

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No.: 03-E-0106

In the Matter of the Liquidation of
The Home Insurance Company

EXHIBITS TO CLAIMANT OSIJO'S OBJECTION TO ORDER ON THE MERITS

Evidence Numbers:

Description of Evidences

- | | |
|----|--|
| 10 | Copy of Second Amended Complaint |
| 11 | Copy of Settlement Agreement signed on July 25, 1991 |
| 12 | Copy of Attorney Fee Retainer Agreement |

**COPY OF THE SECOND AMENDED COMPLAINT, FILED BY OSIJO IN THE SUPERIOR
COURT OF CALIFORNIA, ALAMEDA COUNTY, ON APRIL 6, 1989**

JUN 22 1989

RENE C. DAVIDSON, County Clerk
By ROBBIE McINTOSH, Deputy

1 WILLIAM M. KOLIN, ESQ.
2 PAUL ANTHONY ELIZONDO, ESQ.
3 KING, SHAPIRO, MITTELMAN & KOLIN
4 1999 Harrison Street, Suite 1600
Oakland, California 94612
(415) 273-8833

5 Attorneys for Plaintiff
6 WALE O. OSIJO

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9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

10
11 WALE O. OSIJO,

NO. 649881-6

12 Plaintiff,

SECOND AMENDED COMPLAINT

13 v.

14 HOUSING RESOURCES MANAGEMENT,
15 INC., a California Corporation;
PROSTAFF SECURITY SERVICE, INC.,
16 a California Corporation; ACORN
I LIMITED, a California Limited
17 Partnership; ACORN II LIMITED, a
California Limited Partnership;
18 and DOES 1 through 30, inclusive,

19 Defendants.

20 Plaintiff alleges and complains as follows:

21 FIRST CAUSE OF ACTION
22 (Negligence)

23 1. Defendant HOUSING RESOURCES MANAGEMENT, INC.

24 (hereinafter referred to as "HRM"), is and at all times herein
25 mentioned was a corporation duly organized and existing under
26 the laws of the State of California with its principal place of
27 business in the City of Oakland, County of Alameda, California.

28 2. Defendant PROSTAFF SECURITY SERVICE, INC. (hereinafter

referrec to as "PROSTAFF"), is and at all times herein mentioned
2 was a corporation duly organized and existing under the laws of
3 the State of California with its principal place of business in
4 the City and County of San Francisco, California.

5 3. Defendant ACORN I LIMITED (hereinafter referred to as
6 "ACORN I") is and at all times herein mentioned was a California
7 limited partnership duly organized and existing under the laws
8 of the State of California with its principal place of business
9 in the City of Oakland, County of Alameda, California.

10 4. Defendant ACORN II LIMITED (hereinafter referred to as
11 "ACORN II") is and at all times herein mentioned was a
12 California limited partnership duly organized and existing under
13 the laws of the State of California with its principal place of
14 business in the City of Oakland, County of Alameda, California.

15 5. Plaintiff is ignorant of the true names and capacities
16 of the defendants sued herein as DOES 1 through 30, inclusive,
17 and therefore sues these defendants by such fictitious names.
18 Plaintiff will amend this complaint to allege their true names
19 and capacities when ascertained. Plaintiff is informed and
20 believes and based thereon, alleges that each of the
21 fictitiously named defendants is negligently responsible in some
22 manner for the occurrences herein alleged and that plaintiff's
23 injuries as herein alleged were proximately caused by such
24 negligence.

25 6. Plaintiff is informed and believes and thereon alleges
26 that at all times herein mentioned each of the defendants was
27 the agent and employee of each of the remaining defendants and
28 in the course of doing the things herein alleged was acting

within the course and scope of such agency and employment.

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7. At all times mentioned herein, defendants ACORN I and ACORN II and each of them owned, maintained, controlled, managed, and operated the premises known as ACORN APARTMENTS (hereinafter referred to as "ACORN"), located at 834 Adeline Street, Oakland, California.

8. At all times mentioned herein, defendant HRM was a management company which maintained, controlled, and managed the premises known as ACORN, located at 834 Adeline Street, Oakland, California.

9. On or about July 23, 1987, defendant PROSTAFF and defendants ACORN I and ACORN II entered into a contract whereby defendant PROSTAFF was to provide security services at the ACORN premises. This contract was entered into by ACORN I and ACORN II, through its authorized agent, defendant HRM and was in effect on October 7, 1988.

10. Prior to entering into said contract, defendants ACORN I, ACORN II, and HRM negligently failed to investigate and/or ascertain the reputation, competence, and responsibility level of defendant PROSTAFF SECURITY SERVICE, INC. with respect to providing security services.

11. At all times mentioned herein, defendant PROSTAFF was a security guard company hired by defendants ACORN I, ACORN II, and HRM to provide security services at ACORN and under the control and supervision of defendants and each of them.

12. At all times herein mentioned, defendants, and each of them, negligently failed to train, supervise, and control employees of PROSTAFF to prevent them from verbally and

physically assaulting residents and visitors at ACORN.

2 Furthermore, defendants, and each of them, failed to train,
3 supervise, and monitor employees of PROSTAFF to assure that they
4 would not verbally and physically assault residents and visitors
5 at ACORN. That defendants, and each of them, took no steps to
6 prevent employees of PROSTAFF to prevent them from stealing the
7 personal property of residents and of other persons present at
8 ACORN prior to and during plaintiff's hiring on August 9, 1988.

9 13. From August 9, 1988 through October 7, 1988 plaintiff
10 worked as a security guard in the employ of defendants, and each
11 of them, at ACORN.

12 14. At the aforementioned time and place, defendants, and
13 each of them, negligently failed to train, supervise, control,
14 and hire security guards for PROSTAFF in that during the
15 aforementioned time, employees of PROSTAFF, other than
16 plaintiff, physically and verbally assaulted residents and other
17 persons at ACORN; stole personal property from residents and
18 other persons at ACORN which defendants, and each of them, knew,
19 or in the exercise of reasonable care should have known,
20 constituted a dangerous condition and unreasonable risk of harm
21 to plaintiff in that plaintiff as an employee of defendant
22 PROSTAFF was subject to violent reprisals at the hands of those
23 who had been assaulted by employees of PROSTAFF, and all of the
24 defendants herein. That on numerous occasions prior to
25 October 7, 1988 employees of PROSTAFF physically beat several
26 residents or visitors to ACORN and/or stole money from them.
27 That on October 7, 1988 at approximately 11:00 a.m., one Sean
28 Garth was taken into the security office and severely beaten by

2 employees of PROSTAFF. That thereafter that same day, employees
3 of PROSTAFF proceeded to beat Sean Garth's automobile with a
4 baseball bat, whereupon Sean Garth told said employees of said
5 PROSTAFF, "I am going to come back and shoot up the place."
6 That when plaintiff reported to work at ACORN that day,
7 October 7, 1988, at 4:00 p.m. he was not informed by any
8 defendant or agent or employee of any defendant of this
9 altercation, nor of the threat made by Sean Garth to come back
10 and shoot up the place. That contrary to PROSTAFF'S rules and
11 regulations, plaintiff was working alone in the security office
12 for a number of hours before Sean Garth actually did return.
13 That at approximately 8:00 p.m. on October 7, 1988, Sean Garth
14 did return as promised and proceeded to fire approximately 50
15 rounds from a high velocity assault rifle into the ACORN
16 security office, at least 14 of which struck plaintiff WALE O.
OSIJO causing him serious injury.

17 15. Defendants, and each of them, negligently failed to
18 take steps to make the working conditions at ACORN safe for
19 plaintiff or to warn plaintiff of the impending assault which
20 Sean Garth had advised PROSTAFF of earlier in the day, all of
21 which caused plaintiff to be shot 14 times and to suffer the
22 injuries and damages herein described.

23 16. As a proximate result of the negligence of defendants
24 and each of them, plaintiff was hurt and injured in his health,
25 strength, activities, sustaining injury to his nervous system
26 and person, all of which have caused and continue to cause
27 plaintiff great mental physical and nervous pain and suffering.
28 Plaintiff is informed and believes and thereon alleges that such

injuries will result and have resulted in permanent disability to him. As a result of such injuries, plaintiff has suffered general damages in amount according to proof.

17. As a further proximate result of the negligence of defendants, and each of them, plaintiff has incurred and will continue incur medical and related expenses in an amount according to proof.

18. As a further proximate result of the negligence of defendants, and each of them, plaintiff's earning capacity has been greatly impaired, both in the past and in the present, and in an amount according to proof.

19. As a further proximate result of the negligence of defendants, and each of them, plaintiff's personal property including clothing was destroyed, all to plaintiff's damage in an amount according to proof.

SECOND CAUSE OF ACTION
(Conscious Disregard)

20. Plaintiff realleges paragraphs 1 through 19, inclusive, of the First Cause of Action and incorporates them by reference as if fully set forth herein.

21. At all times herein, defendants, and each of them, knew or should have known that Sean Garth had promised to return and shoot up the place, and that the conditions then known to them, and each of them, indicated a likelihood that Sean Garth would follow through with his threat of attack and shoot up the place, including employees of PROSTAFF such as plaintiff. Notwithstanding this knowledge, defendants, and each of them, in willful and conscious disregard of plaintiff's safety in not

advising him of the threatened attack by Sean Garth, gave plaintiff to believe that the premises at which he worked were safe at all times, and defendants did so in order to advance their pecuniary interest in leasing and/or providing security services at ACORN.

22. Defendants, and each of them, also knew, or in the exercise of ordinary care should have known, that employees of PROSTAFF, prior to the attack of October 7, 1988, were routinely brutalizing residents and others on the premises of ACORN as well as stealing personal property from residents and others on the premises and that such acts thereby subjected innocent employees of PROSTAFF such as plaintiff to violent reprisals.

23. Defendants, and each of them, acted or failed to act with oppression, malice, and in conscious disregard for the rights of plaintiff, thereby entitling plaintiff to exemplary and punitive damages in an amount according to proof.

24. As a result of the acts and omissions of defendants, and each of them, plaintiff sustained severe personal injury, property damage, and severe emotional distress in an amount according to proof, in excess of the jurisdictional minimum of this court.

25. As a result of the acts and omissions of defendants and each of them, plaintiff was hurt and injured in his health, strength, activities, sustaining injury to his nervous system and person, all of which have caused and continue to cause plaintiff great mental physical and nervous pain and suffering. Plaintiff is informed and believes and thereon alleges that such injuries will result and have resulted in permanent disability

1 to him. As a result of such injuries, plaintiff has suffered
2 general damages in amount according to proof.

3 26. As a result of the acts and omissions of defendants,
4 and each of them, plaintiff has incurred and will continue incur
5 medical and related expenses in an amount according to proof.


6 27. As a result of the acts and omissions of defendants,
7 and each of them, plaintiff's earning capacity has been greatly
8 impaired, both in the past and in the present, and in an amount
9 according to proof.

10 28. As a result of the acts and omissions of defendants,
11 and each of them, plaintiff's personal property including
12 clothing was destroyed, all to plaintiff's damage in an amount
13 according to proof.

14 WHEREFORE, plaintiff prays as follows:

- 15 1. For general and special damages in the amount of Three
16 Million Dollars (\$3,000,000.00);
17 2. For punitive damages according to proof;
18 3. For costs of suit incurred herein; and
19 4. For such other and further relief as the court deems
20 just and proper.

21 DATED: June 22, 1989. KING, SHAPIRO, MITTELMAN & KOLIN

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23 
24 WILLIAM M. KOLIN
25 PAUL ANTHONY ELIZONDO
26 Attorneys for Plaintiff WALE O.
27 OSIJO
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2 I am employed in the County of Alameda, State of
3 California. I am over the age of 18 years and not a party to
4 the within action; my business address is 1999 Harrison Street,
5 Suite 1600, Oakland, California 94612.

6 On June 22, 1989 I served the attached

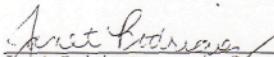
7 SECOND AMENDED COMPLAINT

8 on the parties to said matter by depositing a true copy thereof
9 in a sealed envelope with postage thereon fully prepaid, in the
10 United States mail at Oakland, California, addressed as follows:

11 David R. Pinelli, Esq.
12 Moore, Clifford, Wolfe,
13 Larson & Trutner
- P.O. Box 119
Oakland, CA 94604

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

16 Executed at Oakland, California, on June 22, 1989.

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19 Janet Rodriguez
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COPY OF ATTORNEY FEE RETAINER AGREEMENT, SIGNED ON APRIL 12, 1990

ATTORNEY RETAINER AGREEMENT
(Contingency cases)

This agreement is entered into on the 12th day of April 1990, between Wale Osijo, (client) and GANONG & MICHELL, (attorneys).

1. Attorneys agree to represent Client in the preparation for trial and trial of all claims Client has arising out of shooting incident 10/7/88 Accan Comp

2. This agreement is required by Business and Professions Code Section 6147 and is intended to fulfill the requirements of that section.

3. LEGAL SERVICES SPECIFICALLY EXCLUDED. Legal services that are not to be provided by Attorney under this agreement specifically include, but are not limited to, the following: Representation with respect to (a) any claim for property damage arising out of the accident, or (b) any dispute with a medical care provider about amounts owed by Client for services received.

If Client wishes that Attorney provide any legal services not to be provided under this agreement, a separate written agreement between Attorney and Client will be required.

4. RESPONSIBILITIES OF ATTORNEY AND CLIENT. Attorney will perform the legal services called for under this agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. Client will be truthful and cooperative with Attorney and keep Attorney reasonably informed of developments and of Client's address, telephone number, and whereabouts.

5. Client agrees to pay Attorneys for legal services on a contingency basis. The fee shall consist of 40 % of the gross amount of recovery had by way of settlement or judgment and 45 % of the gross amount of recovery if the case is taken to appeal. The above percentage shall apply to the gross amount of money which is recovered for or on behalf of Client (which term shall include the fair market value of any property which may be recovered). Any costs advanced by the Attorney are deducted from Client's share after the proceeds have been divided as stated herein.

If payment of all or any part of the amount to be received will be deferred (such as in the case of an annuity, a structured settlement, or periodic payments), the "total amount received," for purposes of calculating the Attorney's fees, will be the initial lump-sum payment plus the present value, as of the time of the settlement, final arbitration award, or final judgment, of the payments to be received thereafter. The Attorney's fees will be paid out of the initial lump-sum

payment. If the payment is insufficient to pay the Attorney's fees in full, the balance will be paid from subsequent payments of the recovery before any distribution to Client.

Client is informed that this Attorney's fee is not set by law but rather is negotiable between the Attorney and the Client.

If there is no net recovery, Attorney will receive no Attorney's fees.

6. COSTS. Attorney will advance all "costs" in connection with Attorney's representation of Client under this agreement. Attorney will be reimbursed out of the recovery before any distribution of fees to Attorney or any distribution to Client.

Whatever the outcome of this matter, Client is to pay all costs and expenses incurred in connection with it, including but not limited to, filing fees, fees for service of process, costs and expenses incurred in discovery, jurors fees, travel and related expenses, reproduction costs, long distance telephone charges, hotel charges, messenger service fees, and all fees reasonably incurred to secure the attendance of witnesses at trial, including any extraordinary fees required to obtain the attendance of necessary expert witnesses Attorneys may, at their option, advance any or all of said costs and expenses on behalf of Client, as they deem appropriate. If Attorneys do so, however, Client will remain ultimately liable for all such costs and expenses and Client hereby agrees to reimburse Attorneys therefore regardless of the outcome of this matter and upon presentation of such bills, Client will reimburse Attorneys for same.

7. REPRESENTATION OF ADVERSE INTERESTS. Client is informed that the Rules of Professional Conduct of the State Bar of California require the Client's informed written consent before an Attorney may begin or continue to represent the Client when the Attorney has or had a relationship with another party interested in the subject matter of the Attorney's proposed representation of the Client. Attorney is not aware of any relationship with any other party interested in the subject matter of Attorney's services for Client under this agreement. As long as Attorney's services for Client continue under this agreement, Attorney will not agree to provide legal services for any such party without Client's prior written consent.

8. SETTLEMENT. Attorney will not settle Client's claim without the approval of Client, who will have the absolute right to accept or reject any settlement. Attorney will notify Client promptly of the terms of any settlement offer received by Attorney.

9. ATTORNEY'S LIEN. Attorney will have a lien for

Attorney's fees and costs advanced on all claims and causes of action that are the subject of her representation of Client under this agreement and on all proceeds of any recovery obtained (whether by settlement, arbitration award, or court judgment).

10. DISCHARGE OF ATTORNEY. Client may discharge Attorney at any time by written notice effective when received by Attorney. Unless specifically agreed by Attorney and Client, Attorney will provide no further services and advance no further costs on Client's behalf after receipt of the notice. If Attorney is Client's attorney of record in any proceeding, Client will execute and return a substitution-of-attorney form immediately on its receipt from Attorney. Notwithstanding the discharge, Client will be obligated to pay Attorney out of the recovery a reasonable Attorney's fee for all services provided and to reimburse Attorney out of the recovery for all costs advanced. If there is no recovery, or the recovery is insufficient to reimburse Attorney in full for costs advanced, Client will reimburse Attorney for same.

11. WITHDRAWAL OF ATTORNEY. Attorney may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California. The circumstances under which the Rules permit such withdrawal include, but are not limited to, the following: (a) The Client consents, and (b) the Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively. Notwithstanding Attorney's withdrawal, Client will be obligated to pay Attorney out of the recovery a reasonable Attorney's fee for all services provided, and to reimburse Attorney for all costs advanced, before the withdrawal.

12. RELEASE OF CLIENT'S PAPERS AND PROPERTY. At the termination of services under this agreement, Attorney will release promptly to Client on request all of Client's papers and property. "Client's papers and property" include correspondence, deposition transcripts, exhibits, experts reports, legal documents, physical evidence, and other items reasonably necessary to Client's representation, whether Client has paid for them or not.

13. DISCLAIMER OF GUARANTY. Although Attorney may offer an opinion about possible results regarding the subject matter of this agreement, Attorney cannot guarantee any particular result. Client acknowledges that Attorney has made no promises about the outcome and that any opinion offered by Attorney in the future will not constitute a guaranty.

14. ENTIRE AGREEMENT. This agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this agreement will be binding on the parties.

15. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If

any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

16. MODIFICATION BY SUBSEQUENT AGREEMENT. This agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement to the extent that the parties carry it out.

17. ARBITRATION OF FEE DISPUTE. If a dispute arises between Attorney and Client regarding Attorney's fees under this agreement and Attorney files suit in any court other than small claims court, Client will have the right to stay that suit by timely electing to arbitrate the dispute under Business and Professions Code sections 6200-6206, in which event Attorney must submit the matter to such arbitration.

18. ATTORNEY'S FEES AND COSTS IN ACTION ON AGREEMENT. The prevailing party in any action or proceeding to enforce any provision of this agreement will be awarded reasonable Attorney's fees and costs incurred in that action or proceeding or in efforts to negotiate the matter.

19. Client has been advised that GANONG & MICHELL charge \$ 175- per hour for services requested by Client which are unrelated to the prosecution of this claim.

20. Client agrees to notify Attorneys in writing of any change of address.

21. EFFECTIVE DATE OF AGREEMENT. The effective date of this agreement will be the date it is executed by Client.

The foregoing is agreed to by:

Dated: 4/12/90

Dated: 4/12/90



Client



GANONG & MICHELL

COPY OF THE SETTLEMENT AGREEMENT SIGNED ON JULY 25, 1991

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5 SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 IN AND FOR THE COUNTY OF ALAMEDA
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8 Wale O. Osijo,) No. 649881-6
9 Plaintiff,) SETTLEMENT AGREEMENT
10 -v-)
11 Housing Resources Management, Inc.,)
12 et al.,)
13 Defendants.)

14 The above-referenced action came for a voluntary settlement
15 conference on July 25, 1991 at the offices of Judicial Arbitration
16 and Mediation Services in San Francisco, the Honorable Victor
17 Campilongo, presiding. Plaintiff, Wale O. Osijo, was present,
18 represented by his attorney, Georgia Ann Michell; defendants
19 Housing Resources Management, Inc. and Filbert I & II, Ltd. were
20 represented by attorney David R. Pinelli along with Don Fraga, his
21 adjuster from Home Insurance; Intervenor, Department of Industrial
22 Relations was represented by attorney, David Kizer; defendant
23 Prostaff Security was represented by attorney David Van Dam.

24 The parties having discussed the matter and good cause
25 appearing therefore, without admission of liability enter into the
26 following global settlement of the above-entitled matter as
27 follows:

- 28 1. In exchange for payment of the sum of \$250,000.00 from

1.

EXHIBIT B

1 defendants Filbert I & II, Ltd. and Housing Resources Management,
2 Inc. to plaintiff, Wale O. Osijo, plaintiff shall release, dismiss
3 with prejudice, defend and hold harmless and indemnify all
4 defendants from all liability of whatever nature and kind including
5 but not limited to any and all liens, known and unknown which arise
6 or may arise and/or attorney fees, from the instant action except
7 as hereinafter specifically provided for.

8 2. Intervenor, Department of Industrial Relations, hereby
9 agrees to compromise their lien and dismiss their complaint in
10 intervention with prejudice, in exchange for the sum of \$10,000.00
11 from plaintiff, Wale O. Osijo, and assignment of \$30,000.00 in the
12 chose of action held by defendant, Prostaff Security and its owners
13 and operators against Filbert I & II, Ltd., limited partnerships.

14 3. Cross-complainants Housing Resources Management, Inc. and
15 Filbert I & II, Ltd. agree to dismiss their cross-complaint filed
16 in this action with prejudice.

17 4. Intervenor Department of Industrial Relations further
18 agrees to not oppose and to withdraw any opposition previously
19 filed in the companion workers compensation action filed by
20 plaintiff, Wale O. Osijo, for commutation of permanent disability
21 benefits. It is understood that this is not a guarantee that the
22 workers compensation appeals board will grant said motion, only
23 that said motion shall be unopposed.

24 5. With respect to the potential lien of Highlands Hospital
25 for medical services and care rendered in 1988 to plaintiff in the
26 approximate amount of \$33,000.00, which was a disputed subject of
27 the award in the workers compensation case referenced above,
28 intervenor, Department of Industrial Relations and plaintiff agree

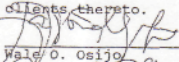
1 that in addition to the compensation contained in paragraph 244,
2 above, intervenor agrees to pay 60% of the negotiated (if any) sum
3 due to Highlands and shall waive its right to a credit against
4 plaintiff's damages recovered against defendants in the settlement
5 amount of \$250,000.00 as provided for in Labor Code § 3732 et seq.
6 for the amount of the Highland lien, if any.

7 6. Defendants Housing Resources Management, Inc. and Filbert
8 I & II, Ltd. hereby agree to pay Judicial Arbitration and Mediation
9 Service for the cost of the settlement conference held on July 25,
10 1991. They further agree to waive collection of the award of
11 \$500.00 sanctions imposed in their favor as against attorney
12 Georgia Ann Michell.

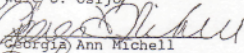
13 7. The parties hereto agree and further stipulate that the
14 within settlement agreement shall satisfy the requirements of an
15 settlement agreement on the record per CCP §664.

16 The undersigned sign this agreement with the full power and
17 authority to bind their respective clients thereto.

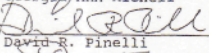
18 Dated: July-25-1991


Wade O. Osijo

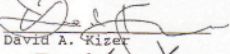
19 Dated: July 25, 1991


Georgia Ann Michell

20 Dated: 7/25/91


David R. Pinelli

21 Dated: 7/25/91

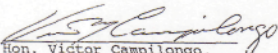

David A. Kizer

22 Dated: 7/25/91


David Van Loan

23 The above stated settlement is approved and accepted this date
24 as set forth above.

25 Dated: 7-25-91


Hon. Victor Campilongo,
26 Judge Retired