

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ORIX CREDIT ALLIANCE, INC.,

Plaintiff,

-vs-

CONAWAY TRANSPORTATION, INC.,
COLONIAL FAST FREIGHT LINES,
INC., ATLANTIC FERTILIZER AND
CHEMICAL CO., E. N. "BUD"
CONAWAY, AND MARY ELIZABETH
CONAWAY,

Defendants,

CV-92-H-0536-S

Inst # 1992-18257

CERTIFICATE OF JUDGMENT

I, PERRY D. MATHIS, Clerk of the United States District Court for the Northern District of Alabama, do hereby that on the 5th day of August 5, 1992, a Judgment was rendered by said Court in the above-styled cause, wherein it was ORDERED in accordance with the Memorandum Opinion entered in this action that Plaintiff ORIX CREDIT ALLIANCE, INC., ("Credit Alliance"), have a judgment against defendant Conaway Transportation, Inc., ("Conaway"), Colonial Fast Freight Lines, Inc. ("Colonial"), Atlantic Fertilizer and Chemical Co., E. N. "Bud" Conaway, and Mary Elizabeth Conaway, jointly and severally, all of the following:

- (a) a money judgment of \$663,331.66;
- (b) immediate possession of all parts that had been removed from any of the Trucks;
- (c) immediate possession of, and the right to transfer good and marketable title

Burr, Forman

(pursuant to a Uniform Commercial Code sale) to a Motor Carrier Certificate of Public Convenience and Necessity No. 440, as amended and extended (Certificate 440) issued by the Alabama Public Service Commission;

(d) post judgment interest;

(e) immediate possession of any of either of both Conaway's and/or Colonial's inventory, goods, equipment, machinery, contract rights, fixtures, and assets of any kind, wherever located now or hereafter belonging to either Colonial or Conaway or in which either has any interest, provided however, that nothing herein shall entitle Credit Alliance to possession of any property in which some other creditor of Conaway or Colonial has a paramount interest; and

(f) costs of this action.

PROVIDED, however, that Credit Alliance cannot enforce this judgment against certain assets belonging to Mary Elizabeth Conaway and the proceeds thereof (the "Exempt Assets") so long as none of the defendants against whose assets Credit Alliance has a right to enforce its judgment or claim has ever acquired or hereafter acquires any interest in such asset. A four page list of the Exempt Assets is attached hereto as Exhibit A and made a part hereof by this reference; and that Michael L. Hall of BURR & FORMAN is the Attorney of Record for Orix Credit Alliance, Inc., in said cause.

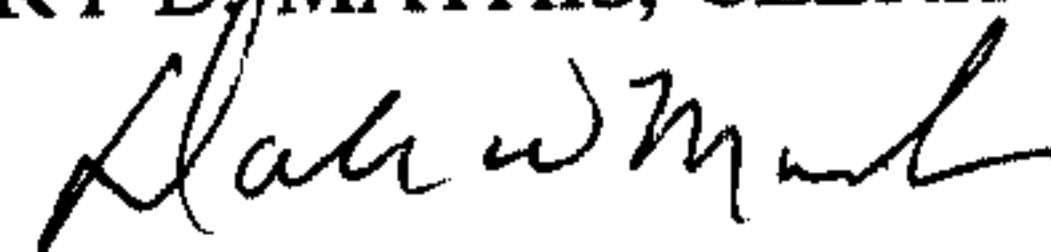
WITNESS, My Hand and the Seal

of said Court, this the 11th

day of August, 1992.

PERRY D. MATHIS, CLERK

BY:



Deputy Clerk

Conaway Transport, Inc.
2513 27th Street, North
Birmingham, Alabama 35203

Colonial Fast Freight Lines, Inc.
2513 27th Street, North
Birmingham, Alabama 35203

E. N. "Bud" Conaway
2513 27th Street, North
Birmingham, Alabama 35203

Atlantic Fertilizer and Chemical Co.
2513 27th Street, North
Birmingham, Alabama 35203

Mary Elizabeth Conaway
306 Easton Circle
Birmingham, Alabama 35223

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA 92 AUG -5 PM 3:24
SOUTHERN DIVISION

U.S. DISTRICT COURT
N.D. OF ALABAMA

ORIX CREDIT ALLIANCE, INC.,

Plaintiff,

v.

CONAWAY TRANSPORTATION, INC.,
COLONIAL FAST FREIGHT LINES, INC.,
ATLANTIC FERTILIZER AND CHEMICAL
CO., E. N. "BUD" CONAWAY, and
MARY ELIZABETH CONAWAY,

Defendants.

CASE NUMBER:
92-H-0536-S

ENTERED

AUG 5 1992

JUDGMENT

In accordance with the Memorandum Opinion entered in this action, it is hereby ORDERED, ADJUDGED, and DECREED that plaintiff ORIX Credit Alliance, Inc. ("Credit Alliance"), have a judgment against defendants Conaway Transportation, Inc., ("Conaway"), Colonial Fast Freight Lines, Inc. ("Colonial"), Atlantic Fertilizer and Chemical Co., E. N. "Bud" Conaway, and Mary Elizabeth Conaway, jointly and severally, all of the following:

- (a) a money judgment of \$663,331.66;
- (b) immediate possession of all parts that had been removed from any of the Trucks;
- (c) immediate possession of, and the right to transfer good and marketable title (pursuant to a Uniform Commercial Code sale) to a Motor Carrier Certificate of Public Convenience and Necessity

No. 440, as amended and extended (Certificate 440) issued by the Alabama Public Service Commission;

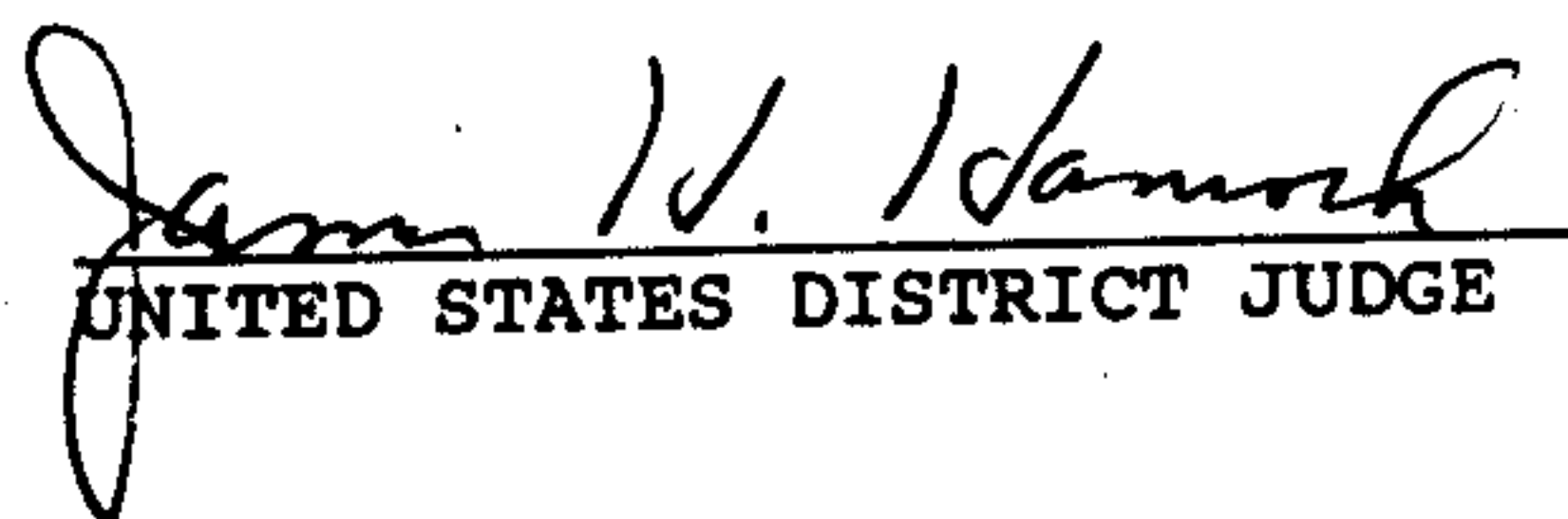
(d) post judgment interest;

(e) immediate possession of any of either of both Conaway's and/or Colonial's inventory, goods, equipment, machinery, contract rights, fixtures, and assets of any and every kind, wherever located now or hereafter belonging to either Colonial or Conaway or in which either has any interest, provided however, that nothing herein shall entitle Credit Alliance to possession of any property in which some other creditor of Conaway or Colonial has a paramount interest; and

(f) costs of this action.

PROVIDED, however, that Credit Alliance cannot enforce this judgment against certain assets belonging to Mary Elizabeth Conaway and the proceeds thereof (the "Exempt Assets") so long as none of the defendants against whose assets Credit Alliance has a right to enforce its judgment or claim has ever acquired or hereafter acquires any interest in such asset. A four page list of the Exempt Assets is attached hereto as Exhibit A and made a part hereof by this reference.

DONE and ENTERED this the 5th day of AUG., 1992.


UNITED STATES DISTRICT JUDGE

CONFIDENTIAL FINANCIAL STATEMENT

MARY ELIZABETH CONAWAY

JANUARY 1, 1982

PAGE 1

ASSETS

	1/1/82	10/31/90
Cash (C.D.'s)	\$ 225,000	\$ 40,000
SouthTrust Bank, Alexander City		135,000
First National, Alexander City		175,000
AmSouth, Birmingham		<u>\$ 350,000</u>
Stocks & Bonds		
U. S. & Alabama Exchange Stocks	135,000	215,000
(See Attached List)		
Real Estate (See Attached List)	250,000	300,000
Jewelry (See Attached List)	188,000	188,000
Furniture (See Attached List)	349,500	349,500
Total Assets	<u>\$ 1,147,500</u>	<u>\$ 1,402,500</u>

LIABILITIES

(None)	\$ 000	\$ 000
Net Worth	<u>\$ 1,147,500</u>	<u>\$ 1,402,500</u>

The above statement does not reflect exact figures, but all figures used are reasonably correct.

This statement is prepared for the confidential use only of Orix Credit Alliance.



CONFIDENTIAL FINANCIAL STATEMENT

MARY ELIZABETH CONAWAY

JANUARY 1, 1982

PAGE 2

1/1/82

10/31/9

Bonds

Alabama Housing Authority	\$ 50,000	
Alabama Finance	<u>40,000</u>	
	\$ 90,000	

Alabama Housing Authority R 15257, C113472	\$ 55,00
Industrial Development Bd (Wilsonville, AL) #796-803	
(8 Bonds)	40,00
Russell County Alabama (Public Building) Held by	
Escrow Agent Paine Webber Bond # R0486	25,00
Wilson County Tennessee (Power Company) #527-531	
(5 Bonds)	25,00
Advantage Fund (Alabama Trust Series I)	
Certificate # 2001000159	25,00
First National Corp (Alexander City) 37 Shs-Cert. # 400	
Aliant National (Alexander City) 74 Shs-Cert. # 909	Value
SouthTrust Corp. (Alexander City) 151 Shs - ST 22805,	
ST 37798	<u>Unknown</u>
	\$ 170,00

STOCKS

Russell Manufacturing 2,180 shs		
#SD30381, #SD39713	<u>45,000</u>	<u>45,00</u>
Total Stocks & Bonds	\$ 135,000	\$ 215,00

REAL ESTATE

Residence (Equity)	\$ 150,000	\$ 225,00
306 Easton Circle, Birmingham, AL		
Warehouse (Alexander City)	<u>100,000</u>	<u>75,00</u>
Dadeville Highway, Alexander City, AL	\$ 250,000	\$ 300,00



MARY ELIZABETH CONAWAY
JANUARY 1, 1982

JEWELRY

1 - 4K Diamond Ring	\$	30,000.00
1 - 2K Diamond plus 1K (Smaller Diamonds)		20,000.00
1 - \$100.00 Gold Piece w/Diamonds		5,000.00
1 - 6K Emerald w/Diamonds		20,000.00
1 - Emerald Pendant W/Diamonds		3,000.00
1 - Opal w/Sapphires		3,000.00
1 - Amethyst w/Diamonds		2,500.00
1 - Pair Amethyst Earrings		2,500.00
1 - Ruby w/Diamonds Necklace		5,000.00
1 - Cross w/Diamonds		3,000.00
1 - Pearl Necklace w/9K Sapphire & Diamonds		30,000.00
1 - Set Earrings w/Pearls and Diamonds		5,000.00
1 - Watch w/3K Diamonds		6,000.00
1 - Sapphire Bracelet w/Diamonds		10,000.00
1 - Link Bracelet w/Seladan & Gold Links		3,000.00
1 - Ruby Bracelet w/Diamonds		10,000.00
1 - Diamonds Bracelet w/3.5 Karats		5,000.00
5 - Gold Bracelets		10,000.00
Misc. Gold Chains (30)		5,000.00
Misc. Earrings (22)		5,000.00
Misc. Pieces (50)		5,000.00
		<hr/>
TOTAL	\$	188,000.00



MARY ELIZABETH CONAW...

JANUARY 1, 1982

FURNITURE

1 - Bathroom Wooden Armoire (2 Drawer/6 Shelves)	\$ 1,500.00
1 - Antique Chest (3 Drawer 36" Tall)	2,000.00
1 - Oriental Black Mother of Pearl Antique End Table	3,000.00
1 - Grandfather Clock	3,000.00
1 - 2 Drawer Chest 24" Antique	2,000.00
1 - Antique Painting (Wagon About to Cross River)	1,000.00
1 - Candelabra Gold & Brass Antique	5,000.00
1 - Baby Grand Piano & Seat	8,000.00
1 - Oriental Mirror	3,000.00
1 - Gold Leaf Oriental Mirror (w/Birds 7 Gazebo)	5,000.00
1 - Chest Antique 2 Small & 4 Large Drawers 36" Tall (Top Drawers Rounded)	4,000.00
2 - Cane French Chairs Antique	2,000.00
1 - Antique Brass Chandelier	3,000.00
1 - Antique Table Dark Stain 30" High 36" Long	1,500.00
1 - Candelabra with Crystal	5,000.00
1 - Backdrop 3 Piece Oriental Painting	1,000.00
Misc. Small Paintings	5,000.00
1 - Antique Glass Top Coffee Table	2,000.00
1 - Large 3 Drawer Antique Chest (Inlaid Wood)	8,000.00
Misc. Mirrors	5,000.00
1 - Antique Wooden Screen (Black & Red Oriental Painting)	1,500.00
1 - Black Oriental 7' Tall Desk & China Cabinet	5,000.00
Misc. Small Tables & Stands	7,500.00
2 - Mantel Pieces Pink with Crystal Pendants	6,000.00
1 - Painting Boat Scene	2,000.00
Queen Ann Living Room Suite w/Tables & Chairs	5,000.00
Misc. Lamps	8,000.00
1 - Small Antique Desk, 4 Drawers & Lift Up Top	3,000.00
1 - Very Old French Dining Room Armoire	15,000.00
1 - Dining Room Table with 12 Chairs, Antique	15,000.00
1 - Grape Crystal Chandelier (Dining Room)	3,000.00
1 - Baker Dining Room Chest	4,000.00
1 - Antique Dining Room Serving Side Table	3,000.00
2 - Candelabra Antique Brass Bottoms Crystal Top	3,500.00
1 - Oriental Desk & China Display	5,000.00
1 - 7' Tall Chest, 1 Big Door @ Bottom 2 Swinging Doors @ Top, Inlaid flowers, Antique	7,000.00
1 - 7' Tall Bedroom Chest with Two Doors	3,000.00
1 - Marble Top 3 Drawers B.R. Chest	2,000.00
1 - Marble Top Table with Ornate Legs	2,500.00
Misc. Chests	8,000.00
1 - Oriental Television Cabinet	5,000.00
1 - Baker Bedroom Chest w/10 Drawers	5,000.00
1 - Antique Chest Matched Grain, 2 Drawers. 2 Swinging Doors	3,500.00
4 - Oriental Rugs	20,000.00
4 - Very Large Handmade Rugs	12,000.00
Misc. Table Pieces	5,000.00
Bean & Humble Collection	10,000.00
China, Silver & Crystal	100,000.00
Beds & Mattresses & etc.	10,000.00
TOTAL	\$ 349,500.00

FILED

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92 AUG -5 PM 3:24

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ATLANTIC FERTILIZER AND CHEMICAL
CO., E. N. "BUD" CONAWAY, and
MARY ELIZABETH CONAWAY,

Defendants.

CASE NUMBER:

92-H-0536-S

ENTERED

AUG 5 1992

MEMORANDUM OPINION

Plaintiff ORIX Credit Alliance, Inc. ("Credit Alliance"), has filed a motion for summary judgment against defendants Conaway Transportation, Inc., ("Conaway"), Colonial Fast Freight Lines, Inc. ("Colonial"), Atlantic Fertilizer and Chemical Co., E. N. "Bud" Conaway, and Mary Elizabeth Conaway (collectively, the "Defendants"). The parties were given a schedule to provide briefs and evidentiary submissions. The only evidence before the Court is that submitted by Credit Alliance. The Court is of the opinion that there is no genuine issue as to any material fact and that Credit Alliance is entitled to a judgment against each Defendant as a matter of law.

The evidence consists principally of the affidavit of one of Credit Alliance's officers, Howard Brenowitz. This suit is between two commercial entities. Defendants are indebted to Credit Alliance on notes and various guaranties. After the Defendants

defaulted, the note was accelerated, the collateral repossessed, sold and a deficiency remains. The undisputed evidence establishes that the disposition of the collateral was commercially reasonable. Leasing Service Corp. v. River City Const. Co., Inc., 743 F.2d 871 (11th Cir. 1983); Credit Alliance Corp. v. Cornelius & Rush Coal Co., Inc., 508 F.Supp. 63 (N.D. Ala. 1980). The amount of indebtedness due on March 13, 1992 is \$648,722.09, with interest accruing thereafter at the statutory rate of 6% per annum until judgment. This brings the total due on July 31, 1992, to \$663,331.66. There is no evidence to the contrary.


Credit Alliance also has a blanket lien on virtually all of the personal property of Conaway and Colonial. Such a lien is enforceable under Alabama law. Leasing Service Corp. v. Hobbs Equipment Co., Inc., 894 F.2d 1287 (11th Cir. 1990). Included in this security interest is a specifically described certificate of public necessity (as amended and extended) awarded to Colonial by the Alabama Public Service Commission (the "Certificate"). The Alabama Supreme Court held in Floyd and Beasley Trans. Co. v. Alabama Public Service Commission, 159 So.2d 833 (Ala. 1963) that the assignment of such a Certificate for the benefit of some, but not all, of the certificate holder's creditors was in the public interest and found such a transfer to be enforceable. Other jurisdictions also enforce security interests in similar collateral. E.g., Freightliners Market Devel. Corp. v. Silver Wheel Freightliner, 823 F.2d 263, 69-70 (9th Cir. 1987) (intrastate

hauling certificate); In re O'Neill's Shannon Village, 750 F.2d 679 (8th Cir. 1984) (liquor license); In re Sunberg, 729 F.2d 561, 63 (8th Cir. 1984) (PIK certificates); Bogus v. Amer. Nat'l. Bank of Cheyenne, 401 F.2d 458 (10th Cir. 1968) (liquor license); Paramount Finance Co. v. United States, 379 F.2d 543 (6th Cir. 1967) (liquor license); In re Cleveland Freightlines, Inc., 14 B.R. 777 (Bankr. N.D. Ohio 1981) (intrastate hauling certificate). The security interest in Conaway's and Colonial's personal property, including the Certificate, is enforceable.

One of the guarantors, Mary Elizabeth Conaway, executed a guaranty that is unlimited as to liability but is limited as to what assets are available to Credit Alliance in order to be able to enforce its judgment against this one party. Accordingly, the judgment shall reflect this limitation. The other guaranties are not limited in any fashion.

A Judgment will be entered in accordance with this Memorandum Opinion.

DONE this the 5th day of August, 1992.


UNITED STATES DISTRICT JUDGE

United States District Court
for the
Northern District of Alabama
August 5, 1992

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:92-cv-00536

True and correct copies of the attached were mailed by the clerk to the following:

Allan Lamar Armstrong, Esq.
NAJJAR DENABURG PC
2125 Morris Avenue
Birmingham, AL 35203

Robert H Adams, Esq.
NAJJAR DENABURG PC
2125 Morris Avenue
Birmingham, AL 35203

Michael L Hall, Esq.
BURR & FORMAN
SouthTrust Tower, Suite 3000
420 North 20th Street
Birmingham, AL 35203

Inst # 1992-18257

08/27/1992-18257
11:02 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
013 MCD 41.50