

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 40

WCC No. 9508-7374

ALEXANDRA ENGLER HAMMER

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent/Insurer for

ROBERT HELMS, d/b/a MOSTLY MONTANA CONSTRUCTION,

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: 22 year old claimant suffered serious injuries when she fell from the roof of a house where she was nailing shingles on the roof. She claimed to be working as an employee for a construction company owned and operated by Robert Helms. An orphan, claimant had been a member of Helms's household for periods of her youth (he was married for a time to a woman who was her legal guardian) and was again living in Helms's household as a condition of release on her own recognizance regarding charges of writing bad checks. Helms testified he brought claimant to the job site so he could keep an eye on her and merely instructed her to pick up around the site to "earn her keep." He testified he regularly uses this phrase with his children and that it does not indicate he will pay them.

Held: Under section 39-71-118, MCA (1991), an employee is "each person in this state...who is in the service of an employer...under any appointment or contract of hire, expressed or implied, oral or written." In *Carlson v. Cain*, 204 Mont. 311, 318 (1983), the Supreme Court stated that a "contract for hire" contemplates being paid, but indicated that payment can be found "in anything of value such as board and lodging." Because claimant was told she was "earning her keep," she was an employee of Helms at the time of her injury. Certain employments, however, are exempt from the Workers' Compensation Act. Among the exclusions set out in section 39-71-401, MCA (1991) is that for "a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code (subsection (c)) and for "any person performing services in return for aid and sustenance only..." (subsection (h)). Subsection (c) does not

apply where claimant would not qualify as a dependent under the federal IRC where she is not stepdaughter and did not reside in Helms's household for the entire year. Subsection (h), however, excludes claimant from the WCA where she was working only in return for aid and sustenance from Helms. Claimant's shifting testimony that Helms had agreed to pay her money was not credible. **Note:** this decision was affirmed by the [*Montana Supreme Court in Hammer v. Uninsured Employers' Fund*, 280 Mont. 371, 929 P.2d 883 \(1996\) \(No. 96-365\)](#).

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: section 39-71-401(c), MCA (1991). Claimant temporarily living with alleged employer per terms of release on her own recognizance from criminal charges was employee within WCA where she worked for board and room. She was not exempt from the WCA under section 39-71-401(c), MCA (1991) as a dependent member of the employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code because she was not his stepdaughter and did not live with him for an entire year. She was, however, exempt from the WCA under a provision relating to work for "aid and sustenance only." **Note:** this decision was affirmed by the [*Montana Supreme Court in Hammer v. Uninsured Employers' Fund*, 280 Mont. 371, 929 P.2d 883 \(1996\) \(No. 96-365\)](#).

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: section 39-71-401(h), MCA (1991). Claimant temporarily living with alleged employer per terms of release on her own recognizance from criminal charges was employee within WCA where she worked for board and room. She was, however, exempt from the WCA under the provision relating to work for "aid and sustenance only" set out in section 39-71-401(h), MCA (1991). **Note:** this decision was affirmed by the [*Montana Supreme Court in Hammer v. Uninsured Employers' Fund*, 280 Mont. 371, 929 P.2d 883 \(1996\) \(No. 96-365\)](#).

Employment: Aid and Sustenance. Claimant temporarily living with alleged employer per terms of release on her own recognizance from criminal charges was employee within WCA where she worked for board and room. She was, however, exempt from the WCA under the provision relating to work for "aid and sustenance only" set out in section 39-71-401(h), MCA (1991). **Note:** this decision was affirmed by the [*Montana Supreme Court in Hammer v. Uninsured Employers' Fund*, 280 Mont. 371, 929 P.2d 883 \(1996\) \(No. 96-365\)](#).

Employment: Employee. Claimant temporarily living with alleged employer per terms of release on her own recognizance from criminal charges was employee within WCA where she worked for board and room. She was, however, exempt from

the WCA under the provision relating to work for "aid and sustenance only" set out in section 39-71-401(h), MCA (1991). **Note:** this decision was affirmed by the [*Montana Supreme Court in Hammer v. Uninsured Employers' Fund*, 280 Mont. 371, 929 P.2d 883 \(1996\) \(No. 96-365\).](#)

Employment: Exempt Employments. Claimant temporarily living with alleged employer per terms of release on her own recognizance from criminal charges was employee within WCA where she worked for board and room. She was, however, exempt from the WCA under the provision relating to work for "aid and sustenance only" set out in section 39-71-401(h), MCA (1991). **Note:** this decision was affirmed by the [*Montana Supreme Court in Hammer v. Uninsured Employers' Fund*, 280 Mont. 371, 929 P.2d 883 \(1996\) \(No. 96-365\).](#)

This matter was initially scheduled for trial on December 12, 1995. However, at that time counsel and the Court agreed that petitioner, who was then in Georgia, should be personally present at trial. The case was rescheduled for March 18, 1996, and began on that date. Trial continued through March 19, 1996. The Court then permitted the parties to submit post-trial briefs. The final brief was filed April 8, 1996, at which time the case was deemed submitted and ready for decision.

The petitioner, Alexandra Engler Hammer (claimant), was present at trial and represented by Mr. David W. Lauridsen. The respondent, Uninsured Employers' Fund (UEF), was represented by Mr. Kevin M. Braun. The employer, Robert Helms was present and represented by Mr. Richard DeJana.

Witnesses and Depositions: Claimant, Robert Helms, Cookie Lowitz, and Thomas Wynne, C.P.A., were sworn and testified. The depositions of claimant, Ray Rester, and Robert Helms were also submitted for the Court's consideration.

Exhibits: Exhibits 1 through 12 were admitted without objection. Exhibit 13, which is the transcript of an earlier hearing before the Department of Labor and Industry, was not admitted except for use in cross-examining the witnesses.

Issues presented: Claimant seeks medical and compensation benefits from the UEF. Both UEF and Helms contend that claimant was an exempt employee and is therefore not covered under the Workers' Compensation Act. Also at issue is whether a prior decision by the Department of Labor and Industry finding claimant was an employee estops the UEF and Helms from asserting that she was not.

Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the depositions and exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

1. Claimant is 22 years old, married and has one small child. Her married name is Hammer, her maiden name is Engler. She presently lives in St. Mary's, Georgia with her husband. She is a high school graduate.

2. Claimant's parents are both deceased. She was nine years old when her father died, eleven when her mother died. After the death of her mother, claimant went to live with her mother's brother Earl, who was at that time married to Mary Alexine (Mary). Mary and Earl then divorced but claimant continued to live with Mary. Mary was appointed claimant's legal guardian.

3. Robert Helms (Bob) is the sole proprietor of Mostly Montana Construction (MMC). He and Mary began dating and were married in 1989. Upon their marriage, claimant was integrated into Bob's expanded family, which included his own children from a prior marriage. Bob has always treated claimant as one of his children.

4. Bob and Mary separated sometime in 1991 and ultimately divorced in May of 1993. Claimant lived with Mary and Bob until they separated. Following their separation, claimant lived at various times with Bob, Mary, and a boyfriend. Between January and May of 1992, she alternated living with Bob and Mary but testified that she spent more time with Mary. In April or May of 1992, she began living with her boyfriend.

5. Claimant turned 18 years old in February 1992. Up to that time, Mary was her designated legal guardian.

6. Helms did not list claimant as a dependent exemption on his tax return in 1992, rather Mary took the exemption. Helms and Mary were still married at the time but filed separate returns.

7. During the summer of 1992, claimant began writing bad checks. In September 1992 she was arrested and jailed. She called Bob and sought his help.

8. On September 25, 1992, claimant was released on her own recognizance based on her agreement to abide by a list of conditions. Those conditions were as follows:

1. She shall live with Bob Helms at 388 Daly Lane, Kalispell, Mt.

2. She shall follow the rules set for her by Bob Helms as a condition of residing in his home including:

a. curfew

b. household duties

c. who can be brought into his home

d. who the [claimant] associates with.

Dated Sept. 25, 1992

/s/ Alexandra Engler

(Ex. 8 at 2.)

9. Claimant lived with Bob during the remainder of 1992.

10. On September 28, 1992, the evening claimant returned to Bob's home, she and Bob discussed what she would do while living in his house. The parties differ as to their recollection of that conversation.

11. Claimant testified at trial that their discussion centered on her need to have a job so she could make restitution. She testified that Bob told her she had to go to work with him. She said she responded that she would find her own job but that he reiterated that she had to come to work with him and he would pay her.

12. Claimant told inconsistent stories regarding her proposed pay. At a hearing before the Department of Labor and Industry on September 22, 1994, she testified that on September 28, 1992, Bob told her he would pay her \$5.00 per hour:

LAURIDSEN: What was your understanding of your arrangement with Mr. Helms on September 29 when you started that position.

ENGLER: That I would work.

LAURIDSEN: How was he to pay you?

ENGLER: He said \$5.00 an hour.

(Ex. 13 at 6 and see *also* Ex. 13 at 28-29, 18-19, 41.) In an affidavit of January 10, 1994, claimant said she believed her rate of pay would be "around \$4.00 or \$5.00 per hour."

During the summer and early fall of 1992, my stepfather Bob Helms loaned me some money. In September of 1992 we had an agreement that I could pay him back by working at one of the job sites of Mostly Montana Construction. . . . part of my understanding with Bob Helms was that I would work on an hourly basis until I paid my debt to him off. I was not paying Bob back for any housing, board or living expenses. I am unsure how much I was to be credited for my hours of work, but believe it was around \$4.00 or \$5.00 per hour.

(Ex. 2 at 1.) In her deposition she was more definite, fixing the rate at \$5.00 an hour:

Q [by counsel for the employer]: And you were working for how much an hour?

A I think it was five dollars.

. . . .

Q And you have no recollection of any hourly rate being specified to you that you would be working.

A I believe it was five dollars.

Q Well, your affidavit says four or five. Which is it?

....

A I think it was five because that's what I've worked for him before.

(Ex. 5 at 13, 20.) At trial she testified that she did not recall discussing a specific rate of pay with Bob. She could only recall being told she would be paid. She explained that the discrepancies in her testimony arose because she thought further about the incident and remembered more about the evening of September 28, 1992. She further testified that while there may have been no discussion concerning her rate of pay she nonetheless believed that the rate would be four or five dollars an hour because she had been paid those amounts when previously working for Helms.

13. Bob has consistently maintained that he never told claimant he would pay her to work for him. (Ex. 6. at 13, *see also* Ex. 6 at 30; Ex. 13 at 53, *see also* Ex. 13 at 57; and trial testimony.) At trial he testified that on the evening of September 28, 1992, he and claimant discussed claimant's responsibilities, chores around the home, and her need to find a job so she could make restitution for the bad checks. He further testified that he called Job Service and set up an appointment for her later that week and that in the meantime he wanted her to accompany him to work so he could keep an eye on her. In light of claimant's troubles, Bob did not want to leave claimant at home alone. He told her that while at the job site she could pick up around the site and "earn her keep." He testified that he regularly uses this phrase with his children and that it does not indicate he will pay them.

14. Claimant had previously worked for Bob on two occasions. On one occasion, she and Bob's other children painted siding. Bob paid each of them approximately fifty dollars for their work. On another occasion Helms loaned claimant money to buy a dress and she was allowed to work to repay him. On both occasions, the work and the compensation were agreed to before the work was done.

15. On both September 29 and 30, 1992, claimant accompanied Bob to the Lowitz residence, where MMC was building an addition on the existing house.

16. Claimant testified that she worked between 5 to 8 hours on the 29th. She testified that she picked up trash and helped another worker, Ray Rester, work on the soffits of the house. She also testified that she filled out time slips with Ray, an assertion which was denied by both Ray and Bob.

17. Claimant again went to the Lowitz job site on September 30, 1992. Bob testified that he told her "I didn't want her on the roof and I wanted her just to pick up stuff around, and I showed her some of the scraps and stuff around the project. And I said just help clean up and stay out of trouble and I'll be back." (Ex. 6 at 161.) He said he told claimant she could "earn her keep" by picking up around the job site and that he gave her the option of riding with him to other projects or staying at the Lowitz job. She chose to remain at the job site.

18. In her deposition, claimant testified that Ray told her to go up on the roof and caulk the soffits. (Claimant Dep. at 8.) At trial she testified that Ray told her to caulk the eaves.

19. Ray, who testified by telephone deposition, said that claimant had watched him caulking and asked him to show her how. (Rester Dep. at 10.) He said that he demonstrated it to her on ground level. (*Id.*) He denied telling her to caulk on the roof and said that she was specifically told to stay off the roof. He testified that when he saw her up on the roof, "I told her to get down and I turned around and the next thing I knew she was on the ground." (*Id.* at 10.)

20. According to claimant, she was caulking under the eaves, stood up, became dizzy and fell backwards off the roof, falling approximately 10 to 12 feet to the ground landing on her back.

21. Cookie Lowitz, the owner of the house where claimant fell, testified at trial that she told claimant to stay off the roof and heard both Bob and Ray tell her to stay off the roof. Her testimony was credible.

22. Ray believed that claimant was caulking to impress Bob. (Rester Dep. at 8-9.)

23. Claimant was taken by ambulance to the Kalispell Regional Hospital. Gary Havens, one of two ambulance crew members treating claimant after her fall, provided an affidavit which states in part:

In the course of my attending the victim, Alexandra Engler stated that she was working by nailing shingles on the roof of the house. I distinctly recall Alexandra stating that while engaged in that work, she backed off the roof and fell down on the ground. I recall Alexandra Engler explaining her activities prior to her accident distinctly; she was not blown off or knocked off the roof.

(Ex. 1 at 20.)

24. Claimant suffered serious injuries in the fall. She suffered a C7 burst fracture, T11-12 burst fracture, and L4 burst fracture with 90% canal compromise. She underwent a "[r]eduction, fusion and stabilization from T9-L1 with Harrington rods, Edwards sleeves and TSRH cross links. Reduction, decompression, fusion and stabilization of lumbar burst fracture from L3-5 with Steffe plates and pedicle screws. Application of halo and vest for treatment of C7 burst fracture." (Ex. 10 at 252.) Claimant had a good recovery following

surgery and was discharged on October 14, 1992. Her recovery continued to go well through January 1993, at which time she took a nine month hiatus from doctors. She returned for a visit in December 1993 reporting some pain in the lower back. The physician was unable to take x-rays at this time because the claimant was six weeks pregnant. He recommended physical therapy and that she return after she gave birth to her baby. (Ex. 10 at 253-254.)

25. Blue Cross/Blue Shield paid claimant's initial medical bills based on a policy covering Mary, who obtained the policy through her job at Western Montana Regional Community Mental Health Center, Inc. Claimant was apparently a named insured under the policy.

26. However, on May 18, 1993. James A. Haynes, general counsel for Western Montana Regional Community Mental Health Center, Inc., wrote a letter to the Montana Department of Labor inquiring about uninsured employer benefits for claimant based on her work for Helms. Haynes contended that UEF, not Blue Cross/Blue Shield, was liable for her medical care.

27. Haynes met with claimant at Mary's office. He asked claimant about the nature of her work for Bob, told her about the factors used to determine whether an employer/employee relationship exists, and then told her he believed she was an employee of Helms.

28. Claimant was never paid for the time she was at the Lowitz job. Helms did not charge the Lowitz's for the tasks performed by claimant while she was on the Lowitz project.

29. After listening to the testimony of both claimant and Bob, and considering all evidence in the record, I find Bob to be the more credible witness. I adopt his testimony as accurately depicting the events in late September 1992. Specifically, I find that Bob did not tell claimant that she would be paid for work at the Lowitz place. I believe his testimony that he had set up an appointment for claimant to see a job service counselor later in the week and that in the meantime he took claimant with him to the job site because he wanted to keep an eye on her and did not want her to remain home unsupervised. Finally, I specifically find that Bob told claimant that in working at the Lowitz place, she could "earn her keep."

30. I further find that claimant did not have a reasonable expectation of being paid. Her initial story about payment was that she owed Bob money and was working her debt off. But she later abandoned that story and said that he indicated he would pay her \$4 or \$5 an hour, and still later she agreed that they had discussed no specific wage. As found in the previous finding, claimant was actually told that she could earn her keep. That arrangement was different from the two prior occasions where Helms had agreed to pay claimant and his children to paint siding and to let claimant work off money he lent her for a dress. In light of the different circumstances and the specific statement that she could earn her keep, I find that the only compensation claimant should have expected was that her work would simply help offset the board and room provided her by Bob.

31. Thomas Wynne, C.P.A., testified at trial concerning Helms' eligibility to declare claimant as a dependent on his 1992 federal income tax return. As previously found, Mary, not Bob, actually listed her as an exemption. Wynne testified, however, that claimant should qualify as a dependent stepchild and that there was a better than a 1 in 3 chance the Internal Revenue Service would not challenge the exemption.

CONCLUSIONS OF LAW

1. The claimant has the burden of proving that her injury occurred in the course and scope of her employment. *Gerlach v. Champion International*, 254 Mont. 137, 836 P.2d 35 (1992). The UEF and Helms contend she has not carried her burden because she was not an employee within the meaning of the Montana Workers' Compensation Act. They further contend that if she met the definition of an employee then she was an exempt employee. They rely on the exemptions for dependants and for persons working for aid or sustenance, §39-71-401(2)(c) and (h), MCA (1991).

2. The Court need not determine whether a decision by the Department of Labor and Industry stating that claimant was Bob's employee is res judicata because the evidence in this case clearly establishes that she was.

3. Employee is defined in the Workers' Compensation Act as meaning "each person in this state . . . who is in the service of an employer . . . under any appointment or contract of hire, expressed or implied, oral or written." § 39-71-118, MCA (1991). In *Carlson v. Cain*, 204 Mont. 311, 318, 664 P.2d 913, 917 (1983), the Supreme Court agreed that a "contract for hire" contemplates the worker's being paid, but it went on to quote and adopt a statement from 1c Larson, Workmen's Compensation Law, § 47.00(c), p. 8-231. The quoted statement says that payment "may be found in anything of value such as board and lodging." *Id.* at 318, 664 P.2d at 918. In *Carlson*, the claimant delivered newspapers for her fiancée three or four times a week. She was not paid for her efforts. Nonetheless, the Supreme Court affirmed this Court's determination that an implied contract for hire existed because the claimant "exchanged her delivery services for the use of a vehicle, room and board, and the expectation of financial security from her impending marriage." *Id.* at 318, 664 P.2d at 916.

In this case the claimant was specifically told she was "earning her keep." In other words her work was in consideration of the board and room being provided by Bob Helms. As the statement from Larson indicates, work in exchange for board and room constitutes a contract for hire. Thus, claimant was an employee of Bob Helms at the time of her injury.

3. Certain employments, however, are excluded from the Workers' Compensation Act. The exclusions are set forth in section 39-71-401, MCA (1991). Among the exclusions are the following:

(c) employment of a dependant member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

....

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

§ 39-71-401(2), MCA (1991).

Dependent Member of an Employer's Family

UEF and Bob contend that claimant is a dependant of Bob for whom Bob was entitled to an exemption. Whether or not claimant qualified as his dependent for purposes of an exemption is a matter of law governed by the Internal Revenue Code and subjacent regulations. Matters of law must be determined by the Court. Thus, Wynne's testimony is not binding on the Court, although the Court allowed it for the purpose of assisting it in locating the applicable law.

The Internal Revenue Code, Section 151 provides:

(a) Allowance of deductions.- In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

....

(c) Additional exemption for dependents.

(1) In General. An exemption for the exemption amount for each dependent (as defined in section 152)

26 U.S.C. § 151 (1993).

Section 152 defines dependent:

(a) General definition. - For purposes of this subtitle, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer . . .

(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor of either,

(5) A stepfather or stepmother of the taxpayer,

- (6) A son or daughter of a brother or sister of the taxpayer,
- (7) A brother or sister of the father or mother of the taxpayer,
- (8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer, or
- (9) An individual . . . who, for the taxable year of the taxpayer, has as his principle place of abode the home of the taxpayer and is a member of the taxpayer's household.

26 U.S.C. § 152 (1993). Only paragraphs (2) and (9) have any potential application to the facts of this case. Paragraph (9) does not apply because claimant did not have her principal place of abode in Bob's household for the entire year. Subsection (2) also does not apply because claimant is not Helms' "stepchild." "A 'stepchild' is a child of one's wife or husband by a former marriage." *Matter of Gaither*, 244 Mont. 383, 390-91, 797 P.2d 208 (1990); see also Random House Unabridged Dictionary (2d Ed. 1993) defining "stepchild" as "a child of one's husband or wife by a previous marriage." Helms' relationship to claimant is through his ex-wife, Mary, however, Mary was claimant's guardian, not her mother.

Aid and Sustenance

Only one Montana case has addressed the "aid and sustenance" exemption. In *Carlson v. Cain*, cited and discussed earlier, the Supreme Court held the exemption did not apply because the claimant therein received compensation in excess of mere aid and sustenance.

Here, there was no express agreement on payment between claimant and Cain, but claimant worked virtually full-time for Cain doing a portion of the work for which he received \$6,470 per month. Her work saved Cain the \$15 to \$30 per night he would have had to pay someone else to make the run. Claimant expected to marry Cain, and to share his life; her activities helped assure that Cain's livelihood would provide future financial security for her as well. Although this is a very close decision, we find sufficient evidence to support the Workers' Compensation Court's conclusion that claimant reasonably expected a benefit to flow from her work beyond those benefits she already enjoyed as Cain's fiancée.

204 Mont. at 319, 664 P.2d at 913. The Court specifically approved this Court's determination that "aid or sustenance" refers "to board and room" but, noting that claimant was working "virtually full time outside the home for Cain," that claimant's "reasonable expectations exceeded room and board."

The present case is factually distinguishable from *Cain*. In *Cain* the claimant was helping build a prospective marital estate in which she expected to share. She worked for Cain full time for several months. Had she not worked for her fiancée he would have had to hire and

pay someone else, thus claimant's work increased her fiance's profit. In this case, there is no evidence indicating that claimant's limited, short-term work financially benefited Helms, or that she could reasonable expect to share in any savings which might have inured to Helms. Helms' specific statement that she could "earn her keep" refuted any expectation of pay. Thus, there is no evidence showing that claimant reasonably expected any greater benefit than she already enjoyed just by living in Helms' home. Helms provided her with room and board and in return expected her to help out on the job for a couple of days.

Sustenance is defined by Random House Unabridged Dictionary (2d Ed. 1993) as:

1. means of sustaining life; nourishment.
2. means of livelihood.
3. the process of sustaining.
4. the state of being sustained.

The dictionary defines *sustain* as "support." As pertains to the support of persons, it defines *sustain* as "to supply with food, drink, and other necessities of life." That is exactly what Helms was providing in return for claimant working a couple of days so he could keep an eye on her. I therefore find that the exemption for work in return for aid and sustenance applies and the claimant was not an employee entitled to coverage under the Montana Workers' Compensation Act.

JUDGMENT

1. Claimant was not an employee covered by the Workers' Compensation Act. She was working for aid and sustenance and was therefore an exempt employee under section 39-71-401(2)(h), MCA.
2. Claimant is not entitled to medical or compensation benefits.
3. Claimant is not entitled to attorney fees and costs.
4. The petition is **dismissed with prejudice**.
5. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.
6. This JUDGMENT is certified as final.

Dated in Helena, Montana, this 31st day of May, 1996.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. David W. Lauridsen
Mr. Kevin M. Braun

Mr. Richard DeJana

Submitted: April 8, 1996