

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 OSJO'S OBJECTION TO ORDER ON THE MERITS

Evidence Numbers:

Description of Evidences

5. C 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

COPY OF THE DECLARATION OF GEORGIA ANN MICHELL IN SUPPORT OF THE DEFENDANTS' MOTION TO ENFORCE SETTLEMENT, FILED ON AUGUST 22, 1991

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ENDORSED
FILED

AUG 28 1991

RENE C. DAVIDSON County Clerk
By EDWARD CRANSTON

1 Georgia Ann Michell, Esq.
2 Carola Kekow Keaton, Esq.
3 GANONG AND MICHELL
4 500 Ygnacio Valley Road, Suite 360
5 Walnut Creek, CA 94596
6 Telephone: (415) 935-0706

7 Attorneys for Plaintiff,
8 WALE O. OSIJO

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF ALAMEDA

11	Wale O. Osijo,	)	No. 649881-6
12	Plaintiff,)	
13	-v-	)	DECLARATION OF GEORGIA ANN
14	Housing Resources Management,	)	MICHELL RE SETTLEMENT
15	Inc. et al.,	)	AGREEMENT
	Defendants.	)	Date: September 5, 1991
		)	Time: 10:00 a.m.
		)	Dept: 19
		)	Trial Date: 10/25/91

16 I, Georgia ann Michell, do declare as follows:

17 1. I am an attorney at law duly licensed in the State of

18 California and am the attorney of record for plaintiff, Wale

19 Osijo, herein.

20 2. I engaged in contracted settlement negotiations with

21 David Pinelli, the attorney for defendants Housing Resources

22 Management, Inc. and Filbert I, LTD. and filbert II, LTD. during

23 the entirety of Spring 1991.

24 3. In the month of June, 1991, it became clear to me that

25 negotiations were at a stand still. Mr. Pinelli had indicated

26 that he thought the case had a top value of \$175,000.00 to

\$225,000.00 (not explicitly but through strong hints) and I

GANONG AND MICHELL
500 Ygnacio Valley
Road, Suite 360
Walnut Creek, CA
94596
(415) 935-0706

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1 believed the case had a settlement value of \$250,000.00 to
2 \$350,000.00. An impediment to settlement was the plaintiff who
3 was at the time vacillating between wanting \$500,000.00 and
4 \$2,500,000.00 to settle this matter.

5 4. In late June, 1991, Mr. Pinelli and I determined that
6 a JAM's settlement conference might speed up the settlement
7 process before hard-core discovery procedures (stayed because of
8 the bankruptcy of defendant HRM) got under way. [It was my
9 opinion, based upon my experience in handling several similar
10 cases that I would expend, on behalf of plaintiff, at least
11 \$35,000.00 to \$50,000.00 in costs prior to trial for
12 depositions, expert fees and services as well as exhibit
13 preparation.] I felt that an early settlement might be more
14 palatable if both sides were not too heavily invested in the
15 costs of the litigation.

16 5. A JAM's settlement conference was subsequently
17 arranged with Judge Campilongo for July 25, 1991.

18 6. Prior to that conference I had engaged in protracted
19 telephone conversations with plaintiff regarding the value of
20 the case, my evaluation of the chances of prevailing in front of
21 a jury, and the potential costs which would need to be incurred
22 to adequately prepare for trial as well as the advantages of
23 having the security of a settlement and the ability to negotiate
24 with the lien holders.

25 7. On the date of the JAM's settlement conference, I
26 attended with my client.

8. Negotiations took place all through the morning; at

1 noon, I took my client to lunch and discussed the merits of the
2 defendant's offer.

3 9. After lunch, negotiations resumed. One important
4 issue under negotiation was the reimbursement due the Intervenor
5 for medical bills, temporary disability payments made and the
6 \$30,000.00 permanent disability award which had not been paid in
7 substantial part. The amounts claimed by the Intervenor were in
8 excess of \$50,000.00.

9 10. At each step in the negotiation process, I kept my
10 client informed of the offers being made and the ramification to
11 him of each offer. By late afternoon, when the monetary offer
12 was increased to \$250,000.00 and all but \$10,000.00 of the lien
13 was waived, Mr. Osijo indicated to me that the various offers
14 were acceptable to him provided he had an opportunity to speak
15 with Judge Campilongo and was able to tell his side of the
16 story.

17 11. At this time, I personally accessed the JAM's word
18 processing department and drafted the Settlement Agreement with
19 the assistance of Mr. Pinelli and Mr. Kizer. The Settlement
20 Agreement so drafted embodied the agreements made that day as I
21 had discussed them with my client.

22 12. Thereafter, all of the attorneys save Mr. Van Dam, the
23 adjuster, plaintiff, and Judge Campilongo assembled in the
24 conference room. We spent the next several hours discussing the
25 injuries sustained by plaintiff; plaintiff showed us his
26 grievous injuries and expressed his distress regarding both his
injuries and how he had been treated thereafter. After long

1 discussions wherein all present participated, Mr. Osijo
2 expressed his willingness to agree to the settlement negotiated
3 that date.

4 13. Thereafter, Judge Campilongo presented Mr. Osijo with
5 the typed Settlement Agreement I had prepared and Mr. Osijo (who
6 has completed the schooling necessary to receive an MBA) read
7 the agreement and further discussed the terms and provisions of
8 the agreement with all present.

9 14. After more discussion, Mr. Osijo indicated to all
10 parties that he was in agreement with the Settlement Agreement.
11 Thereafter, the parties present affixed their names thereto.

12 15. Mr. Kizer, Mr. Pinelli, my client and I went to the
13 Big Four Restaurant in the Huntington Hotel. We had a before
14 dinner cocktail and then had dinner. During this dinner, Mr.
15 Osijo continually expressed his satisfaction with the settlement
16 both as to the amount and the terms (especially since the
17 Intervenor was going to pay him an additional \$20,000.00 on top
18 of the \$250,000.00).

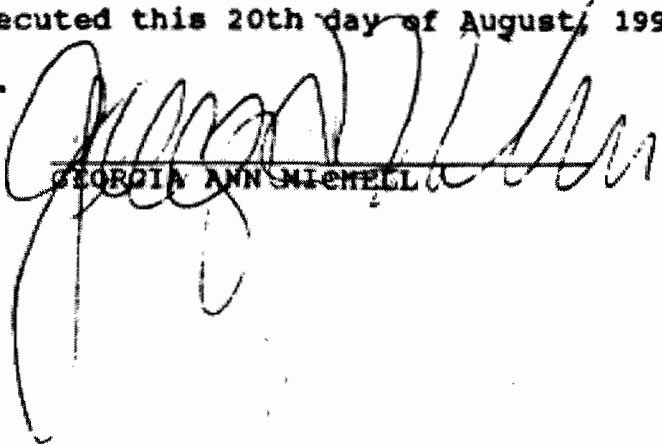
19 16. The evening ended about 10:30 p.m. when Mr. Pinelli
20 and I arranged for Mr. Osijo to have a room at the Huntington so
21 he wouldn't have to drive home that evening.

22 17. At no time during the evening did Mr. Osijo express
23 anything but agreement with the settlement agreement we had all
24 signed that day.

25 18. I was quite shocked the next morning when I received a
26 call from my client indicating that he felt he had been
"tricked" and "snookered" into signing the settlement agreement.

1 19. Based on the facts of this case and the damages
 2 sustained by my client, it is my opinion that \$250,000.00 in
 3 addition to the compensation benefits which plaintiff has
 4 received and will receive is a good settlement of this matter.
 5 Given the reality of Proposition 51, it was a strong possibility
 6 that plaintiff would have obtained by way of verdict
 7 substantially less.

8 I declare under penalty of perjury that the foregoing is
 9 true and correct and was executed this 20th day of August, 1991
 10 at Walnut Creek, California.



~~GEORGIA ANN NICHELL~~

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PROOF OF SERVICE BY MAIL
(CCP Sec. 1013a)

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3 I declare that I am a citizen of the United States and am
4 employed in the County of Contra Costa. I am over the age of 18
5 years and not a party to the above-entitled case. My business
6 address is 500 Ygnacio Valley Road, Suite 360, Walnut Creek,
7 California 94596.

8 On August 21, 1991, I served the within:

9 DECLARATION OF CHARLES S. BAKER, ESQ. RE SETTLEMENT AGREEMENT;
10 DECLARATION OF GOERGIA ANN MICHELL RE SETTLEMENT AGREEMENT

11 by placing a true copy thereof enclosed in a sealed envelope
12 with postage thereon fully prepaid for collection and mailing,
13 in the course of ordinary business practice, with other
14 correspondence of Ganong and Michell, at Walnut Creek,
15 California, addressed as follows:

16 David R. Pinelli
17 Larson & Burnham
18 P.O. Box 119
19 Oakland, CA 94604

Judge Campilongo
JAMS
111 Pine St.
San Francisco, CA 94111

20 I am familiar with the practice of the Law Offices of Ganong and
21 Michell for collection and processing of correspondence for
22 mailing with the United States Postal Service. It is the
23 practice that correspondence is deposited with the United States
24 Postal Service the same day it is submitted for mailing.

25 I declare under penalty of perjury under the laws of the
26 State of California that the foregoing is true and correct, and
that this declaration was executed on August 21, 1991, at Walnut
Creek, California.



Dianne T. Stamatelos

EXHIBIT 6

**COPY OF THE DECLARATION OF CHARLES SAMUEL BAKER, FILED IN SUPPORT OF
MOTION TO ENFORCE SETTLEMENT, FILED ON AUGUST 22, 1991**

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UNRECORDED
FILED

AUG 22 1991

RENE C. DAVIDSON, County Clerk
By EDWARD CRANSTON

1 Georgia Ann Michell, Esq.
2 Carola Kekow Keaton, Esq.
3 GANONG AND MICHELL
4 500 Ygnacio Valley Road, Suite 360
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7 Attorneys for Plaintiff,
8 WALE O. OSIJO

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF ALAMEDA

10	Wale O. Osijo,	)	No. 649881-6
11	Plaintiff,)	
12	-v-	)	DECLARATION OF CHARLES S.
13	Housing Resources Management,	)	BAKER, ESQ. RE SETTLEMENT
14	Inc. et al.,	)	AGREEMENT
15	Defendants.	)	Date: September 5, 1991.
		)	Time: 10:00 a.m.
		)	Dept: 19
		)	Trial Date: 10/25/91

16 I, Charles S. Baker, Esq., do declare as follows:

17 1. I am an attorney at law duly licensed in the State of
18 California and am an associate with the law firm Ganong and
19 Michell.

20 2. On or about August 7, 1991, I traveled to Fresno to
21 meet with Mr. Osijo, the plaintiff herein, to try and obtain his
22 signature on the release required to settle this case.

23 3. I am familiar with the facts of the within case and
24 met with Mr. Osijo over lunch to discuss his sudden aversion to
25 settling the case and signing the release.

26 4. Mr. Osijo did not appear to me to be so upset with the
amount of the settlement, but rather to be fixated on the idea

GANONG AND MICHELL
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(415) 935-0706

1 of "telling his story to the jury". He indicated that he didn't
2 care if he won or lost at trial, but that honor was to be won in
3 taking the fight to the very end. He seemed to feel that any
4 compromise was "losing face".

5 5. After several hours of discussion with Mr. Osijo, we
6 discussed the fact that Mr. Pinelli had promised that if Mr.
7 Osijo did not sign the release that the defendants would make a
8 664 motion to enforce the settlement. Thereafter, Mr. Osijo
9 indicated to me that if he was ordered to take the settlement by
10 a judge, it would not be as offensive because that was not the
11 same as him agreeing to accept less than his \$2,500,000.00
12 demand.

13 I declare under penalty of perjury that the foregoing is
14 true and correct and was executed this 20th day of August, 1991
15 at Walnut Creek, California.



CHARLES S. BAKER, ESQ.

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