satisfy to obtain an injunction pending appeal. Noting the highly extraordinary nature of the requested relief, this Court held that an applicant seeking an injunction pending review must satisfy not only the standard announced by our Supreme Court in *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), but also the



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stringent requirements for a preliminary injunction, particularly the requirements that greater injury would result from refusing the injunction than by granting it and that the plaintiffs right to relief is clear. Tri-State Asphalt, 582 A.2d at 60. Accordingly, for this Court to issue an injunction pending appeal, the applicant must prove each of the following criteria:

- (1) a likelihood of success on the merits of the appeal;
- (2) irreparable injury if the injunction is denied;
- (3) issuance of an injunction will not harm other interested parties;
- (4) issuance of an injunction will not adversely affect the public interest;
- (5) greater injury would result from refusing the injunction than from granting it; and
- (6) a clear right to relief.

Id.

After a thorough review of the filings and upon consideration of the parties' excellent oral arguments, this Court concludes that Commissioners fell short of satisfying the stringent requirements for the issuance of an injunction pending appeal. Specifically, the Court finds that Commissioners failed to establish the first and second prongs of the Tri-State Asphalt test, i.e., that Commissioners made a strong showing of a likelihood of success on the merits, and that absent an injunction, they would suffer irreparable injury.

In regards to Commissioners' likelihood of success on the merits, this Court notes that trial courts have broad discretion in determining whether to grant or deny a preliminary injunction, and appellate courts only review those trial court decisions for an abuse of discretion. *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1000 (Pa. 2003). Our Supreme Court expounded on this highly deferential standard of review as follows:

[W]e recognize that on an appeal from the grant or denial of a preliminary injunction, we do not inquire into the merits of the controversy, but only examine the record to determine if there were any apparently reasonable grounds for the action of the court below. Only if it is plain that no grounds exist to support the decree or that the rule of law relied upon was palpably erroneous or misapplied will we interfere with the decision of the [trial court].

Id. (quoting *Roberts v. Bd. of Dirs. of Sch. Dist.*, 341 A.2d 475, 478 (Pa. 1975)). Accordingly, to prevail on the merits of the instant case, Commissioners are required to prove that the trial court lacked "any apparently reasonable grounds" to deny the preliminary injunction. Id. At this preliminary stage, Commissioners have not shown a strong likelihood that they will succeed on that endeavor. Indeed, the trial court noted three separate rationales for denying Commissioners' preliminary injunction on the basis of lack of subject matter jurisdiction, and Commissioners have not strongly rebutted all three of these

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	<p>proffered rationales. 4 Accordingly, this Court concludes Commissioners have not adequately satisfied the first Tri-State Asphalt factor.</p> <p>Turning to irreparable injury, this Court likewise concludes that Commissioners have not made their case. "An irreparable injury causes damage which can be estimated only by conjecture and not by an accurate pecuniary standard." Carlini v. Highmark, 756 A.2d 1182 (Pa. Cmwlth. 2000). While Commissioners maintain that Sunoco's use of the open trench method without County consent constitutes a trespass, the Court is not persuaded this alone proves irreparable injury. Notably, Commissioners have not established that the real property at issue will be incapable of reclamation as a result of Sunoco's use of the alternate installation method, which was approved the DEP in 2018. Moreover, to the extent the County argues Sunoco is operating outside of the agreed upon terms of the Easements, any damage to County property caused by such action is compensable. See, e.g., Simon v. Sunoco Pipeline, L.P. (Pa. Super., No. 771 WDA 2017, filed January 7, 2019) (concluding Sunoco's use of an area outside the agreed-upon right-of-way did not constitute irreparable injury for purposes of a preliminary injunction when the land was capable of reclamation and any damage incurred to property outside the right-of-way was amenable to compensation at an accurate pecuniary standard).</p> <p>In sum, Commissioners have failed to establish the required criteria to njustify the issuance of an injunction pending appeal. Accordingly, Commissioners' Emergency Application is denied.</p> <p>ORDER</p> <p>AND NOW, this 18th day of February, 2020, Appellants' Emergency Application for an Injunction Pending Appeal Pursuant to Rule I 732(b) of the Pennsylvania Rules of Appellate Procedure is DENIED.</p>			
March 9, 2020	Transcript Lodged Court Reporter			
	Document Name: For Proceeding held February 5, 2020			
March 19, 2020	Transcript Filed Court Reporter			
April 24, 2020	Trial Court Record Received Chester County Civil Division			
	Document Name: Consolidated cases. Briefing schedule at 59 CD 2020.			
April 28, 2020	Consolidated - Same Party Commonwealth Court			
April 28, 2020	Order Filed Per Curiam			04/28/2020
	Document Name: the above-captioned matters are hereby consolidated. Comment: All further filings in these consolidated matters shall be captioned as set forth above.			
April 29, 2020	Supplemental Record Chester County Civil Division			
	Document Name: Transcript			

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May 6, 2020	Briefing Schedule Issued Commonwealth Court Filing Office			
May 15, 2020	Designation of Contents of Reproduced Record			
	Kupperman, Louis B.	Farrell, Terence	Appellant	
	Kupperman, Louis B.	Kichline, Michelle H.	Appellant	
	Kupperman, Louis B.	Cozzone, Kathi	Appellant	
	Kirk, Kristen	Cozzone, Kathi	Appellant	
	Kirk, Kristen	Farrell, Terence	Appellant	
	Whiteman, Thomas L.	Farrell, Terence	Appellant	
	Kirk, Kristen	Kichline, Michelle H.	Appellant	
	Whiteman, Thomas L.	Cozzone, Kathi	Appellant	
	Whiteman, Thomas L.	Kichline, Michelle H.	Appellant	
May 15, 2020	Certificate of Service Filed			
	Kupperman, Louis B.	Farrell, Terence	Appellant	
	Kupperman, Louis B.	Kichline, Michelle H.	Appellant	
	Kupperman, Louis B.	Cozzone, Kathi	Appellant	
May 26, 2020	Designation of Contents of Reproduced Record			
	Byer, Robert L.	Sunoco Pipeline, L.P.	Appellee	