IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MATLACK LEASING, LLC; PENN : CIVIL ACTION

INTERMODAL LEASING, INC.; and VASILI KRISHNAMURTI;

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Plaintiffs, : NO. 09-1570

:

V.

MORISON COGEN, LLP, and JAMES M. BURNS, CPA,

:

Defendants.

ORDER

AND NOW, this 13th day of January, 2010, upon consideration of Motion of Defendants Morison Cogen, LLP and James M. Burns, CPA to Dismiss Plaintiffs' Complaint for Failure to State a Claim Upon Which Relief Can be Granted and For Failure to Join a Party Under Rule 19 (Document No. 11, filed June 16, 2009); Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss Plaintiffs' Complaint (Document No. 14, filed July 6, 2009); and Reply Brief in Further Support of Motion of Defendants Morison Cogen, LLP and James M. Burns, CPA to Dismiss Plaintiffs' Complaint for Failure to State a Claim Upon Which Relief Can be Granted and For Failure to Join a Party Under Rule 19 (Document No. 18, filed July 31, 2009) IT IS ORDERED as follows:

1. That part of defendants' Motion to Dismiss which seek dismissal of Counts II and III of the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) is **GRANTED**WITHOUT PREJUDICE;

- 2. That part of defendants' Motion to Dismiss which seeks dismissal of Counts I, IV, V and VI of the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) is **DENIED**;
- 3. That part of defendants' Motion to Dismiss which seeks dismissal of Count VI of the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(7) is **DENIED**.

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/s/ Jan E. DuBois

JAN E. DUBOIS, J.