

**IN THE SUPREME COURT OF MISSISSIPPI
CIVIL ACTION NO. 2007-CA-00087**

ILLINOIS CENTRAL RAILROAD COMPANY

Defendant/Appellant

V.

RICHARD ALDRIDGE, ET AL

Plaintiffs/Appellees

**APPEAL FROM THE CIRCUIT COURT OF
MARSHALL COUNTY, MISSISSIPPI
CIVIL ACTION M98-328**

BRIEF OF APPELLEES, RICHARD ALDRIDGE, ET AL

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ORAL ARGUMENT REQUESTED

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court may evaluate possible disqualification or recusal.

1. Plaintiffs/Appellees:

| | | |
|--------------------------|------------------------|-------------------------------|
| Muriel L. Anderson, Dec. | Billy Blagg | Samuel Boddie |
| Paskle D. Bowman | Hugh Brower, Dec. | George F. Bruch |
| Jack Cooper, Dec. | George Crain, Dec. | Curtis Craven |
| Lawrence Farris | Jack Greer, Dec. | John H. Harper, Dec. |
| Roosevelt Joyner | Charles L. Mayer, Dec. | Elwood Parton, Dec. |
| Lloyd D. Robinson, Dec. | Billy Stanfill | Clifton David Travis, Dec. |

2. Defendant/Appellant:

Illinois Central Railroad Company
Canadian National Railway Company - Owner/Parent of Illinois Central Railroad
Company

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5. Trial Court Judge:

Honorable Henry L. Lackey
Marshall County Circuit Court Judge
P. O. Drawer T
Calhoun City, MS 38916

Thomas W. Brock

THOMAS W. BROCK
ATTORNEY OF RECORD FOR APPELLEES

TABLE OF CONTENTS

| | |
|--|-----|
| CERTIFICATE OF INTERESTED PERSONS | i. |
| TABLE OF AUTHORITIES | iv. |
| TABLE OF ABBREVIATIONS | vi. |
| STATEMENT OF THE CASE | 1 |
| STATEMENT OF THE FACTS | 2 |
| SUMMARY OF THE ARGUMENT | 7 |
| ARGUMENT | 7 |
| A. STANDARD OF REVIEW | 7 |
| B. THE JUNE 19, 2001 LETTER TOGETHER WITH THE FEBRUARY 2002 LETTERS AND COURSE OF CONDUCT OF THE PARTIES ESTABLISHED A BINDING CONTRACT | 9 |
| C. THE PRIOR RELEASES ASSERTED BY ILLINOIS CENTRAL ARE IN VIOLATION OF SECTION 5 OF THE FELA | 17 |
| D. THIS COURT SHOULD ORDER ILLINOIS CENTRAL TO MAKE IMMEDIATE PAYMENT TO ASBESTOSIS AND PLEURAL PLAQUE PLAINTIFFS AND REMAND FOR TRIAL ALL LUNG CANCER CASES | 21 |
| CONCLUSION | 23 |
| CERTIFICATE OF SERVICE | 24 |

TABLE OF AUTHORITIES

| <u>CASES</u> | <u>PAGE</u> |
|--|-------------------------|
| Ammons v. Cordova Floors, Inc., 904 So.2d 185 (Miss.Ct.App.2005) | 8 |
| Anderson v. A. C. & S., Inc., et al, 797 N.E. 2d 537 (Ohio App. 2003) | 19, 20 |
| Babbitt v. Norfolk & Western Railway Co., 104 F.3d 89 (6 th Cir.1997) | 20 |
| Boyd v. Grand Trunk W. R.R., 338 U.S. 263, 70 S.Ct. 26 ((1949) | 21 |
| City of Jackson v. Perry, 764 So.2d 373 (Miss.Sup.Ct.2000) | 9 |
| Davis v. Singing River Electric Power Assn., 501 So.2d 1128 (Miss.1987) | 8 |
| Dockins v. Allred, 849 So.2d 151 (Miss.Sup.Ct.2003) | 16 |
| Duncan v. Thompson, 315 U.S. 1, 62 S.Ct. 422 (1942) | 21 |
| Fanning v. CIT Corporation, 192 So. 41 (Miss.1939) | 10 |
| Frazier v. Burnett, 767 So.2d 263 (Miss.Ct.App.2000) | 16 |
| Howard v. Total Fina E & P USA, Inc., 899 So.2d 882 (Miss.Sup.Ct.2005) | 9 |
| Illinois Central R.R. Co. v. Milton McDaniel, et al, 951 So.2d 523 (Miss.Sup.Ct.2006).. | 1, 2, 3, 11, 13, 17, 18 |
| Illinois Central R.R. Co. v. Phillip Acuff, et al, 950 So.2d 947 (Miss.Sup.Ct.2006) | 1, 17, 18, 21 |
| Illinois Central R.R. Co. v. Travis, 808 So.2d 928 (Miss.Sup.Ct.2002) | 1, 23 |
| In re Estate of Davis, 832 So.2d 534 (Miss.Ct.App.2001) | 10 |
| Kernan v. Am. Dredging Co., 355 U.S. 426, 78 S.Ct. 394 (1958) | 21 |
| Kirk v. Pope, 973 So.2d 981 (Miss.Sup.Ct.2007) | 16 |
| Maldonado v. Kelly, 768 So.2d 906 (Miss.Sup.Ct.2000) | 9 |
| Marinari v. Asbestos Corp. Ltd., et al, 612 A.2d 1021 (Pa.Super.1992) | 21 |

| | |
|--|----|
| Mauck v. Columbus Hotel Co., 741 So.2d 259 (Miss.Sup.Ct.1999) | 23 |
| McInnis v. Southeastern Automatic Sprinkler Co. Inc., 233 So.2d 219 (Miss.1970) ... | 10 |
| McManus v. Howard, 569 So.2d 1213 (Miss.Sup.Ct.1990) | 9 |
| Norfolk & Western Railway Co. V. Ayers, 538 U.S. 135, 123 S.Ct. 1210 (2003) | 21 |
| Rogers v. Missouri Pac.R.Co., 352 U.S. 500, 77 S.Ct. 443 (1957) | 1 |
| Thomas v. Bailey, 375 So.2d 1049 (Miss.1979) | 16 |
| TXG Intrastate Pipeline Co. v. Grossnickle, 716 So.2d 991, reh. den. (Miss.Sup.Ct.1997) | 23 |
| Viverette v. State Highway Comm'n of Miss., 656 So.2d 102 (Miss.1995) | 10 |
| Wicker v. Consolidated Rail Corp. 142 F.3d 690 (3 rd Cir.1998) | 17 |

STATUTES

| | |
|--|----|
| 45 U.S. C. § 51, <i>et seq.</i> | 1 |
| 49 U.S. C. § 20701, <i>et seq.</i> | 1 |
| 45 U.S. C. § 55 | 17 |

TABLE OF ABBREVIATIONS

| | |
|------------|---|
| R | Clerk's Record |
| T | Transcript |
| EX. | Exhibits |
| RE | Defendant/s Appellant's Record Excerpts |
| SRE | Plaintiffs'/Appellees' Supplemental Record Excerpts |

STATEMENT OF THE CASE

This case was originally filed in the Circuit Court of Marshall County, Mississippi on October 9, 1998 as Richard Aldridge, et al v. Illinois Central Railroad Company. (“Aldridge”) (R 1-21) The Plaintiffs in Aldridge, all former employees of Illinois Central Railroad Company (“Illinois Central”) filed their Complaint under the Federal Employers’ Liability Act (“FELA”), 45 U.S.C. § 51, et seq. and under the Locomotive Boiler Inspection Act (“BIA”) 49 U.S.C. § 20701, et seq., seeking damages for asbestos related personal injuries and wrongful death. At the time Plaintiffs filed their Amended Complaint, on May 7, 1999, Aldridge consisted of 99 plaintiffs and one defendant, Illinois Central. (R 79-102) The FELA makes railroads liable to their employees when the railroad’s negligence plays any part, even in the slightest, in causing injury. Rogers v. Missouri Pac. R. Co., 352 U.S. 500, 77 S.Ct. 443 (1957). (emph. added)

The Aldridge case is the third recent FELA asbestos case in which Illinois Central has appealed to this Court the judgment of a lower court which upheld a settlement agreement that Illinois Central entered into with its former employees.¹ In fact, the settlement agreement at issue in this case is the identical agreement that was at issue in Illinois Central Railroad Company v. Milton McDaniel, et al, 951 So.2d 523 (Miss.2006) cert. den., 127 S.Ct. 1332 (2007), with the exception that in this case the agreement as to the settlement amounts was finalized at a later date.

As in McDaniel and Acuff, when this case was filed in October, 1998, it was properly filed under then existing law on venue and joinder. This Court, in Illinois Central Railroad Company v. Travis, 808 So.2d 928 (Miss.2002) ruled that the claims of Clifton David Travis, a plaintiff in this

¹ See Illinois Central Railroad Company v. Milton McDaniel, et al, 951 So. 2d 523 (Miss.Sup.Ct.2006), cert. den., 127 S.Ct. 1332 (2007). See also Illinois Central Railroad Company v. Phillip Acuff, et al, 950 So.2d 947 (Miss.Sup.Ct.2006), cert. den., 127 S.Ct. 1826 (2007).

case, were properly joined with the claims of ninety-eight (98) other former Illinois Central employees; this Court further ruled in Travis that venue was proper and the lower court did not err in overruling Illinois Central's Motion to Dismiss on grounds of forum *non conveniens*.

After settlements and dismissals, there remain pending in this case the claims of eighteen (18) plaintiffs. On August 31, 2004, Plaintiffs filed a Motion to Enforce Settlement Agreement and for a Stay of Defendants Motions (**R 3128, RE Vol. 1 Tab 27**) which was granted by the Trial Court on December 5, 2006, from which Illinois Central has taken this appeal. (**R 3999, RE Vol 1, Tab 3**)

STATEMENT OF FACTS

On June 19, 2001, the Plaintiffs in this case (Aldridge) entered into a settlement agreement with Illinois Central. (**EX. D, SRE 1**) This agreement applied to the Jefferson County, Mississippi case of Robert Allen, et al v. Illinois Central Railroad Company ("Allen") as well as this case, Richard Aldridge, et al v. Illinois Central Railroad Company, in Marshall County, Mississippi.

Illinois Central made numerous payments under the settlement agreement to both Allen and Aldridge plaintiffs before it slowed payments in 2003 and then ceased making settlement payments in 2004. The Allen plaintiffs filed a motion to enforce the settlement agreement which was granted in part and denied in part by the Circuit Court of Jefferson County, which decision was upheld by this Court in Illinois Central Railroad Company v. Milton McDaniel, et al, 951 So.2d 523 (Miss.2006), cert. den., 127 S.Ct. 1332 (2007).

The Aldridge plaintiffs similarly filed their Motion to Enforce Settlement Agreement on August 31, 2004. (**R 3128-3140, RE Vol. 1 Tab 27**) The Circuit Court of Marshall County, Mississippi, on December 11, 2006, filed its Order granting the Aldridge Plaintiff's Motion to Enforce Settlement Agreement. (**R 3999, RE Vol. 1 Tab 3**)

In reviewing the Allen/Aldridge Settlement Agreement, this Court stated:

FACTS

¶ 4. On June 19, 2001, counsel for ICRR sent a letter to plaintiffs' counsel stipulating the payment to thirteen specifically named plaintiffs in the cause of *Robert Allen, et al v. Illinois Cent. R.R. Co.* The letter also set forth a contingent payment procedure detailing the payment of negotiated amounts to the remainder of the plaintiffs involved in *Robert Allen, et al v. Illinois Cent. R.R. Co.* Pursuant to the agreed upon payment procedure, ICRR would not tender payment for any remaining plaintiffs' claims without receiving certain documentation from each individual plaintiff, including: a pulmonary questionnaire, authorizations, and medical documentation establishing the claimed disease process. Also, ICRR reserved the right to assert three defenses to payment under the conditional settlement agreement including a statute of limitations defense, evidence of a prior release, or if the plaintiff was never in the employment of ICRR. As both ICRR and the plaintiffs assert, numerous claims were settled in accordance with the established procedure.

See Illinois Central R.R. Co. V. McDaniel, at ¶ 4.

The June 19, 2001 Settlement Agreement clearly applies to the Aldridge case as well as Allen. Page 1 of the Settlement Agreement includes the following:

Dear William and Tommy:

Following our discussions of the last several days, I agreed to memorialize the agreements that have been reached regarding the settlement of Trial Group I of *Allen v. Illinois Central Railroad Company* (amounts listed below) and for the procedure that we have agreed upon whereby the remaining plaintiffs in *Allen v. Illinois Central Railroad Company* and the remaining plaintiffs in *Aldridge v. Illinois Central Railroad Company* (excluding Trial Group III currently set for September 10, 2001) can submit information to the Illinois Central for purposes of processing a settlement. (Emph. added)

(EX. D (Page 1), SRE 1)

The Settlement Agreement continues on Page 2 and includes:

As part of the negotiating process to arrive at the settlement amounts in Allen Trial Group I, both of you (on behalf of your clients) and the Illinois Central have agreed to establish a procedure whereby **you will submit information to the Illinois Central regarding the remaining plaintiffs in *Allen v. Illinois Central* and in *Aldridge v. Illinois Central*** (excluding Aldridge Trial Group III set for trial September 10, 2001. (Emph. added)

(EX. D (Page 2), SRE 2)

The following language is found on Page 3 of the Settlement Agreement:

Using Allen Trial Group I as an example, the parties have agreed to settle Trial Group I for a total of 3.9 million dollars. The Illinois Central stands ready to process additional claims during the third fiscal quarter of calendar year 2001 totaling 2.1 million dollars, bringing the total settlements paid to clients represented by the Law Offices of William S. Guy in the third fiscal quarter of 2001 to a total of 6 million dollars. **The Illinois Central stands ready to process additional claims for plaintiffs remaining in *Allen v. Illinois Central* or *Aldridge v. Illinois Central*** (excluding Aldridge Trial Group III) totaling 6 million dollars for payments to be made during the fourth fiscal quarter of 2001, beginning in October 2001, and payments continuing thereafter on a quarterly basis until all properly submitted claims are paid. (Emph. added)

(EX. D (Page 3), SRE 3)

At the time the Settlement Agreement was executed, the parties had not reached a finalization of the specific amounts that Illinois Central would pay the Aldridge Plaintiffs:

I understand that there needs to be some finalization as to the settlement amounts agreed to in *Aldridge v. Illinois Central* as to those remaining plaintiffs (other than those in Trial Group III). As soon as that remaining issue is resolved, the Law Offices of William S. Guy can choose to submit any combination of plaintiffs from either *Allen* or *Aldridge* for claims processing.

(EX. D (Page 3), SRE 3)

The Agreement itself clearly contemplates and provides that the parties would continue to negotiate a finalization of the Aldridge settlement amounts.

By February of 2002, the parties had reached agreement as to the amounts that would be paid to Aldridge Plaintiffs with the non-malignant claims of asbestosis and pleural plaques.

By facsimile dated February 1, 2002, Plaintiffs' counsel, John Booth Farese, sent a letter to Illinois Central counsel, Tom Peters, stating:

It is my understanding that we have agreed to settle all the plural (sic) plaque cases for \$35,000 each and all the asbestosis cases for \$55,000 each. It seems to me that we should go ahead and settle all those cases in the second quarter of this year.

(EX. B, SRE 7)

By facsimile dated February 6, 2002, Tom Peters wrote back to Farese stating:

I am in receipt of your fax of February 1. With respect to the pleural plaques and asbestosis cases, we have agreed to process 30 of those claims and pay them \$35,000 and \$55,000 respectively, unless defenses as outlined in our letter of last year apply. With respect to the remaining 33 (I have not included Earl Hubbard since his claim was clearly released), we agreed to pay \$35,000 and \$55,000 each, subject to the same defenses, but that payment would have been deferred until September.

(EX. C, SRE 9)

Subsequent to these two letters, Aldridge Plaintiffs submitted Pulmonary Questionnaires as prescribed in the June 19, 2001 Agreement, and Illinois Central paid 48 plaintiffs for asbestosis and pleural plaques broken down as follows:

33 Plaintiffs were paid \$55,000² each for asbestosis claims.

2

5 of the 48 plaintiffs were paid a small amount less than \$55,000 or \$35,000 which reflected an agreement between Plaintiffs and Illinois Central that in cases where the Illinois Central had previously paid a hearing loss claim, and the hearing loss release contained language purporting to also release a claim for asbestosis, Illinois Central would be entitled to a credit of 25% of the amount it had paid for hearing loss, not to exceed \$2500. Plaintiff William Foley had a deduction of the maximum \$2500; Dan Collins had a deduction of \$1750. Plaintiffs provided to the trial court copies of hearing loss releases for for Robert Slayden, Raleigh Climer and Donald Hardy. Robert Slayden was paid \$54,250 for asbestosis,

15 Plaintiffs were paid \$35,000 each for pleural plaque claims. See Footnote 2.

(See EX. A, SRE 11)

No agreement was reached between the parties as to the settlement amounts for asbestos related malignancy claims.

Illinois Central has had consents from the plaintiffs and has been gathering medical records as far back as follows: Clifton Travis - 12/22/1999; Elwood Parton - 10/19/2000; Lloyd D. Robinson - 11/13/2000; Jack Greer - 7/6/2001; Billy Blagg - 3/25/2002; Paskle Bowman - 3/25/2002; Hugh Brower - 3/25/2002; Curtis Craven - 4/18/2002; Billy Stanfill - 5/6/2002; Charles L. Mayer - 10/16/2002; and, Muriel Anderson - 11/15/2002. See Addendum.

The June 19, 2001 Settlement Agreement requires Illinois Central to notify plaintiffs' counsel where a question has been raised as to the claim being barred by reason of a statute of limitations, the existence of a previous release or the failure to establish a claimant as an employee of the Illinois Central or a legal predecessor. See EX. D (Page 4), SRE 4.

Illinois Central has been gathering medical and other records on plaintiffs as far back as 1999, but it has never identified any of its three defenses for the remaining plaintiffs except the asserted prior releases for Plaintiffs Blagg, Bowman and Craven. Illinois Central counsel Tom Peters, at the September 30, 2005 hearing, requested leave of Court to "document the reasons for not paying these ten guys, why we are not considering them for settlement and I would like leave to do that within a week or so." T. 52, SRE 95. Illinois Central, to this day, has never filed any such

reflecting a deduction of \$750, which was 25% of the \$3,000 Illinois Central had paid him for his hearing loss. Raleigh Climer and Donald Hardy were each paid \$53,750 for asbestosis, reflecting a deduction of \$1,250, which was 25% of the \$5,000 that Illinois Central had paid each of them for their hearing loss. (EX. A, SRE 11; EX. E, SRE 46) See also T. 48-49, SRE 91-92.

documentation.

SUMMARY OF THE ARGUMENT

The June 19, 2001 letter agreement executed by the parties, together with the two letters from February 2002 establish that there was a meeting of the minds and a binding settlement agreement. The actions of the parties, Plaintiffs submitting Pulmonary Questionnaires with supporting documentation to Illinois Central pursuant to the terms of the June 19, 2001 letter and Illinois Central paying 48 plaintiffs the amounts agreed to in the February 2002 letters establishes not only that the parties reached an agreement but also that the parties followed the agreement such that 48 plaintiffs were paid pursuant to terms of the agreement.

Because there is in fact a binding Settlement Agreement, and due to the protracted length of this litigation, and the humanitarian and remedial purpose of the FEOLA, and that Illinois Central has been investigating these claims for over 5 years, none of the claims should be dismissed. Rather, the non-malignant asbestosis and pleural plaque plaintiffs who have submitted their documentation to Illinois Central should be paid immediately \$55,000 and \$35,000, respectively; the lung cancer plaintiffs should be remanded to Marshall County, Mississippi for a trial on damages only or on all issues as this Court should decide, and, the cases of Plaintiffs Samuel Boddie and Lawrence Farris should be remanded to Marshall County Mississippi Circuit Court with instructions that they be allowed a reasonable time to furnish Illinois Central with the required documentation pursuant to the June 19, 2001 Settlement Agreement between the parties.

ARGUMENT

A. STANDARD OF REVIEW

Illinois Central has waived any objection to the Trial Court Judge making findings of fact.

Even though Illinois Central argues otherwise, a review of the record shows that Illinois Central counsel never voiced any such objection. In fact, at the September 30, 2005 hearing on Plaintiffs' Motion to Enforce Settlement Agreement, testimony on contested issues of fact was heard by Judge Lackey without any objection by Illinois Central counsel and, in fact, Illinois Central counsel Tom Peters was sworn and testified as a witness regarding contested factual issues. **T. 41, SRE 84.** By failing to voice any objection and by actually giving sworn testimony on the merits of these issues, Illinois Central has waived any objection to Judge Lackey making findings of fact. Further, at the conclusion of this September 30, 2005 hearing, Judge Lackey requested the parties to submit to him proposed findings of fact and conclusions of law. Again, Illinois Central counsel did not object and did in fact submit proposed findings of fact to the Judge. **(R. 3830)** The only objection by Illinois Central to Judge Lackey making findings of fact is in a two line footnote on the fourteenth page of a twenty page pleading. **(R. 3959)** A party waives its right to object where it has not properly objected at the lower court level. Davis v. Singing River Electric Power Association, 501 So.2d 1128 (Miss.1987).

In Ammons v. Cordova Floors, Inc., 904 So.2d 185 (Miss.Ct.App.2005), a factually similar case where the parties put on opposing proof at a hearing to enforce a settlement agreement and offered no objection to the Circuit Court Judge deciding the matter, the Mississippi Court of Appeals found:

We find that the Ammons' failure to object to the procedure employed by the circuit court and their arguing the conflicting affidavits on the merits rather than as a procedural limitation on the circuit judge's authority to rule, waived any objection to the trial court's deciding the disputed issue. Therefore, we decline to hold the trial judge in error and review his findings under the same deferential standard accorded those of a chancellor.

Ammons, at ¶ 18.

A circuit judge sitting without a jury is accorded the same deference with regard to his findings as a chancellor, and his findings are safe on appeal where they are supported by substantial, credible, and reasonable evidence. City of Jackson v. Perry, 764 So.2d 373, 376 (Miss.Sup.Ct.2000) (quoting Puckett v. Stuckey, 633 So.2d 978, 982 (Miss.1993)). The Supreme Court will not disturb the findings of the lower court unless the trial judge was clearly erroneous or abused his discretion. Howard v. Total Fina E & P USA, Inc., 899 So.2d 882, 888 (Miss.Sup.Ct.2005). The Supreme Court employs *de novo* review for questions of law. Maldonado v. Kelly, 768 So.2d 906, 908 (Miss.Sup.Ct.2000).

B. THE JUNE 19, 2001 LETTER TOGETHER WITH THE FEBRUARY 2002 LETTERS AND COURSE OF CONDUCT OF THE PARTIES ESTABLISHED A BINDING CONTRACT

The June 19, 2001 Settlement Agreement, together with the two letters from February 2002, clearly show that there was an agreement which was followed by the parties.

The Settlement Agreement specifically provided for the fact that Aldridge settlement values had not been finalized as of June 19, 2001. This, however, does not detract from the fact that by February of 2002, the parties had accomplished this finalization of values as to asbestosis and pleural plaque cases. The Settlement Agreement further provided that as soon as the values were established that “the Law Offices of William S. Guy can choose to submit any combination of plaintiffs from either Allen or Aldridge for claims processing.” See **EX. D at Pg. 3 (SRE 3)**.

“The law favors the settlement of disputes by agreement of the parties and, ordinarily, will enforce the agreement which the parties have made, absent any fraud, mistake, or overreaching.” McManus v. Howard, 569 So.2d 1213, 1215 (Miss.1990). In order to have a valid settlement agreement, there must be consideration and a meeting of the minds between competent contracting

parties. Viverette v. State Highway Comm'n of Miss., 656 So.2d 102, 103 (Miss.1995) (citing Hutton v. Hutton, 239 Miss. 217, 230, 119 So.2d 369, 374 (1960)). As this Court explained in In re Estate of Davis, 832 So.2d 534, 537 (¶ 9) (Miss.Ct.App.2001), no meeting of minds occurs until the offeree accepts the terms and provisions of the offer. Acceptance, however, can occur in a number of different ways and may be inferred from conduct of the parties. *Id.* At 537 (¶ 10).

This Court in McInnis v. Southeastern Automatic Sprinkler Co., Inc., 233 So.2d 219 (Miss.1970), citing 17 C.J.S. Contracts § 58 (1963) stated:

A contract need not be contained in a single writing; it may be collected from several different writings which do not conflict with each other and which, when connected, show the parties, subject matter, terms, and consideration...

McInnis, at 222.

This Court in Fanning v. C.I.T. Corporation, 192 So. 41, at 43 (Miss.1939) held:

The rule is that acceptance of a contract as binding upon a party may be shown by his actions, and any definite and unequivocal course of conduct disclosing that the party has acceded or asserted to it is as binding on him as had he endorsed his assent in formal writing.

Here, the June 19, 2001 Settlement Agreement which expressly contemplates a future finalization of Aldridge settlement values, together with the February 2002 letters which set forth asbestosis and pleural plaque values, then followed by payment of the agreed to values to 48 asbestosis and pleural plaque cases clearly shows that the parties entered into a binding contract.

Contrary to Illinois Central's assertions, the documents and letters in the record together with the course of conduct of the parties clearly demonstrate that there was an agreement as to the settlement of asbestosis and pleural plaque cases. Illinois Central attempts to characterize the Settlement Agreement as merely a procedure that it could take or leave, at its whim and pleasure. However, the June 19, 2001 Allen/Aldridge Settlement Agreement is a binding and enforceable

settlement agreement as found by this Court in Illinois Central R.R. Co. v. Milton McDaniel, et al, 951 So.2d 523 (Miss.Sup.Ct.2006) cert. den., 127 S.Ct. 1332 (2007). The contingent settlement agreement, as this Court characterized it in McDaniel, is a binding agreement that is contingent only upon Illinois Central being allowed to raise the three specific defenses of statute of limitations, a valid prior release, or that the plaintiff was never an employee of Illinois Central or any of its predecessors . See McDaniel at ¶ 4.

Illinois Central attempts to evade the clear intent of the Settlement Agreement by reference to a statement in the Agreement that a claim is not settled until it is paid. This is of no avail to Illinois Central because the agreement was indeed contingent. However, it is only contingent to the extent that Illinois Central can raise the 3 aforementioned defenses. Further, under the agreement, Illinois Central agreed to pay claims up to \$6 million per calendar quarter until all Allen and Aldridge claims were paid.

The language in the Settlement Agreement that a claim is not settled until it is paid is to clearly and unequivocally accommodate another provision that specifically provides that a plaintiff's diagnosis can change prior to payment:

Prior to payment, any plaintiffs' diagnosis can change: i.e., a plaintiff with a current diagnosis of asbestosis or asbestos related pleural disease could develop a malignancy, or a plaintiff with asbestos related pleural disease could be diagnosed with asbestosis.

(See **Ex. D (Page 3), SRE 3**). See Also McDaniel, at ¶¶ 32-34.³

3

Under this provision of the Settlement Agreement, Larry McWilliams, an Allen plaintiff, signed a release for asbestosis but before he was paid, he notified Illinois Central that he had developed lung cancer and that he was withdrawing his claim for asbestosis for which he had not been paid. In a callous and totally unjustified manner, Illinois Central asserted the asbestosis release in defense of the lung cancer claim, all the while knowing that it had never tendered nor completed any settlement payment whatsoever regarding McWilliams' asbestosis injuries. This Court, in McDaniel, upheld the lower court ruling ordering Illinois Central to

Most importantly, after the parties agreed on the settlement amounts of \$55,000 for asbestosis and \$35,000 for pleural plaque cases, Illinois Central paid 48 plaintiffs these amounts. If, as Illinois Central argues, these cases were decided on a case by case basis, it is impossible that 48 cases would have been paid the same amounts for asbestosis and pleural plaques.

In Tom Peters February 6, 2002 facsimile to Plaintiffs' Counsel Farese, Peters states:

Dear John:

I am in receipt of your fax of February 1. With respect to the pleural plaques and asbestosis cases, we have agreed to process 30 of those claims and pay them \$35,000 and \$55,000 respectively, unless defenses as outlined in our letter of last year apply. With respect to the remaining 33 (I have not included Earl Hubbard since his claim was clearly released), we agreed to pay \$35,000 and \$55,000 each, subject to the same defenses, but that payment would have been deferred until September.

(See Ex. C, SRE 9)

It is important to note that as of February 6, 2002, there were exactly 63 asbestosis and pleural plaque cases, not including Earl Hubbard.⁴ This number is important because it confirms

pay McWilliams \$550,000 for his lung cancer claim.

⁴The number of 63 is derived as follows:

99 Plaintiffs at the time of Amended Complaint filed 5/7/99 **R. 79-103**

Less: 8 Trial Group I Plaintiffs paid 10/30/2000 See Payment Timeline, **EX. A, SRE 11**

Less: 17 Trial Group II Plaintiffs paid 4/27/01 See Payment Timeline, **EX. A, SRE 11**

Less: 1 Trial Group II Plaintiff C. B. Nix paid 5/3/01 See Payment Timeline, **EX. A, SRE 11**

Less: 1 September 10, 2001, Trial Group Plaintiff Bruce Myrick paid 10/12/01 See Payment Timeline, **EX. A., SRE 11**

Less: 1 Claude Beal (Initially in Tr. Grp II and later put in 9/10/01 Trial Group) paid 11/2/01 See Payment Timeline, **EX. A, SRE 11**

Less: 1 September 10, 2001, Trial Group Plaintiff Byron Cox paid 11/2/01 See Payment Timeline **EX. A, SRE 12**

70 - Sub-total

Less: 6 Cancer cases pending as of February, 2002 See **Ex. B, SRE 7**

64 Non-malignant cases as of February, 2002, including Earl Hubbard

Less: 1 Earl Hubbard, who Peters does not include in his calculation because he (Peters) considers Hubbard's claim was clearly released by a prior release See **EX. C, SRE 9**

that Illinois Central agreed to settle all of the asbestosis and pleural plaque cases for \$55,000 and \$35,000, respectively, as clearly stated in Peters' February 6, 2002 letter where he states: "We have agreed to process 30 of those claims and pay them \$35,000 and \$55,000 respectively, unless defenses as outlined in our letter of last year apply."⁵ Peters next statement that "With respect to the remaining 33 (I have not included Earl Hubbard since his claim was clearly released), we agreed to pay \$35,000 and \$55,000 each, subject to the same defenses, **but that payment would have been deferred until September**" (Emph. added) is clearly addressing the earlier statement in Farese's February 1, 2002 letter to him (Peters) wherein Farese states that it is his (Farese) understanding that all the asbestosis and pleural plaque cases **would be paid in the second quarter of 2002**. (Emph. added) (See Ex. B, SRE 7)

Because payments did not begin until November 4, 2002, (See Payment Timeline, Ex. A (Page 2), SRE 12) the issue about a discount for paying prior to September became totally moot. Illinois Central paid 30 claims from November 4, 2002 until March 7, 2003 and then began paying the 33 remaining claims on March 20, 2003. ICRR continued honoring the Settlement Agreement for 18 of the 33 remaining claims until its last payment on September 29, 2004. (See Payment

⁶³ This is the total number of pending asbestosis and pleural plaque cases as of February 6, 2002, the date of Peters' letter where he clearly states Illinois Central had agreed to pay all 63.

⁵

This is a reference to the three defenses of statute of limitations, valid prior release or lack of employment with Illinois Central set forth in the June 19, 2001 Settlement Agreement. See also McDaniel, 951 So.2d 523 at 525, ¶ 4. Illinois Central argues that Peters' reference to "our letter of last year" is to a March 8, 2001 letter from Peters to Farese outlining a settlement offer for Trial Group II. Even if true, this suggestion is unavailing: Peters' March 8 letter does not reserve any additional defenses in this letter. More importantly, the June 19, 2001 letter clearly supercedes this earlier letter and specifically provides for a future finalization of settlement amounts which was accomplished in February, 2002 for asbestosis and pleural plaque cases.

Timeline, Ex. A, SRE 11-15)

Illinois Central's argument on Page 32 of its brief that in Peters' letter of February 6, that "with respect to 33 other asbestosis and plaque claims, Attorney Peters had no authority and would discuss the matter with Illinois Central" is in complete contradiction of the express terms of Peters' letter itself and with the course of conduct by Illinois Central. Peters clearly and unequivocally states in his February 6 letter that Illinois Central agreed to pay \$35,000 and \$55,000 for the remaining 33 cases and that payment would be in September. Nothing more was said about these cases until Illinois Central began paying them in November of 2002. Because Illinois Central didn't begin paying the cases until after September, the issue about a discount was moot. Illinois Central did what it had agreed to do: it paid \$55,000 and \$35,000 for 48 cases until it breached the agreement.

Illinois Central argues that Plaintiffs' setting cases for trial after the February 2002 letters establishes that there was no settlement agreement. However, the only trial scheduled after February 2002 was for cancer cases. (R. 2920, RE Vol. 1 Tab 18 - Setting trial on 5/17/04 for Plaintiffs Brower, Cooper, Greer and Travis) Plaintiffs acknowledge there was no agreement reached as to the value of cancer cases. However, Plaintiffs' attempt to set cancer cases for trial is not inconsistent in any way with the fact that there was a settlement agreement as to the non-malignant cases of asbestosis and pleural plaques.

Illinois Central argues that after the Jun 19, 2001 letter that the parties continued discovery efforts and engaged in mediation efforts with respect to Plaintiffs Myrick, Cox and Beal. The discovery, trial setting, mediation and payment of Plaintiffs Myrick, Cox and Beal all occurred in the fall of 2001, pre-dating the February 2002 agreement as to settlement amounts for asbestosis and pleural plaques and is thus totally inapplicable. Illinois Central also overlooks the fact that the June

19, 2001 letter did not apply to Myrick, Cox and Beal.⁶ Discovery efforts did continue as to Myrick, Cox and Beal because of the impending trial date in September of 2001. Illinois Central also attempts for some reason to point out especially that Beal's claim was for asbestosis, however, this is of no consequence at all because it pre-dates the February 2002 letters by several months. Beal was paid on November 2, 2001, some three months prior to the February 2002 agreement as to all remaining non-malignant cases.

Illinois Central is also completely mistaken about the Settlement Agreement excluding certain plaintiffs whose claims are still pending. Illinois Central at Page 34 of its Brief states: "This letter excluded Trial Group III which consisted of 8 plaintiffs including 6 of the plaintiffs remaining in this case: Greer, Harper, Parton, Robinson, Bruch and Travis. **(R. 3673-74)**." However, none of these Plaintiffs was in Trial Group III. By Order filed July 24, 2001, Trial Group III consisted of Plaintiffs Myrick, Cox and Beal. **(R. 2504, SRE 52)** Illinois Central has mistakenly relied on earlier correspondence indicating some of these plaintiffs may have been being considered for inclusion in this trial group but ultimately were not.

No settlement values were agreed to by the parties as to cancer cases. To the extent that the Order and Conclusions of Law/Findings of Fact of the Circuit Court are inconsistent with this is purely unintentional. Plaintiffs' counsel Farese and Brock both testified before the court on September 30, 2005 and fully disclosed to the court that no settlement values were reached as to cancer cases. **(T. 21, SRE 64)** Illinois Central's attempt to invoke judicial estoppel is not well founded. As stated, Plaintiffs' counsel fully disclosed to the court that no settlement values were

⁶

See **EX. D, SRE 1 & 3 At Pgs. 1 & 3** where the June 19, 2001 letter parenthetically excludes Aldridge Trial Group III set for trial for September 10, 2001. By Order filed July 24, 2001, the Trial Group for the September 10, 2001 trial were Plaintiffs Myrick, Cox and Beal. **R. 2504, SRE 52.**

reached as to cancer cases and Plaintiffs/Appellees have once again fully acknowledged this to this Court. The requirements for judicial estoppel are not met where, as here, the parties fully disclosed to the Court that no settlement values were reached for cancer cases. See Kirk v. Pope, 973 So.2d 981 (Miss.Sup.Ct.2007). Plaintiffs/Appellees are not assuming a position at one stage of a proceeding and then taking a contrary stand later in the same litigation as is required for judicial estoppel to apply. Dockins v. Allred, 849 So.2d 151 (Miss.Sup.Ct.2003). In fact, the position taken by Plaintiffs/Appellees herein is exactly the same as taken before the Circuit Court at the hearing on September 30, 2005. If Plaintiffs/Appellees were attempting to obtain unfair advantage, they would be asking this Court to enforce the Settlement Agreement as to cancer cases as well as the non-malignant cases. Such is not the case.

Mississippi law does not regard estoppels with favor. Frazier v. Burnett, 767 So.2d 263 (Miss.Ct.App.2000). When the party making the prior statement, which is inconsistent with his position in the present action has not benefitted by the assertion the doctrine should not be applied. Thomas v. Bailey, 375 So.2d 1049 (Miss.1979). Here, Plaintiffs/Appellees have not benefitted in any way. Further, to the extent that there was any mistake in the Conclusions of Law/Findings of Fact or Order of the Circuit Court, judicial estoppel should not be invoked. Thomas v. Bailey, at 1053.

**C. THE PRIOR RELEASES ASSERTED BY ILLINOIS CENTRAL ARE
IN VIOLATION OF SECTION 5 OF THE FELA**

Section 5 of the FELA limits the ability of a common carrier (such as Illinois Central) to fully exempt itself from liability. Section 5 of FELA states, in part, “[a]ny contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void....” 45 U.S.C. §55.

This Court has recently reviewed prior releases asserted by Illinois Central in defense of asbestos settlements in McDaniel, supra, and Acuff, supra. In two of the three cases before the Court today (Bowman and Craven), the releases relied on by Illinois Central are clearly hearing loss releases which incorporated the type of “laundrylist/boilerplate” language criticized in Wicker v. Consolidated Rail Corp., 142 F.3d 690 (3rd Cir. 1998). See also Acuff, 950 So.2d 961, at ¶ 51.

In fact, the Bowman release relied on by Illinois Central includes the exact laundry list boilerplate language found by this Court in Acuff to be violative of FELA Section 5:

This release specifically excludes any personal injury claim or lien pending against Illinois Central Gulf Railroad and/or Illinois Central Railroad Company, other than for occupational, disease-type illness or illnesses, to wit, including but not limited to, asbestosis, lead, dust, sand, diesel fumes, paint, PCB, Dioxin, or other toxic or noxious chemical exposure, which claims are specifically released by this document.

See P. D. Bowman Hearing Loss Release dated October 20, 1990. (R. 3062, SRE 53)

This Court’s opinion in Acuff, supra, at ¶37 examined prior hearing loss releases, which, just as in this case, Illinois Central argued release it from current asbestos injury claims. The hearing loss releases examined in Acuff contained the identical laundry list as found in the Bowman release. The Bowman hearing loss release clearly is in violation of FELA Section 5 and does not release Mr. Bowman’s current asbestos injury claim.

The Curtis Craven release relied on by Illinois Central is a hearing loss release with the additional laundry list of exposures that is nearly identical to the prohibited language in Plaintiff Carpenter's release in Acuff. See Acuff at ¶ 38.

According to the language of Craven's release, it covers:

Any and all claims, losses, damages and injuries of the undersigned, directly or indirectly caused by or resulting from any alleged exposure of the undersigned to asbestos, coal, coal dust, welding fumes, brass fumes, diesel fumes, dust, paint vapors, fuel fumes, methylbromide, ammonia gas, sand, silica, and any and all other fumes, dusts, mists, gases, and vapors from any material, chemical or agent, and noise which allegedly occurred while the undersigned was in the employ of the parties released.

See Curtis Craven Hearing Loss Release dated October 17, 1991. **(R. 3163, SRE 54)**

Plaintiff Craven executed and filed herein an affidavit, similar to those affidavits submitted by the Acuff plaintiffs (See Acuff, at ¶ 40), explaining that at the time he signed this release, the only claim he had against Illinois Central was for hearing loss, he did not have a pending asbestos claim against Illinois Central, he had not been diagnosed with any asbestos-related illness, he did not know he was at risk to develop any such lung injury, and that he settled his hearing loss claim only. **(R. 3159, SRE 57)** Illinois Central has not offered any counter-affidavit or otherwise challenged the matters set forth in Mr. Craven's affidavit. Plaintiff Curtis Craven's prior hearing loss release clearly violates Section 5 of FELA as found by this Court in Acuff, supra and McDaniel, supra.

Plaintiff Billy Blagg presents a different situation, albeit with the same end result. Blagg was paid on May 6, 1991 a settlement of a claim for the non-malignant disease asbestosis. (See Affidavit of Billy M. Blagg. **(R. 3167, SRE 58)** See also Plaintiff Billy M. Blagg's Response to Defendant's Motion to Dismiss Based on Execution of Prior Release. **(R. 3168, SRE 59)**

Mr. Blagg states in his affidavit that in May of 2004 he first became aware that he had lung

cancer, and that when he signed the prior release asserted by Illinois Central that he did not know he was at risk to develop lung cancer from the materials he worked with or around at Illinois Central. As with Mr. Craven, Illinois Central has offered no challenge whatsoever to these facts by counter-affidavit or otherwise.

The Blagg release contains a similar laundry list of exposures purportedly released:

...any and all claims, losses, damages, injuries, or diseases directly or indirectly caused by or resulting from any alleged exposure of the undersigned to asbestos, coal dust, sand, silica, welding fumes, brass fumes, diesel fumes, fuel fumes, paint vapors, methylbromide, ammonia gas, lead, PCB, dioxin, or other toxic or noxious chemical exposure and all other fumes, dusts, mists, gases, and vapors from any chemical or agent and, in addition, from any and all claims, losses, damages, injuries or diseases directly or indirectly caused by or resulting from the exposure of the undersigned to noise, all of which allegedly occurred while the undersigned was in the employ or environment of ILLINOIS CENTRAL RAILROAD COMPANY, a corporation, and/or its parent, subsidiary, and affiliated companies or its predecessors or successors. **(R. 3171, SRE 62)**

This release further purports to release any future cancer allegedly related in any manner to the employment of the undersigned with Illinois Central Railroad Company. **(R. 3171, SRE 62)**

A similar situation arose in the case of Anderson v. A. C. & S., Inc., et al, 154 Ohio App. 3d 393, 797 N.E. 2d 537 (2003), cert. den. 125 S.Ct. 315 (2004). In Anderson, the United States Supreme Court declined to review a ruling of the Ohio Appellate Court for the Eighth District which ruled that a prior release for asbestosis did not release a subsequent claim for mesothelioma, an asbestos malignancy.

The Plaintiff, Shirley Anderson, individually and as the Executor of the Estate of Lester Anderson, her deceased husband, in March, 2000, sued Norfolk and Western Railway Company asserting claims pursuant to the FELA as a result of Lester Anderson's death from mesothelioma in 1998. Shirley Anderson alleged that Lester Anderson's mesothelioma and resulting death were

caused by his exposure to asbestos while he was employed by Norfolk and Western and its predecessor railroads. Plaintiff, Shirley Anderson, asserted a survivorship claim for personal injuries suffered by Lester Anderson during his lifetime as well as a wrongful death claim.

In 1983, Lester Anderson was diagnosed with asbestosis; in 1984 Lester and Shirley Anderson sued Norfolk and Western Railway Company and others seeking compensation under the FELA for damages incurred as a result of Lester Anderson's asbestosis. 797 N.E. 2d at 539.

On March 26, 1986, for the consideration of \$50,000.00, the Andersons executed a release in favor of Norfolk and Western Railway which stated:

IT IS FURTHER AGREED AND UNDERSTOOD without any limitation of the foregoing that this agreement includes on behalf of LESTER ANDERSON[,] his successors and assigns [,] any claim, demand, right or cause of action for injuries, losses and damages resulting from or relating in any manner to exposure to or ingestion of any substance whatsoever[,] including but not limited to asbestos dust or fiber and any diseases resulting therefrom as well as asbestosis or asbestos-related disease, illness or injury including any and all forms of cancer or mesothelioma, claimed to be related to asbestos or any other substance whether or not presently alleged or manifested.

797 N.E.2d at 540.

The Anderson Court ruled that under Babbitt v. Norfolk & Western Railway Co., 104 F.3d 89 (6th Cir. 1997), the 1986 release was invalid as to both Shirley Anderson's survival and wrongful death claims. The Anderson Court also found that the broad language of the 1986 release for "any claim, demands, rights, and causes of action of whatever kind, nature or description" including "injuries, losses and damages resulting from or relating in any manner to exposure to or ingestion or any substance whatsoever...whether or not presently alleged or manifested" violated the prohibition set forth in Wicker. Anderson, 797 N.E.2d at 544, 545.

Under the "second disease rule", an FELA claimant suffering from asbestosis may bring a

second action if cancer develops. Norfolk & Western Railway Co. v. Ayers, 538 U.S. 135, at 152, 123 S.Ct. 1210, at 1221 (2003). See also Marinari v. Asbestos Corporation, Ltd., et al, 612 A.2d 1021 (Pa.Super.1992).

As with the releases executed by Plaintiffs Craven and Bowman, the Blagg release also runs afoul of FELA Section 5. Under the "second disease rule", Mr. Blagg is entitled to pursue a claim for asbestos related lung cancer. Further, releases extinguishing an employee's claims for injuries under FELA are held to a higher standard, given the statutory language and Congress' stated intent in passing the ACT.⁷

For all of the foregoing reasons, Plaintiffs, Billy Blagg, Paskle D. Bowman and Curtis Craven, respectfully request this Court to render its decision that the above and foregoing releases asserted by Illinois Central are void as a matter of law as to Plaintiffs' current asbestos injury claims.

**D. THIS COURT SHOULD ORDER ILLINOIS CENTRAL TO
MAKE IMMEDIATE PAYMENT TO ASBESTOSIS AND
PLEURAL PLAQUE PLAINTIFFS AND REMAND FOR
TRIAL ALL LUNG CANCER CASES**

Due to the protracted length of this litigation, the advanced age of the plaintiffs and the humanitarian and remedial purposes of the FELA (See Footnote 7), the fact that Illinois Central has investigated these Plaintiffs' claims for in excess of five years⁸ and that settlements of asbestosis and

7

See Acuff, *supra*, at ¶ 49; See also Kernan v. Am. Dredging Co., 355 U.S. 426, 432, 78 S.Ct. 394, 2 L.Ed.2d 382 (1958) ("[I]t is clear that the general congressional intent was to provide liberal recovery for injured workers...."); Boyd v. Grand Trunk W.R.R., 338 U.S. 263 at 265, 70 S.Ct. 26 (1949) (" 'Congress wanted Section 5 to have the full effect that its comprehensive phraseology implies.' ") (quoting Duncan v. Thompson, 315 U.S. 1 at 6, 62 S.Ct. 422 (1942)).

8

See Addendum Pages 1-12, which are copies of some of the medical record requests by Illinois Central counsel that date back as far as December 22, 1999.

pleural plaque cases were unilaterally and wrongfully stopped by Illinois Central, Plaintiffs/Appellees respectfully request this Court to render its decision that Illinois Central be ordered to immediately pay the following claims in the amounts set forth opposite their name, with reference to each claimants Pulmonary Questionnaire or Interrogatory Response which substantiates each of their claims as follows:

ASBESTOSIS CLAIMS

| | | |
|--------------------------|----------|---|
| Muriel Anderson | \$55,000 | (R. 3213, RE Vol. II, Tab 1 - Pul. Ques. dated 6/24/2002) |
| Paskle D. Bowman | \$55,000 | (R. 3229, RE Vol. II, Tab 2 - Pul. Ques. dated 3/15/2002) |
| George Crain | \$55,000 | (R. 3337, RE Vol. II, Tab 7 - Pul. Ques. dated 1/14/2003) |
| Roosevelt Joyner | \$55,000 | (R. 3438, RE Vol. II, Tab 10 - Pul. Quest. dated 6/29/2002) |
| Lloyd Robinson | \$55,000 | (R. 3490, RE Vol. II, Tab 13 - Int. Resp. dated 12/19/2000) |
| John Harper ⁹ | \$55,000 | (R. 3374, RE Vol. II, Tab 9 - Int. Resp. dated 7/16/2004) |
| Elwood Parton | \$55,000 | (R. 3466, RE Vol. II, Tab 12 - Int. Resp. dated 7/20/2004) |

PLEURAL PLAQUE CLAIMS

| | | |
|----------------|----------|--|
| Curtis Craven | \$35,000 | (R. 3289, RE Vol. II, Tab 5 - Pul. Ques. dated 3/6/2002) |
| Charles Mayer | \$35,000 | (R. 3446, RE Vol. II, Tab 11 - Int. Resp. dated 7/20/2004) |
| Billy Stanfill | \$35,000 | (R. 3547, RE Vol. II, Tab 14 - Pul. Ques. dated 2/20/2003) |
| George Bruch | \$35,000 | (R. 3247, RE Vol. II, Tab 4 - Int. Resp. dated 7/21/2004) |

For the same reasons, Plaintiffs/Appellees respectfully request this court will remand the lung cancer claims (Blagg, Brower, Cooper, Greer and Travis) to the Circuit Court of Marshall County, Mississippi for a trial either on damages only or on all issues. Plaintiffs/Appellees Samuel Boddie

⁹

Plaintiffs Harper, Parton and Bruch elect to be paid for asbestosis or pleural plaques rather than to pursue a colon cancer claim.

and Lawrence Farris respectfully request that this Court will remand their cases to the Circuit Court of Marshall County, Mississippi with instructions to allow them a reasonable time to comply with the June 19, 2001 Settlement Agreement.

This Court should not order dismissal of these plaintiffs' claims on the basis of joinder, venue or forum *non conveniens*. These issues were decided favorably to the plaintiffs in Illinois Central Railroad Company v. Travis, 808 So.2d 928 (Miss.Sup.Ct.2002), and the Travis ruling remains the law of the case. The "Law of the Case Doctrine" holds that whatever is once established as the controlling legal rule of decision, between the same parties in the same case, continues to be the law of the case, so long as there is a similarity of facts. Mauck v. Columbus Hotel Co., 741 So.2d 259, 266 (Miss.1999); TXG Intrastate Pipeline Co. V. Grossnickle, 716 So.2d 991, reh. den. (Miss.Sup. Ct.1997).

Further, after the many years of investigation of these claims by Illinois Central, together with Illinois Central not identifying any reasons why it has not paid these claims (other than the prior releases on Blagg, Bowman and Craven) in spite of Illinois Central counsel Peters specifically requesting leave of court to do so at the September 30, 2005 hearing (T. 52, SRE 95), Illinois Central should be equitably estopped from requesting a dismissal of these claims.

CONCLUSION

It is clear from the record and from the actions of the parties that a binding settlement agreement was reached as to asbestosis and pleural plaque cases. This agreement should be upheld by this Court and Illinois Central should be ordered to pay the aforementioned Plaintiffs the amounts specified hereinabove. Further, due to the protracted length of this litigation, the age of the plaintiffs and the remedial purpose of the FELA, the lung cancer claims and the claims of Plaintiffs Boddie and Farris should not be dismissed but rather should be remanded to the Marshall County,

Mississippi Circuit Court for trial of the lung cancer cases and for completion of the settlement for Plaintiffs Boddie and Farris.

RESPECTFULLY SUBMITTED, this the 2nd day of May, 2008.

**RICHARD ALDRIDGE, ET AL
PLAINTIFFS/APPELLEES**

By Thomas W. Brock
THOMAS W. BROCK, MSBN [REDACTED]

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John Booth Farese,
Farese Farese and Farese
122 Church Street
P. O. Box 98
Ashland, MS 38603-0098
662/224-6211
662/224-3229 Facsimile

CERTIFICATE OF SERVICE

I, Thomas W. Brock, counsel for Plaintiffs, do hereby certify that I have this day mailed, postage prepaid, by United States mail, a true and correct copy of the above and foregoing to:

Glenn F. Beckham, Esq.
Lonnie D. Bailey, Esq.
Harris F. Powers, III, Esq.
Upshaw, Williams, Biggers, Beckham & Riddick, LLP
Post Office Drawer 8230
309 Fulton Street
Greenwood, MS 38930

Edward Blackmon, Jr., Esq.

Frank Jones, Esq.
Blackmon & Blackmon, PLLC
Post Office Drawer 105
Canton, MS 39046

Thomas R. Peters, Esq.
Robert D. Andrekanic, Esq.
Gundlach, Lee, Eggman,
Boyle & Roessler
5000 West Main Street
Post Office Box 23560
Belleville, IL 62226-0560

William F. Schneller, Esq.
126 North Spring Street
Holly Springs, MS 38635

Honorable Henry L. Lackey
Marshall County Circuit Court Judge
P. O. Drawer T
Calhoun City, MS 38916

THIS, the 2nd day of May, 2008.



THOMAS W. BROCK, MSBN 

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ROBERT D. ANDREKANIC

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ROBERT E. EGGMANN
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(314) 231-2084

December 22, 1999

VIA FEDERAL EXPRESS

Baptist East Hospital

Attn: Health Information Management

6019 Walnut Grove Rd.

Memphis, TN 38120

RE: Patient: Clifton David Travis, Jr.
DOB: 05/10/32
SS#: 415-46-1775

Dear Sir/Madam:

Enclosed please find our original request for copies of medical records regarding Mr. Travis dated November 3, 1999, your response dated November 23, 1999, our letter dated December 3, 1999 and copies of medical records you inadvertently forwarded to me on a patient named Teresa Simpson. There must have been a mistake, because instead of forwarding us medical records on Mr. Travis, we received Ms. Simpson's records. I am sending you this via Federal Express because I am aware of your policy concerning authorizations more than 90 days old. Therefore, I wanted to get the request to you before December 30, 1999 so that our request may be fulfilled, since the error was not on our behalf.

Pursuant to the signed authorization, please forward copies of any and all medical records in your possession concerning Clifton David Travis, Jr. to my attention as soon as possible. I have enclosed a mailing label for your convenience.

Thank you for your cooperation.

Very truly yours,

Stephanie E. Lee

Stephanie E. Lee
Paralegal

APPENDUM 1

73pgs
MB
Smart

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NSA
CLM
3/1/01

4254300
Prebill
Print

October 19, 2000

Methodist Central Hospital
Attn: Medical Records
1265 Union Avenue
Memphis, TN 39104

RE: Patient: Elwood Parton
DOB: 09/12/13
SS#: 709-03-8657

Dear Sir/Madam:

Enclosed you will find an authorization for medical records signed by Elwood Parton. Pursuant to the authorization, please send to me a copy of any and all medical records in your possession or control, including but not limited to any and all x-ray reports, x-ray films, CT scans, etc. If you require pre-payment for these copies, please fax your invoice to me or telephone me with the amount at the number above as soon as possible.

Should you have any questions, please do not hesitate to contact me. Thank you for your cooperation in this matter.

Yours very truly,

Stephanie E. Lee

Stephanie E. Lee
Paralegal

Enclosure

PREBILL
Date 4/19/01
PGS 5
Fiches 5
Computer
Y.I. Inc. Reg. # 28
Initials CLM

MAY 14 2001

ADDENDUM 2

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November 13, 2000

Via Facsimile # (601) 249-2507

Mr. Thomas W. Brock
Attorney at Law
909 Delaware Avenue
PO Box 509
McComb, MS 39648

Re: Richard Aldridge, et al. v. Illinois Central Railroad Company
Marshall County, MS, No. M98-328

Dear Mr. Brock:

On today's date, I have sent you medical records concerning your clients as follows:

Van Everheart - from Dr. Thomas Motley, Memphis, Tennessee;
Wallace D. Ruddle - from Dr. O. H. Thomas, Memphis, Tennessee;
Raymond Hubbard - from The Jackson Clinic, Jackson, Tennessee;
Claude E. Beal - from Baptist Memorial Hospital, Southhaven, Mississippi, Dr. Samir Abdel-Wahid, Memphis, Tennessee;
Calvin Boone - from Dr. Riley Jones, Memphis, Tennessee;
Thomas J. McNeilly - from Dr. Robert McEwan, Memphis, Tennessee;
Byron F. Cox, Jr. - Dr. John Jenkins, Jackson, Tennessee;
Lloyd D. Robinson - Dr. Bill C. Weber and Dr. Frank Osborn, both of Memphis, Tennessee;
Rayford L. Boxx - from Grenada Lake Medical Center, Grenada, Mississippi; and
Elwood Parton - from Dr. Brown Brooks, Memphis, Tennessee.

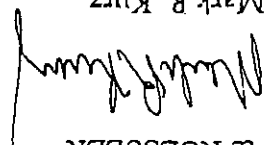
Unless I hear from you to the contrary, I will assume that you have received same.

ADDENDUM 3
Pg. 1 OF 2

MURK:mms
Enclosures

Very truly yours,

GUNDLACH, LEE, EGGMANN, BOYLE
& ROESSLER



Mark R. Kurz

CARL W. LEE
RICHARD E. BOYLE *
RICHARD M. ROESSLER *
KENNETH L. HALVACHS *
THOMAS R. PETERS *
CHARLES J. SWARTWOUT *
ROBERT D. ANDREKANIC *
CURTIS R. PICOU *
MARK R. KURZ *

BRAD G. PELC **
JAMES R. GARRISON *
MAUREEN A. McMULLAN *
ANDREW C. CORKERY *
TODD R. McFARLAND *

* ILLINOIS AND MISSOURI
** ILLINOIS, MISSOURI AND CALIFORNIA

LAW OFFICES

GUNDLACH, LEE, EGGMANN, BOYLE & ROESSLER

5000 WEST MAIN STREET

P.O. BOX 23560

BELLEVILLE, ILLINOIS 62223-0560

(618) 277-9000

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FAX: (618) 277-4594

ORIGINALLY:
E. G. KRAMER 1982

NORMAN J. GUNDLACH
(1907-1996)

ROBERT E. EGGMANN
(1928-1986)

1010 MARKET STREET
SUITE 1640
ST. LOUIS, MO 63101
(314) 231-2064

Mail to

July 6, 2001

42376

Dr. A. J. Sutherland
Attn: Medical Records
1325 Eastmoreland, Suite 460
Memphis, TN 38104-3563

RE: Patient: Jack Greer
DOB: 01/23/29
SS#: 414-34-2762

AT

Dear Sir/Madam:

Enclosed you will find an authorization for medical records signed by Jack Greer. Pursuant to the authorization, please send to me a copy of any and all medical records in your possession or control, including but not limited to any and all x-ray reports, x-ray films, CT scans, etc. If you require pre-payment for these copies, please fax your invoice to me or telephone me with the amount at the number above as soon as possible.

Should you have any questions, please do not hesitate to contact me. Thank you for your cooperation in this matter.

Yours very truly,

Stephanie E. Lee

Stephanie E. Lee
Paralegal

X

Enclosure

*LMS
07/11/01
20*

RECEIVED
JUL 10 2001

ADDENDUM 4 JUL 15 2001

CARL W. LEE
 RICHARD E. BOYLE *
 RICHARD M. ROESSLER *
 KENNETH L. HALVACHS *
 THOMAS R. PETERS *
 CHARLES J. SWARTWOUT *
 ROBERT D. ANDREKANIC *
 CURTIS R. PICO *
 R. K. KURZ *

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 MAUREEN A. McMULLAN *
 ANDREW C. CORKERY *
 TODD R. McFARLAND *

ILLINOIS AND MISSOURI
 ILLINOIS, MISSOURI AND CALIFORNIA

01101
 ORIGINALLY:
 E. C. KRAMER 1882

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 (1907-1998)

ROBERT E. EGGMANN
 (1928-1988)

1010 MARKET STREET
 SUITE 1040
 ST. LOUIS, MO 63101
 (314) 231-2084

March 25, 2002

Lourdes Hospital
 Attn: Medical Records
 1530 Lone Oak Road
 Paducah, KY 42003

RE: Patient: Billy M. Blagg
 DOB: 03/27/27
 SS#: 400-32-5618

Dear Sir/Madam:

Enclosed you will find an authorization for medical records signed by Billy M. Blagg. Pursuant to the authorization, please send to me a copy of any and all medical records in your possession or control, including but not limited to any and all x-ray reports, CT scan reports, discharge summaries, surgical reports, etc. If you require pre-payment for these copies, please fax your invoice to me or telephone me with the amount at the number above as soon as possible.

Should you have any questions, please do not hesitate to contact me. Thank you for your cooperation in this matter.

Yours very truly,



Stephanie E. Lee
 Paralegal

Enclosure

4/24/02
 0505922
 3/13/98 OP
 6 PP
 15 microfilm
 21 Total PP
 ADDENDUM 5

CARL W. LEE
RICHARD E. BOYLE
RICHARD M. ROESSLER
KENNETH L. HALVACHS
THOMAS R. PETERS
CHARLES J. SWARTWOUT
ROBERT D. ANDREKANIC
CURTIS R. PICOU
MARK R. KURZ

BRAD G. PELC
JAMES R. GARRISON
MAUREEN A. McMULLAN
ANDREW C. CORKERY
TODD R. McFARLAND

ILLINOIS AND MISSOURI
ILLINOIS, MISSOURI AND CALIFORNIA

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(1907-1998)

ROBERT E. EGGMANN
(1928-1986)

1010 MARKET STREET
SUITE 1840
ST. LOUIS, MO 63101
(314) 231-2084

March 25, 2002

Methodist South Hospital
Attn: Medical Records
1300 Wesley Drive
Memphis, TN 38116

RE: Patient: Paskle Dee Bowman
DOB: 05/29/26
SS#: 430-36-6810

Dear Sir/Madam:

Enclosed you will find an authorization for medical records signed by Paskle Dee Bowman. Pursuant to the authorization, please send to me a copy of any and all medical records in your possession or control, including but not limited to any and all x-ray reports, CT scan reports, discharge summaries, surgical reports, etc. If you require pre-payment for these copies, please fax your invoice to me or telephone me with the amount at the number above as soon as possible.

Should you have any questions, please do not hesitate to contact me. Thank you for your cooperation in this matter.

Yours very truly,

Stephanie E. Lee

Stephanie E. Lee
Paralegal

Enclosure

ADDENDUM 6

LAW OFFICES

CARL W. LEE
RICHARD E. BOYLE
RICHARD M. ROESSLER
KENNETH L. HALVACHS
THOMAS R. PETERS
CHARLES J. SWARTWOUT
JERBERT D. ANDREKANIC
JRTIS R. PICOU
MARK R. KURZ

GUNDLACH, LEE, EGGMANN, BOYLE & ROESSLER

5000 WEST MAIN STREET

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BELLEVILLE, ILLINOIS 62223-0560

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(618) 271-8000

FAX: (618) 277-4594

ORIGINALLY:
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(1907-1998)

ROBERT E. EGGMANN
(1928-1988)

1010 MARKET STREET
SUITE 1640
ST. LOUIS, MO 63101
(314) 231-2084

BRAD G. PELC
JAMES R. GARRISON
MAUREEN A. McMULLAN
ANDREW C. CORKERY
TODD R. McFARLAND

* ILLINOIS AND MISSOURI
** ILLINOIS, MISSOURI AND CALIFORNIA

March 25, 2002

VA Hospital
Attn: Medical Records
1310 24th Avenue
Nashville, TN 37212

RE: Patient: Hugh D. Brower
DOB: 10/21/24
SS#: 412-42-9781

Dear Sir/Madam:

Enclosed you will find an authorization for medical records signed by Hugh D. Brower. Pursuant to the authorization, please send to me a copy of any and all medical records in your possession or control, including but not limited to any and all x-ray reports, CT scan reports, discharge summaries, surgical reports, etc. If you require pre-payment for these copies, please fax your invoice to me or telephone me with the amount at the number above as soon as possible.

Should you have any questions, please do not hesitate to contact me. Thank you for your cooperation in this matter.

Yours very truly,

Stephanie E. Lee

Stephanie E. Lee
Paralegal

Enclosure

RECEIVED
VA MEDICAL CTR

MAR 28 7 41 AM '02
NASHVILLE, TN 37212
MAS (136)

APR 17 2002

ADDENDUM 7

LAW OFFICES

GUNDLACH, LEE, EGGMANN, BOYLE & ROESSLER

5000 WEST MAIN STREET

P.O. BOX 23560

BELLEVILLE, ILLINOIS 62223-0560

(618) 277-9000

(618) 271-8000

FAX: (618) 277-4594

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RICHARD M. ROESSLER
KENNETH L. HALVACHS
THOMAS R. PETERS
CHARLES J. SWARTWOUT
JBERT D. ANDREKANIC
JRTIS R. PICOU
MARK R. KURZ

BRAD G. PELC
JAMES R. GARRISON
MAUREEN A. McMULLAN
ANDREW C. CORKERY
TODD R. McFARLAND

ILLINOIS AND MISSOURI
ILLINOIS, MISSOURI AND CALIFORNIA

ORIGINALLY:
E. C. KRAMER 1882

NORMAN J. GUNDLACH
(1907-1996)

ROBERT E. EGGMANN
(1928-1986)

1810 MARKET STREET
SUITE 1640
ST. LOUIS, MO 63101
(314) 231-2084

April 18, 2002

Methodist South Hospital
ATTN: MEDICAL RECORDS
1300 Wesley Drive
Memphis, TN 38116

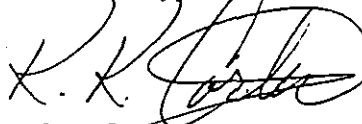
RE: Patient: Curtis Kinion Craven
DOB: 02/15/29
SS#: 400-32-9881

Dear Sir/Madam:

Enclosed you will find an authorization for medical records signed by Curtis Kinion Craven. Pursuant to the authorization, please send to me a copy of any and all medical records in your possession or control, including but not limited to any and all x-ray reports, x-ray films, CT scans, etc. If you require pre-payment for these copies, please fax your invoice to me or telephone me with the amount at the number above as soon as possible.

Should you have any questions, please do not hesitate to contact me. Thank you for your cooperation in this matter.

Yours very truly,



K.K. Carter
Paralegal

Enclosure

ADDENDUM 8

LAW OFFICES

CARL W. LEE
RICHARD E. BOYLE
RICHARD M. ROESSLER
KENNETH L. HALVACHS
THOMAS R. PETERS
CHARLES J. SWARTWOUT
ROBERT O. ANDREKANIC
CURTIS R. PICOU
MARK R. KURZ

GUNDLACH, LEE, EGGMANN, BOYLE & ROESSLER

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BELLEVILLE, ILLINOIS 62223-0560

(618) 277-9000

(618) 271-8000

FAX: (618) 277-4594

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(1907-1998)

ROBERT E. EGGMANN
(1928-1988)

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ST. LOUIS, MO 63101
(314) 231-2084

BRAD G. PELC
JAMES R. GARRISON
MAUREEN A. McMULLAN
ANDREW C. CORKERY
TODD R. McFARLAND

ILLINOIS AND MISSOURI
ILLINOIS, MISSOURI AND CALIFORNIA

May 6, 2002

Dr. Hodges
The Hodges Group
ATTN: MEDICAL RECORDS
1325 Eastmoreland #450
Memphis, TN 38104

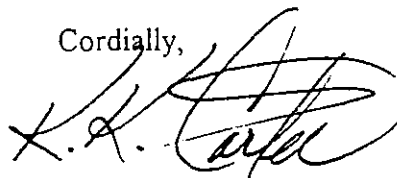
RE: Patient: Billy W. Stanfill
DOB: 11/25/34
SS#: 412-50-0865

Dear Sir/Madam:

Enclosed you will find an authorization for medical records signed by Billy W. Stanfill. Pursuant to the authorization, please send to me a copy of any and all medical records in your possession or control, including but not limited to any and all x-ray reports, x-ray films, CT scans, etc. If you require pre-payment for these copies, please fax your invoice to me or telephone me with the amount at the number above as soon as possible.

Should you have any questions, please do not hesitate to contact me. Thank you for your attention to the above-referenced matter.

Cordially,



K.K. Carter
Paralegal

Enclosure

ADDENDUM 9

CARL W. LEE
RICHARD E. BOYLE *
RICHARD M. ROESSLER *
KENNETH L. HALVACHS *
THOMAS R. PETERS *
CHARLES J. SWARTWOUT *
ROBERT D. ANDREXANIC *
CURTIS R. PICO *
MARK R. KURZ *

LAW OFFICES

GUNDLACH, LEE, EGGMANN, BOYLE & ROESSLER

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P.O. BOX 23560

ORIGINALLY:
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NORMAN J. GUNDLACH
(1907-1986)

ROBERT E. EGGMANN
(1928-1986)

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SUITE 1840
ST. LOUIS, MO 63101
(314) 231-2084

BRAD G. PELC **
JAMES R. GARRISON *
MAUREEN A. McMULLAN *
ANDREW C. CORKERY *
TODD R. McFARLAND *
DAVID B. SCHNEIDEWIND

OCT 18 2002

BELLEVILLE, ILLINOIS 62223-0560

(618) 277-9000

(618) 271-8000

FAX: (618) 277-4594

* ILLINOIS AND MISSOURI
** ILLINOIS, MISSOURI AND CALIFORNIA

October 16, 2002

Methodist Hospital Central
ATTN: MEDICAL RECORDS
1265 Union Ave.
Memphis, TN 38116

RE: PATIENT: CHARLES L. MAYER
DOB: 03/21/27
SS#: 428-24-0487
CASE: ALDRIDGE IV V. IC

148263-4
R 37804812
~~7-11-97 RT OUTP HOLL~~
B 430697
~~9-15-83 P HOLL~~
B 25471
~~4-16-73 P 5 cells~~

Dear Sir/Madam:

Enclosed you will find an authorization for medical records signed by Charles L. Mayer, Jr., Executor of the Estate of Charles L. Mayer, deceased. Pursuant to the authorization, please send to me a copy of any and all medical records in your possession or control, including but not limited to any and all x-ray reports, CT scan reports, discharge summaries, surgical reports, etc. If you require pre-payment for these copies, please fax your invoice to me or telephone me with the amount at the number above as soon as possible.

Should you have any questions, please do not hesitate to contact me. Thank you for your attention to the above-referenced matter.

Cordially,

GUNDLACH, LEE, EGGMANN,
BOYLE & ROESSLER

K.K. Carter
Paralegal

Enclosure

SOURCECORP
Date 10-28-02 Req. # 8577
PGS 0 Initials DL
Fiche 60 # Computer

ADDENDUM 10 NOV 01 2002

CARL W. LEE
 RICHARD E. BOYLE
 RICHARD M. ROESSLER
 KENNETH J. HALVACHS
 THOMAS J. PETERS
 CHARLES J. SWARTWOUT
 ROBERT D. ANDREKANIC
 CURTIS R. PICOU
 MARK R. KURZ

GUNDLACH, LEE, EGGMANN, BOYLE & ROESSLER

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(618) 271-8000

FAX: (618) 277-4594

ORIGINALLY:
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NORMAN J. GUNDLACH
 (1907-1996)

ROBERT E. EGGMANN
 (1928-1988)

1010 MARKET STREET
 SUITE 1840
 ST. LOUIS, MO 63101
 (314) 231-2084

BRAD G. PELC
 JAMES R. GARRISON
 MAUREEN A. McMULLAN
 ANDREW C. CORKERY
 TODD R. McFARLAND
 DAVID B. SCHNEIDEMUND

ILLINOIS AND MISSOURI
 ILLINOIS, MISSOURI AND CALIFORNIA

November 5, 2002

Dr. Michael Dragutsky
ATTN: MEDICAL RECORDS DEPT.
 6025 Walnut Grove Rd., Ste. #316
 Memphis, TN 38120

RE: **PATIENT:** MURIEL LEE ANDERSON/deceased
DOB: 08/30/17
SS#: 426-01-0898
CASE: ALDRIDGE IV V. IC

Dear Sir/Madam:

Enclosed please find an authorization for medical records regarding Muriel Lee Anderson, signed by *Lee Anderson, Executor of the Estate of Muriel Lee Anderson, deceased., along with the death certificate.* Please send copies of any and all medical records in your possession or control, including but not limited to any and all x-ray reports, CT scan reports, discharge summaries, surgical reports, etc, regarding Muriel Lee Anderson. If you require pre-payment for these copies, please fax your invoice with the amount due at the number above as soon as possible. Please forward medical records to this office and directly to my attention.

Should you have any questions, please do not hesitate to contact me. Thank you for your attention to the above-referenced matter.

Cordially,

GUNDLACH, LEE, EGGMANN,
 BOYLE & ROESSLER

K.K. Carter
 K.K. Carter
 Paralegal

Enclosures

NOV 25 2002
ADDENDUM 11