

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

<u>Evidence Numbers:</u>	<u>Description of Evidences</u>
1	Copy of the front and back pages of the cancelled settlement check
2	Copy of the cover letter that accompanied settlement check, dated 8/29/1991
3	Copy of Defendants' Motion to Enforce Settlement, filed on 8/15/09
4	Copy of Declaration of David R. Pinelli in Support of Defendants' Motion to Enforce Settlement
5.	Copy of Declaration of Georgia Ann Michell Support of Motion to Enforce Settlement, filed on August 22, 1991.
6.	Copy of the Declaration of Charles S. Baker in Support of Defendants' Motion to Enforce Settlement, filed on August 22, 1991.
7.	Copy of the Transcript of Hearing, on Motion to Enforce Settlement, held on September 5, 1991.
8.	Copy of Substitution of Attorney, dated September 19, 1991.
9.	Copy of Order On Defendants' Motion For Enforcement of Settlement
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 FRONT AND BACK PAGES OF THE CANCELLED SETTLEMENT CHECK

HOME

THE HOME INSURANCE COMPANIES
Customer Service Comes First

99 219

Claim Number: 703-L-686417-207 GL 1692617
Policy Number: 2 295 13
Issue Date: 07/26/91
Insured Name: HOUSING RESOURCES

51990219

Trust Beneficiary: TRUST ACCOUNT OF GANONG & MITCHELL AS
Pay to the Order of: TRUSTEES FOR WALE O. OSIGO

10000000000000000000

In payment of: FULL & FINAL SETTLEMENT

Contract No: 10/07/88

Payable Person: DAVE PINELLI, ERD
Company Name: P.O. BOX 119

CA 94604

Payable Address: OAKLAND
Payable City: OAKLAND
Payable State: CA
Payable Zip: 94604

51990219# 60119036754

1833#

10000000000000000000



802 25467 0002



16 - 0 - 91

FOR THE USE OF THE
BANK OF AMERICA
FOR DEPOSIT ONLY
GANONG, MITCHELL &
TRUSTEES (as Trustee)
Trust Account
703-L-686417-207
001 034681 90

HOME INSURANCE COMPANIES
Customer Service Comes First

51990219

01-287
118

Upper Number

Policy Number

Issue Date

Insured Name

703-L-686417-207 GL 1692617
2 295 13

07/26/91 HOUSING RESOURCES

Issuing
Office

703

51990219

Upon acceptance

Pay to the Order of

TRUST ACCOUNT OF GANONG & MICHELL AS
TRUSTEES FOR WALE O. OSIGO

*****250,000.00**

Occurrence Date

10/07/88

In payment of

FULL & FINAL SETTLEMENT

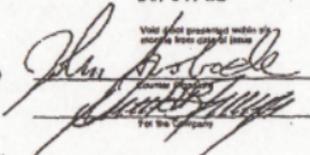
Payable through
Connecticut
National Bank
Hartford, Connecticut

DAVE PINELLI, ESQ
P.O. BOX 119

Process through
Federal Reserve
System

OAKLAND
PAYABLE AT BANK OF AMERICA N.T. & S.A.
MAD CORPORATE SERVICE CENTER #1233
REF. ARRANGEMENTS BOOK 11-25
1988

CA 94604

Void when presented with or
without this original issue

For the Company

⑈51990219⑈ ⑆011903675⑆

1833⑈

PLEASE DETACH BEFORE CASHING

WE ARE PLEASED TO PRESENT YOU WITH THIS PAYMENT.
SHOULD YOU HAVE ANY QUESTIONS CONCERNING THIS DRAFT, PLEASE CONTACT:

D FRAGA AT 415-544-3000

002727

**COPY OF LETTER THAT ACCOMPANIED SETTLEMENT CHECK, AUTHORED BY
DAVID RAYMOND PINELLI, DATED JULY 29, 1991**

LAW OFFICES OF
LARSON & BURNHAM
A PROFESSIONAL CORPORATION
POST OFFICE BOX 119
OAKLAND, CALIFORNIA 94604
TELEPHONE: (415) 444-0800

DAVID D. LARSON
GREGORY DAVID BROWN
ROBERT J. TMAN
ROBERT E. FRISCH
RALPH A. ZAPPALA
PETER DAVIN
SUSAN THOMAS FELDMIST
GARY R. BELVIN

CLARK J. BURNHAM
GEORGE J. ZBER
ERIC R. NAAS
STEVEN W. HUGHES
MONICA DELL'ORSO
JEFFERY G. BAREY
PATRICK R.E. SUGARTHY
W. WAYNE GOODRICH

A.J. MOORE, JR. (1949-1984)

JAMES H. MOORE (OF COUNSEL)

1901 HARRISON STREET, 11TH FLOOR
OAKLAND, CALIFORNIA 94612
TELECOPIER NUMBER: (415) 830-6666

CHRISTOPHER L. AGUILAR
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TIMOTHY J. ROGARITY
ROY A. FRANCO
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NANCY E. McDONALD
BRYEN L. PARRER
JAMES B. RUTZER
JAMES J. ROBERT
JOHN A. RUBIO
DONALD J. SMITH
ANALI TALWAR
MICHAEL S. THEPPA
JAMES L. WRIGHT
BRADLEY M. ZMIGZKY

CARL W. ALLEN
CATHY L. ANAS
JAMES G. BENZ
CHRISTOPHER J. JOHN
DONALD J. EDWARDS
RICHARD J. FINK
ROBERT A. FORD
JAMES L. O'HARA JAMES
CECILA M. HENK
MICHAEL A. JOHNSON
ROBERT W. MULLER
STEVEN W. NELSEN
DAVID R. PINELLI
MICHAEL A. RYNNOLISE
JACQUELINE E. ROTH
SUSAN E. SHANNOLTZ
MARK J. SWEENEY
SHAWN A. TOLVER
JOHN J. VERBER
DARRYL M. YEE

July 29, 1991

Via Courier

ARGO.....

Georgia Ann Michell, Esq.
Ganong & Michell
500 Ygnacio Valley Road, Suite 360
Walnut Creek, CA 94596

Re: Osijo v. Housing Resources Management, et al.

Dear Ms. Michell:

Enclosed please find a Request for Dismissal with prejudice and a release document entitled "Full Release and Satisfaction of All Claims and Demands." Please date and sign both documents and have Mr. Osijo fully execute the Release, returning both documents to my office in the self-addressed stamped envelope provided. We will file the Dismissal with the Court and thereafter provide all parties with filed/endorsed copies of same.

Also enclosed please find our check in the amount of \$250,000.00 made payable to the "Trust Account of Ganong & Michell as Trustees for Wale O. Osijo." Please be advised that you and Mr. Osijo are authorized to negotiate this check only after you have deposited in the U. S. Mail the fully-executed Release and Dismissal.

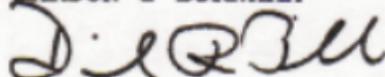
Georgia Ann Michell, Esq.
July 29, 1991
Page 2

Finally, enclosed for your files please find a copy of the fully-executed "Settlement Agreement" entered into on July 25, 1991 at the JAMS Settlement Conference.

Please do not hesitate to contact me should you have any questions or comments.

Very truly yours,

LARSON & BURNHAM



DAVID R. PINELLI

DRP:mfo
Enclosures

cc: David Van Dam (w/encl. copies)
David A. Kizer (w/encl. copies)

**COPY OF THE DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT,
FILED IN THE SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY ON AUGUST
15, 1991**

GREGORY D. BROWN
DAVID R. PINELLI
LARSON & BURNHAM
A Professional Corporation
Post Office Box 119
Oakland, California 94604
Telephone: (415) 444-6800

DRAFT

Attorneys for Defendants
HOUSING RESOURCES MANAGEMENT, INC.,
FILBERT I, LTD. and FILBERT II, LTD.

Ans'd.....

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
NORTHERN DIVISION

WALE O. OSIJO,

No. 649881-6

Plaintiff,

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ENFORCEMENT OF
JUDGMENT

v.

HOUSING RESOURCES MANAGEMENT,
INC. and PROSTAFF SECURITY
SERVICES, INC.,

Date:
Time:
Dept:

Defendants.

I. FACTS

In October 1988, plaintiff sustained gunshot wounds while employed as a security guard at the Acorn Apartment complex located in Oakland, California. At the time of the incident, plaintiff was employed as a security guard by Prostaff Security Services. The apartment complex where plaintiff was injured was owned by Filbert I and Filbert II, and managed by Housing Resources Management.

Plaintiff subsequently filed suit against Prostaff, Filbert I and Filbert II, and Housing Resources Management.

("HRM"). Substantial written discovery took place, as well as the deposition of the plaintiff.

Settlement discussions began between David R. Pinelli, attorney for Filbert I and Filbert II and HRM, and plaintiff's attorney. Numerous discussion took place between January 1991 and July 1991.

As of July 1991, it was apparent that the discussions had reached an impasse. It was agreed that the parties could benefit from a settlement conference. Plaintiff's attorney arranged for a settlement conference through the Judicial Arbitration and Mediation Services, Inc. ("JAMS") on July 25, 1991.

The conference took place on that date before Honorable Judge Victor M. Campilongo, retired. Attorneys for all of the parties, as well as the plaintiff, began the conference at approximately 10:00 a.m. A settlement was achieved later in the evening.

During the conference, plaintiff had numerous discussions with his attorney. He was fully informed of all of the terms of the settlement which were negotiated on his behalf. Near the end of the conference, his attorney prepared a written document entitled "Settlement Agreement." It was stipulated among the parties that this agreement would satisfy the requirements of the Code of Civil Procedure relating to judicially supervised settlements.

After the "settlement agreement" was prepared, plaintiff,

in the presence of all the attorneys, and Judge Campilongo, discussed the merits of the agreement. Plaintiff also displayed his injuries to all those present. Plaintiff then openly indicated his acceptance of the agreement. Plaintiff then read the agreement, discussed it again at length with all present, and then signed the same in front of all the parties and Judge Campilongo.

Plaintiff reviewed the completed document, and signed the same in front of all of the parties and Judge Campilongo.

The plaintiff was aware of, fully comprehended and agreed to the terms of the settlement prior to signing the document. In fact, plaintiff appeared very satisfied with the agreement, and invited the parties to join him at a restaurant to celebrate the resolution of the case.

During the course of this dinner, plaintiff repeatedly expressed his satisfaction with the agreement. At no point during the conference or during the celebration dinner, did plaintiff express any reservations regarding the settlement.

On July 26, 1991, plaintiff prepared a letter, which was sent to all counsel. In this letter he claims he did not agree with settlement, and felt that he was "tricked" into signing the agreement. Since receiving that letter, plaintiff's counsel has consulted with her client, who has reiterated his refusal to sign the standard release agreement, as specified in the "settlement agreement."

II. LEGAL AUTHORITIES

- A. California Code of Civil Procedure Authorizes The Court To Enter Judgment Pursuant To The Terms Of A Settlement Agreement.

Code of Civil Procedure section 664.6 states

If parties to pending litigation stipulate, in writing or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement.

Numerous cases have interpreted section 664.6 to enforce settlements when a party has later attempted to rescind.

The litigants in Corkland v. Bosco (1984) 156 Cal.App.3d 989, submitted a written settlement agreement to the court. One of the parties subsequently filed a motion to compel enforcement of the agreement. The court noted the intent of the legislature in enacting Code of Civil Procedure section 664.6, and stated that the right to bring the motion to enforce is applicable not only to judicially supervised settlement conferences, but to stipulations as settlement in writing or orally before the court intending litigation. Id. at 994.

It is the duty of the court in deciding upon a section 664.6 motion to determine that the parties entered into a valid and binding settlement of all or part of the case. In making this determination, the court, in the sound exercise of discretion, may consider oral testimony or may determine the motion upon declarations alone. Corkland at 994.

The courts have enforced the agreement, even if the settlement is not manifested by a writing. For example, in

108

Richardson v. Richardson (1986) 180 Cal.App.3d 91, a husband and wife attended a mandatory settlement conference to settle the financial terms of their dissolution. They reached an oral settlement before the judge, who presided over the conference. When the wife later attempted to reduce the agreement to writing, the husband disputed several material terms of the agreement. The wife brought a motion, which was granted by the court.

The court in Richardson noted that, while there was no written agreement, the court could rely on the recollections of the settlement conference judge regarding the terms of the settlement. The facts in Richardson indicated that there was a mutual consent to the oral settlement, despite the later protestation of the husband.

In the instant case, it is clear from the supporting declarations submitted by David R. Pinelli and Judge Campilongo that a settlement was reached at the JAMS conference on July 25, 1991. Plaintiff was actively involved in all of the negotiations, and conferred frequently with his attorney. His attorney explained all of the terms of the settlement, which were later reduced to the "settlement agreement," and signed by all parties including plaintiff. All of these negotiations took place in front of Judge Campilongo, who presided over the entire conference. Judge Campilongo also explained the provisions to the plaintiff, to ensure that he had full knowledge of what he was signing.

**COPY OF THE DECLARATION OF DAVID R. PINELLI IN SUPPORT OF THE
DEFENDANTS' MOTION TO ENFORCE SETTLEMENT, FILED ON AUGUST 15, 1991**

1 GREGORY D. BROWN
2 DAVID R. PINELLI
3 LARSON & BURNHAM
4 A Professional Corporation
5 Post Office Box 119
6 Oakland, California 94604
7 Telephone: (415) 444-6800

8 Attorneys for Defendants
9 HOUSING RESOURCES MANAGEMENT, INC.,
10 FILBERT I, LTD. and FILBERT II, LTD.

11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

12 NORTHERN DIVISION

13 WALE O. OSIJO,

No. 649881-6

14 Plaintiff,

DECLARATION OF DAVID R.
PINELLI IN SUPPORT OF MOTION
FOR ENFORCEMENT OF SETTLEMENT

15 v.

16 HOUSING RESOURCES MANAGEMENT,
17 INC. and PROSTAFF SECURITY
18 SERVICES, INC.,

DATE: September 5, 1991

TIME: 9:00 a.m.

DEPT: 19

TRIAL DATE: October 25, 1991

19 Defendants.

20 I, DAVID R. PINELLI, declare as follows:

21 1. I am an attorney duly licensed to practice law before
22 all of the courts in the State of California and am an
23 associate with the law offices of Larson & Burnham,
24 attorneys for Defendants and Cross-complainants, FILBERT I,
25 LTD., FILBERT II, LTD., and HOUSING RESOURCES MANAGEMENT,
26 INC.

2. A voluntary settlement conference was held in this
case before the Honorable Judge Victor M. Campilongo, retired,
on July 25, 1991, at the JAMS office in San Francisco. The

1 conference commenced at 10:00 a.m. and settlement was achieved
2 late that evening.

3 3. The terms and conditions of the settlement are set
4 forth in the written "Settlement Agreement" which was signed by
5 all the parties, including Mr. Osijo, at the conclusion of the
6 July 25, 1991 conference. (A true and correct copy of
7 the fully-executed "Settlement Agreement" is attached
8 hereto and marked as Exhibit 1; the original "Settlement
9 Agreement" will be produced at the hearing of this
10 motion.)

11 4. Prior to the voluntary settlement conference, I
12 spent an enormous amount of time the previous six months
13 negotiating with Mr. Osijo's attorney, Georgia Ann Michell, in
14 an attempt to settle the case. An impasse occurred in early
15 July, 1991, when Ms. Michell informed me that she would
16 recommend to Mr. Osijo a settlement of no less than
17 \$250,000.00. At that time, I believed (and still believe)
18 that the case had a reasonable settlement value falling
19 into a range of \$175,000.00 to \$225,000.00. Although I
20 did not communicate to Ms. Michell my actual evaluation
21 of the settlement value of the case, I gave her every
22 indication that the range mentioned above was where I
23 thought the case should settle. Ms. Michell suggested
24 that we attend a voluntary settlement conference at JAMS
25 so that the gap in the monies being demanded and offered
26

1 would be bridged.

2 5. As noted above, the voluntary settlement
3 conference was presided over by Judge Campilongo. He
4 spent nearly twelve hours helping us to agree on the
5 \$250,000.00 settlement figure and helping us to resolve
6 the problems relating to the outstanding liens in
7 the case.

8 6. Mr. Osijo actively participated in the
9 settlement process through numerous discussions with
10 Ms. Michell. He was fully apprised of and agreed to
11 the terms that were negotiated. The terms and conditions
12 of the settlement were explained to him prior to the
13 drafting of the "Settlement Agreement."

14 7. Ms. Michell herself prepared the written
15 "Settlement Agreement." One of the conditions of the
16 settlement was that the parties further agreed and
17 stipulated that the agreement would satisfy the requirements
18 of a settlement made pursuant to California Code of Civil
19 Procedure, section 664. Mr. Osijo was informed of this
20 provision and its ramifications by Ms. Michell prior
21 to the drafting of the "Settlement Agreement."

22 8. After the "Settlement Agreement" was prepared,
23 Mr. Osijo, in the presence of all the attorneys and Judge
24 Campilongo (save and except for Mr. Van Dam, who had to leave
25 the conference prior to its conclusion), discussed the merits
26

1 of the agreement and displayed his injuries. Mr. Osijo then
2 openly indicated acceptance of the agreement. Thereafter, Mr.
3 Osijo read the agreement, discussed it at length with all
4 present and then signed it.

5 9. Mr. Osijo was not coerced or harassed into signing
6 the agreement. He knew of and fully understood and agreed to
7 the terms of the settlement prior to executing the agreement.
8 He appeared to be extremely satisfied with the agreement
9 and appeared very happy that the case had been resolved.
10 Indeed, following the conference, he requested me to
11 accompany him to a restaurant to celebrate the resolution of
12 the case.

13 10. I in fact invited Mr. Osijo and his attorney, Ms.
14 Michell, and David Kizer, the attorney who represented the
15 Intervenor, to dinner at the Huntington Hotel in San Francisco.
16 During the course of our dinner, which lasted approximately two
17 and one-half hours, Mr. Osijo expressed to me his great
18 satisfaction with the settlement and his relief that he could
19 put the litigation behind him. At no point in time, either at
20 the settlement conference when he agreed to the terms of the
21 "Settlement Agreement" or at dinner did Mr. Osijo express any
22 reservations regarding the settlement. To say the least, I was
23 quite shocked when I learned that Mr. Osijo wished to breach
24 the agreement.

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1 11. Following the settlement conference, I have had
2 several discussions with Mr. Osijo's attorney regarding the
3 terms and conditions of the agreement and the fairness of the
4 settlement. Ms. Michell is in total agreement with me that the
5 settlement achieved was extremely fair to Mr. Osijo and, in
6 fact, an outright victory for him. As I stated above, although
7 I believed that the case had a settlement value of no more than
8 \$225,000.00, I nevertheless recommended to my principal to
9 agree to the \$250,000.00 figure because it was in the
10 "ballpark."

11 12. In sum, it is my opinion that the settlement
12 agreement achieved was extremely reasonable for Mr. Osijo.
13 More importantly, and despite what Mr. Osijo may feel at
14 this time, he completely endorsed the terms of the "Settlement
15 Agreement" at the time he executed the written "Settlement
16 Agreement." There was absolutely no hesitation on his part
17 nor did he communicate misgivings when he signed the
18 Agreement.

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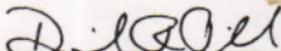
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1 I declare under penalty of perjury under the laws of the
2 State of California that the foregoing is true and correct.

3 Executed this 2nd day of August, 1991, at Oakland,
4 California.

5 

6 DAVID R. PINELLI

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