

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 70A-2

WCC No. 9708-7814

KATHY M. FITCH

Petitioner

vs.

LIBERTY MUTUAL FIRE INSURANCE COMPANY

Respondent/Insurer for

J.C. PENNEY COMPANY, INCORPORATED

Employer.

COURT MEMORANDUM CONCERNING
MOTION FOR PROTECTIVE ORDER

Summary: Claimant moved for a protective order based on allegations that respondent's counsel intimidated and frightened her friends, coworkers, and family through seeking information about her and through hiring private investigators to videotape her activities.

Held: The Court conducted a full-day hearing into claimant's allegations. She did not provide a scintilla of evidence to indicate wrongful conduct on the part of respondent's counsel or other agents. Evidence of questioning of one witness by respondent's counsel indicated his demeanor and questions were exemplary. The videotaping was conducted over a period of several weeks, but only in public settings, in which claimant had no reasonable expectation of privacy. Moreover, she can hardly claim emotional distress during the surveillance when she did not know about the surveillance as it occurred.

Topics:

Discovery: Generally. Claimant moved for a protective order based on allegations that respondent's counsel intimidated and frightened her friends, coworkers, and family through seeking information about her and through hiring private investigators to videotape her activities. Following a full-day hearing, and briefing by the parties, the Court concluded there was not a scintilla of evidence to support claimant's serious allegations. Evidence of questioning of one witness by respondent's counsel indicated his demeanor and questions were exemplary. The

videotaping was conducted over a period of several weeks, but only in public settings, in which claimant had no reasonable expectation of privacy. Moreover, she can hardly claim emotional distress during the surveillance when she did not know about the surveillance as it occurred.

Discovery: Protective Orders. Claimant moved for a protective order based on allegations that respondent's counsel intimidated and frightened her friends, coworkers, and family through seeking information about her and through hiring private investigators to videotape her activities. Following a full-day hearing, and briefing by the parties, the Court concluded there was not a scintilla of evidence to support claimant's serious allegations. Evidence of questioning of one witness by respondent's counsel indicated his demeanor and questions were exemplary. The videotaping was conducted over a period of several weeks, but only in public settings, in which claimant had no reasonable expectation of privacy. Moreover, she can hardly claim emotional distress during the surveillance when she did not know about the surveillance as it occurred.

Discovery: Surveillance. Claimant moved for a protective order based on allegations that respondent's counsel intimidated and frightened her friends, coworkers, and family through seeking information about her and through hiring private investigators to videotape her activities. Following a full-day hearing, and briefing by the parties, the Court concluded there was not a scintilla of evidence to support claimant's serious allegations. Evidence of questioning of one witness by respondent's counsel indicated his demeanor and questions were exemplary. The videotaping was conducted over a period of several weeks, but only in public settings, in which claimant had no reasonable expectation of privacy. Moreover, she can hardly claim emotional distress during the surveillance when she did not know about the surveillance as it occurred.

Surveillance. Claimant moved for a protective order based on allegations that respondent's counsel intimidated and frightened her friends, coworkers, and family through seeking information about her and through hiring private investigators to videotape her activities. Following a full-day hearing, and briefing by the parties, the Court concluded there was not a scintilla of evidence to support claimant's serious allegations. Evidence of questioning of one witness by respondent's counsel indicated his demeanor and questions were exemplary. The videotaping was conducted over a period of several weeks, but only in public settings, in which claimant had no reasonable expectation of privacy. Moreover, she can hardly claim emotional distress during the surveillance when she did not know about the surveillance as it occurred.

By motion dated October 23, 1997, petitioner, Kathy M. Fitch (claimant), moved for a protective order prohibiting respondent, Liberty Mutual Fire Insurance Company (Liberty), and its attorney from contacting prospective witnesses and from conducting further video surveillance. The motion also asks that all statements taken by Liberty and all video surveillance be suppressed.

After reading the initial brief in support of the motion, the Court scheduled and conducted an all-day hearing on the motion. That hearing was held on October 30, 1997, in Bozeman, Montana.

Following the hearing, the parties submitted additional briefs. The final brief was received by the Court on November 21, 1997, at which time the motion was deemed submitted. After reviewing the briefs, the evidence introduced at hearing, and the surveillance tapes, the Court issued an Order denying the motion as "utterly without merit." (Order Denying Motion for Protective Order, December 3, 1997.) The Order did not address the specific contentions made by claimant. This memorandum will do so.

The Motion

The motion arises out of a sworn statement taken by respondent's attorney and video surveillance of claimant over a 24-day period. In her initial motion, claimant accused respondent's attorney, Mr. Larry W. Jones (Jones), of intimidating or frightening friends, coworkers and the family of claimant. Specifically, the motion asserts:

Friends, co-workers, and family of [claimant] have stated to [claimant] that, without prior notice or their consent, they have been contacted, questioned, **"cornered", and intimidated or frightened** in various ways by Mr. Jones and/or his agents.

(Motion for Protective Order at 2, emphasis added; quotation marks in original.) As an "example" of intimidation, the motion states that "Brenda Herbst was interviewed by Larry Jones in a manner that was **intimidating** and unreasonable." (*Id.*, emphasis added.) With respect to the video surveillance and questioning of witnesses, the motion alleges that "the actions of Mr. Jones and his agents extend far beyond the issues raised in the Petition, and merely represent a fishing expedition into the [claimant's] private business and the privacy and business of the individuals listed in Exhibit A." (*Id.* at 1.) Exhibit A is a list of 16 witnesses. Finally, the motion alleges that "the family business operated by [claimant's] husband and sons has been, and continues to be harmed," by the videotaping, and that the reputation of claimant's family and their business has been harmed. (*Id.* at 2.)

The motion asks that Liberty, "its attorney, Larry W. Jones, and their agents be required to immediately cease contacting, attempting to contact, following, telephoning, attempting to question, or in any way harassing, annoying, intimidating, intercepting or waylaying, and/or molesting [claimant], her family, co-workers, business associates, and friends listed in Exhibit A" (*Id.* at 1.)

The Hearing

Claimant and her attorney, Mr. H. Charles Stahmer (Stahmer), were present at the October 30, 1997 hearing. Liberty was represented by Jones.

Witnesses: Claimant, Brenda Herbst, Vicki Dagenhart, Mark Fullerton and Ron Maki testified. Herbst is a co-employee of claimant. Dagenhart is a friend of claimant and presently lives with her. Fullerton and Maki are private investigators who participated in the surveillance of claimant.

Depositions and Sworn Statement: The parties agreed that, for purposes of resolving the motion, the Court may consider the sworn statement of Herbst and two video depositions of claimant. I have read the sworn statement and the transcripts of claimant's depositions. I have not viewed the videotapes of the claimant's depositions.

Exhibits: Exhibits 1 through 8 were offered and admitted without objection. Three of those exhibits were copies of the surveillance tapes. Exhibit 9, a handwritten statement of claimant's husband, Tommy Fitch, was admitted as an offer of proof as to the testimony he would present if allowed to testify. On the day of trial, he was incapacitated due to a recent injury and therefore unavailable to testify.

The Videotapes: During the hearing, there was testimony and representations indicating that the videotapes tendered the Court were composites of several original tapes. Since claimant challenged the accuracy of the tapes, I ordered Liberty to furnish the Court and claimant's counsel with a separate copy of each original tape. Liberty thereafter furnished five tapes.

The tapes were reviewed in detail by my law clerk, Ms. Patricia A. McHugh (McHugh), who identified a single discrepancy. That discrepancy is on Tape 1, which shows claimant at a carwash on September 23, 1997. The videotape jumps from 7:29 p.m. on September 23, 1997, to 1:50 p.m. on September 25, 1997, then back to 7:30 p.m. on September 23, 1997. The September 25, 1997 sequence is fleeting and may be a product of the copying process. Nonetheless, the Court has directed Liberty to explain the sequence. Upon receipt of the explanation, the Court will consider whether it should require further evidence concerning the making of the tapes and their admissibility.

Partial Bench Ruling: At the hearing, I ruled that there is no evidence to support claimant's assertion that Jones intimidated Herbst; to the contrary, Jones' interview of Herbst was exemplary. Since Herbst's interview was the claimant's sole evidence of her allegation that Liberty had intimidated witnesses, I denied her request that Liberty and Jones be precluded from contacting potential witnesses. The basis for my ruling was stated at the hearing, which is reported. In this memorandum, I will restate and expand on my reasons for that ruling.

Post-Hearing Briefs: At the close of hearing, I granted the parties leave to file additional briefs addressing the motion. In addition to any arguments the parties wished to make, I directed Stahmer to state what testimony Tommy Fitch would give, if permitted to testify, in addition to that set out in Mr. Fitch's handwritten statement. I indicated that if Mr. Fitch had personal information which is admissible and relevant to the allegations of the motion, the Court would return to Bozeman and hear his testimony.

Mr. Fitch's Proffered Testimony

Nothing in Mr. Fitch's handwritten statement or the post-trial brief of claimant (petitioner's post-hearing brief) indicates that he has any personal knowledge of facts relevant to the motion. Therefore, there was, and is, no reason to hear his testimony.

Allegations of Misconduct Made by Claimant at Hearing and in Her Post-Hearing Brief

At hearing and in her post-hearing brief, the claimant, through her counsel, alleged the following:

- Jones intimidated Herbst when interviewing her, causing her to fear for her job.
- The private investigators surveilling claimant trespassed on private property during their videotaping of the claimant.
- The surveillance constituted or approached "stalking." (petitioner's post-hearing brief at 6, 8.) Claimant's attorney asserts in his post-hearing brief: "When a person is being kept under constant surveillance which causes that person to feel intimidated and fearful and to have severe emotional distress, said surveillance has become harassment and **borders on the offense of stalking.**" (*Id.* at 8, emphasis added.) Earlier in his brief, he cites the criminal statute on stalking, § 45-5-220, MCA. (*Id.* at 6.) Stahmer compared the investigators' surveillance with that of the paparazzi who pursued Princess Diana.
- Claimant was "under constant surveillance for three and one half weeks." (*Id.*) The surveillance was unreasonably long and violated the rights of privacy of claimant, her family and friends. (*Id.*)
- The prolonged videotaping harassed, threatened and frightened claimant and her family. (*Id.* at 6-7; Statement by Mr. Stahmer at hearing.)
- The videotaping caused a four-year old child of a friend of claimant's to fear that "someone would come through her window and kill her." (petitioner's post-hearing brief at 6.)
- The videotaping extended to other individuals, including children, thereby invading their privacy rights.

- The "accuracy of several of the videotapes is questionable, and . . . there are many discrepancies and inaccuracies." (*Id.* at 5.) The times shown on the tapes are inconsistent, suggesting "the possibility that the videotapes have been tampered with." (*Id.*)

The Videotapes

The videotaping occurred between September 23, 1997 and October 16, 1997, a period of 24 days. However, no taping occurred on ten of those days (September 26 through 28 and October 8 through 14). On another five of those days, no activity was recorded. The most significant taping occurred on September 23, when claimant was taped washing and cleaning her pickup truck at a carwash over a two hour period; on October 7, following claimant's deposition; and on October 15 and 16, when claimant was in Missoula for an independent medical examination.

At various times, three different investigators participated in the surveillance, using three different video cameras. One of the investigators testified that the time generator of one of the cameras was out of synchronization with the others. A review of the tapes confirms his testimony.

Although claimant suspected she might be under surveillance, she did not learn of the videotaping until after October 16, the last day of taping. She claims to have seen a white Ford Bronco following her, but that type of vehicle was not used by the investigators and she presented no evidence showing that she ever saw the investigators who in fact were surveilling her.

During the hearing, parts of the videotapes were played for the Court. Subsequent to receiving individual copies of the original tapes, I asked my law clerk to carefully review the tapes, keeping in mind the specific allegations made by claimant. McHugh undertook my charge and provided me with a detailed and comprehensive report upon which parts of this memorandum are predicated.

Discussion

Claimant's allegations against Liberty and Jones are serious ones.

Through her attorney, claimant has accused Liberty's attorney, Jones, of intimidating witnesses. She has thereby placed his integrity as an officer of the Court, as well his reputation, at issue.

Claimant has further accused Liberty's private investigators of trespassing; engaging in conduct which "borders" on "stalking"; harassing claimant, her family and friends;

undermining the business reputation of claimant's husband; invading the privacy of claimant, her family and friends; frightening small children; and falsifying videotapes. "Stalking" is a crime, § 45-5-220, MCA; trespassing may also be a crime, § 45-6-203, MCA. Tampering with videotape evidence is a crime. § 45-7-207, MCA.

The Court has provided claimant with every opportunity to support her allegations. She has not done so. She has not presented a scintilla (a "spark" or "trace" of evidence, i.e., *any* evidence) of evidence to support her factual allegations. She has provided no legal authority for her contentions.

I. Claimant's Allegations as Set Forth in Her Motion.

Claimant's initial allegations are set forth in her motion. I address each allegation separately.

A. Intimidation of Witnesses.

In her motion, claimant alleges:

Friends, co-workers, and family of [claimant] have stated to [claimant] that, without prior notice or their consent, they have been contacted, questioned, "cornered", and intimidated or frightened in various ways by Mr. Jones and/or his agents. . . .

For example, Brenda Herbst was interviewed by Larry Jones in a manner that was intimidating and unreasonable. In Ms. Herbst's words, "He had me scared to death." She stated that she has worked in the beauty salon at J.C. Penney Company for nine years, and she felt that her job was in jeopardy by the presence of Mr. Jones. Ms. Herbst felt that her rights were being infringed upon, but was too scared to say anything. This caused her such emotional trauma that the following day, she went to a friend's house and cried because she was so upset by what had transpired.

(Motion for Protective Order at 2.) The "for example" of Herbst was the only example offered by claimant.

Herbst was indeed interviewed by Jones. The interview was conducted before a court reporter and a transcript of the interview was available to the claimant and her attorney. Nothing in the interview supports claimant's allegation of intimidation.

The transcript of the sworn interview shows that the interview was voluntary and non-coercive. At the beginning of the interview, the following exchange took place between Jones and Herbst:

Q. Brenda, my name is Larry Jones. I'm an attorney from Missoula. I'm representing JC Penney and Liberty Mutual Insurance Company on a workers' compensation case

involving Kathy Fitch. And before we went on the record and before you were sworn did I explain to you this was entirely voluntary on your part?

A. Yes.

Q. Okay. And do I have your permission to ask you these questions and have them recorded by our court reporter?

A. Yes.

Q. And did I also explain that at any time when I'm talking with you you're free to say, "I'd rather discontinue this"?

A. Right.

Q. Okay. Now, please feel free to do that. Okay?

A. Okay.

Q. Because this is entirely voluntary on your part.

A. Right.

(Sworn Statement of Brenda Herbst at 2-3.) Near the end of the interview, Herbst was asked if she wanted to add anything to her responses to the questions that had been asked her. She did, and added the following:

Q. Anything else you'd like to put on the record?

A. Well, I did kind of feel that I had to do this, I mean, even though it was voluntary. But I just -- working for JC Penney.

Q. Did you feel coerced in any way?

A. Yes and no, I guess. It's --

Q. Did anyone threaten you?

A. No.

Q. Did anyone instruct you what to say?

A. No. And I did not discuss this with Kathy that this was going to happen. I voluntarily did it.

Q. Do you feel some loyalty to JC Penney?

A. Yes, I do.

Q. And that's why you volunteered to come in and talk to us?

A. Yes. But I also have loyalty to my friend, too, you know.

Q. I can understand that.

A. But I just want you to understand that what we talked about before as well with if people are following me and jacking with my phone.

Q. Yeah. Yeah. Before we went on the record you thought maybe somebody was following you and maybe had tapped your phone?

A. Uh-huh.

Q. And I told you that I was confident it was not our private investigators?

A. Right. And if I find out different, there will be charges filed.

(*Id.* at 45-46.) Jones provided Herbst with the name and phone number of the private investigators employed by Liberty. (*Id.* at 47-48.)

Herbst's statements near the end of the interview belies the assertion that she was intimidated by Jones. She was assertive. She voiced her loyalty to her friend Kathy, who is the claimant in this case, as one of the reasons for her agreeing to the interview. She expressed her belief that she was being followed and that her phone was tapped. These were not the answers of someone who was intimidated.

Herbst testified at the hearing. As did the transcript of her sworn statement, her testimony contradicted claimant's assertion that she was intimidated by Jones. While she testified that she "felt" intimidated and that she felt her job might be in jeopardy if she did not cooperate with Jones, she related that the J.C. Penny store manager told her prior to the interview that the interview was voluntary and that her job was not in jeopardy. She also testified:

- The room where her statement was taken was a large one.
- Jones sat across the table from her.
- The court reporter was present throughout the interview.
- Jones did **not** shout at her, use profanity or otherwise act in an intimidating manner during the interview.
- Prior to the interview and going on the record, Jones gave her the same explanation about the nature of the interview as he gave after the court reporter began transcribing the interview.
- She was provided with an opportunity to speak freely.

Herbst's testimony, as well as the transcript of her interview, show that any fears she may have had were unjustified. There is not a single fact indicating that Jones intimidated her in anyway.

Similarly, there is not a whit of evidence that Jones or Liberty ever "cornered", "intimidated", "frightened", "molested" or "harassed" [the words used in the motion for protective order at page 2] any other witness in this case. There was no evidence that Jones or Liberty even contacted other witnesses. The surveillance could not have frightened claimant or witnesses as it was unknown to them until it was over.

Claimant's accusations against Jones are without merit, intemperate and scandalous.

b. Claimant requests that the Court exclude all statements, videotapes, records, and other such materials collected "**without prior knowledge or consent of [claimant] and/or her attorney.**" (motion for protective order at 1, emphasis added.) She asserts that the actions of Jones and agents (private investigators) extended beyond the issues raised in the petition, and amounted to a "fishing expedition" into claimant's private business and the businesses of others. She cites Rule 26(c)(1), Mont.R.Civ.P. as authority for her request. (*Id.*)

Rule 26(c), as well as a similar rule of this Court, ARM 24.5.325, relate to protective orders regarding the use of depositions, interrogatories, requests for production, and requests for admission. The rule does not extend to interviews of witnesses or surveillance. Thus, it provides no authority for claimant's request.

Moreover, there is no factual merit to claimant's allegations. The statement taken of Herbst clearly pertained to the merits of this case. The surveillance was all aimed at the claimant. The surveillance shows claimant washing her truck, driving, eating, and walking. These activities may reflect on her claim of disability. The videotaping of other persons was incidental to capturing claimant's activities. The activities and scenes filmed occurred in public places or were observable from public places. Claimant's husband was filmed because he operates his business out of his and claimant's home and because claimant accompanied him in some of his activities.

The notion that an insurer or any other party must obtain the prior consent of the opposing party or her attorney before interviewing witnesses or conducting surveillance is not only unsupported by any citation to authority, it is ludicrous.

c. Claimant next contends that the videotaping has harmed the business operated by her husband and sons. The allegation has no basis in fact. Claimant and her husband were unaware of the videotaping while it was being done. Claimant presented no evidence that Liberty ever contacted persons with whom her husband and sons do business or that their business associates were ever made aware of the surveillance.

II. Other Allegations Made at Hearing and in the Post-Hearing Brief

Which Are Not Already Addressed.

a. Claimant alleged that the investigators trespassed on private land when videotaping her in East Helena on October 7, 1997. Most of the videotape shot in East Helena shows the front of a new mobile home. The home was being set up by claimant's husband. At approximately 7:30 p.m., the videotape shows a closeup view from what appears to be the backside of the mobile home. Claimant argued that the videos could not have been taken unless the investigators trespassed.

The inference claimant asks the Court to draw is unfounded. The video cameras used by the investigators had zoom features. Both investigators involved in the surveillance testified that they conducted their surveillance from public property or from private property for which they had permission to be on. Claimant did not offer any evidence to the contrary.

b. Claimant's attorney used the word "stalking" to describe the surveillance and compared the investigators to the paparazzi who pursued Princess Diana. (Hr'g Test.) "Stalking" is a criminal offense in Montana. It is defined in section 45-5-220, MCA, which provides in pertinent part:

(1) A person commits the offense of stalking if the person **purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:**

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, or by other action, device, or method.

....

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person. [Emphasis added.]

Claimant had no knowledge of the surveillance until after it was completed. (Fitch Hr'g Test.) Therefore, she could not have suffered "substantial emotional distress or reasonable apprehension of bodily injury or death" as a result of the surveillance. § 45-5-220, MCA. Moreover, the statute requires that the distress was "purposely or knowingly caused." The surveillance in this case depended on it remaining *surreptitious*.

The stalking allegation is without merit. The comparison of the surveillance to the paparazzi hounding Princess Diana is absurd.

c. Claimant asserts that she was "under constant surveillance for three and one half weeks." (petitioner's post-hearing brief at 4.) She further asserts that the surveillance was unreasonably long and invaded the rights of privacy of herself, her family and her friends.

Initially, she grossly exaggerates the surveillance. As noted earlier, the period of surveillance covered 24 days but there was no surveillance on ten of those days and on five others the surveillance was wholly nonproductive. On only a handful of days did the surveillance yield significant taping. In any event, claimant has not cited any statute or case which places any specific time limit on surveillance.

As to the allegation of invasion of privacy, I fail to find such invasion. "An invasion of privacy cause of action is defined as a 'wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.'" *Rucinsky v. Hentchel*, 266 Mont. 502, 505, 881 P.2d 616, 618 (1994) (quoting from *Sistok v. Northwestern Telephone Systems, Inc.*, 189 Mont. 82, 92, 615 P.2d 176, 182 (1980)). The videotapes disclose activities which could have been observed by anyone. The right of privacy encompasses activities for which the individual has an actual or a subjective expectation of privacy, so long as that expectation is a reasonable one. *State v. Solis*, 214 Mont. 310, 314, 693 P.2d 518, 520 (1984)(citing *The Missoulian v. Board of Regents of Higher Education*, 207 Mont. 513, 522, 675 P.2d 962, 967 (1984)). Persons engaged in activities which are readily observable by others cannot reasonably expect that their activities will be unobserved, and any such subjective expectation is not reasonable. In this case, the cameras recorded activities readily observable by the public.

d. Claimant questions the accuracy of the videotapes and suggests that they have been tampered with. (petitioner's post-hearing brief at 5.) She points to a discrepancy in times on the tapes for October 7, 1997. She asserts that the tape of her washing her truck on September 23 seems to be slowed down. She alleges that the trip from Bozeman to Belgrade on October 7 shows that it took seven minutes, which is impossible.

A review of the tapes showed that at least three different video cameras were used on October 7 and that one of the cameras was not synchronized with the others. Two different cameras were used to record claimant's trip from Bozeman to Belgrade. The video recording from each camera has a unique time stamp from which the Court is able to determine that more than one camera was used for this portion of the surveillance. The time stamp on the second camera was consistently 11 minutes slower than the other camera (see Tapes 2 and 5). When viewed in its entirety, the second camera shows claimant leaving Bozeman on October 7, 1997, at approximately 11:30 a.m. and driving by her mobile home in Belgrade at approximately 11:48 a.m. Thus, claimant's trip from Bozeman to Belgrade took 18 minutes, not 7.

A review of the carwash tape failed to confirm claimant's assertion. The tape shows a time counter. The counter does not appear inaccurate. The actions on tape appear at normal speed.

e. Claimant asserts that the surveillance has frightened the four-year old child of a friend and that the child now fears someone will come through a window to shoot her.

Dagenhart, a friend of claimant, is the child's mother. At present, Dagenhart and her children are living with claimant. She and her children accompanied claimant to Missoula on October 15-16 and were incidentally captured on the videotapes taken on those dates.

Dagenhart testified at hearing. She confirmed that she was unaware of the surveillance at the time. She learned about the surveillance from claimant, who was provided with the information and copies of the tapes after the surveillance had ended. Dagenhart's four-year old child learned of the surveillance when her mother and others were viewing the videotapes. The child walked into the room, saw the videos, and overheard the adults discussing them. The blame for the child's fear lies with her mother, who exposed her to the tapes and the conversation, not with Liberty.

DISPOSITION

As set forth in the Court's prior Order, the motion for a protective order is without merit and **denied**.

DATED in Helena, Montana, this 30th day of December, 1997.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. H. Charles Stahmer

Mr. Larry W. Jones

Submitted: November 21, 1997