



20060714000846400 1/5
 Bk: LR200611 Pg:27057
 Jefferson County, Alabama
 I certify this instrument filed on:
 07/14/2006 09:38:04 AM CO
 Judge of Probate- Mark Gaines

FILED IN OFF

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

NATHANIEL McNAIR,

Plaintiff

vs.

LARRY DEPIANO f/d/b/a PARKLANE
 PROPERTY, et al.,

Defendants

RECEIVED
 Case No.: CV01-1380
 DEC 10 2003

FILED IN OFFICE
 DEC 09 2003
 ANNE-MARIE ADAMS
 Clerk

PLAINTIFF'S MOTION TO ASSESS PENALTY

COMES NOW the plaintiff, by and through his attorney, and files this, his
 verified motion to assess the **mandatory** 15% penalty pursuant to Alabama Code §25-5-
 59(b) and reduce said amount to a judgment on account of the Defendant's failure to pay
 within thirty days all installments of compensation due the Plaintiff on June 20, 2002 . As
 grounds for said motion, counsel states as follows:

1. This matter was scheduled for trial before this honorable court on May 20, 2002. Immediately prior to trial, the defendant agreed to settle this matter. According to the terms of the settlement, the defendant would be liable for any and all past and future medical expenses related to the plaintiff's on-the-job injury and would pay the plaintiff \$11,000.00 in cash to settle his permanent impairment.
2. Twice plaintiff has filed a Motion to Enforce Settlement, but to no avail. As of today, no funds have been received by the plaintiff from the defendant and there is no "good cause" why the defendant entered into this settlement agreement and subsequently refused to pay the amount agreed on to the plaintiff.
3. §25-5-59 (b) states a 15% penalty **shall** be assessed against the defendant for failing to make payment within 30 days. The penalty in this matter would be \$1,650.00 for the first 30 days the defendant was late in making payment to the plaintiff, and the amount would accrue from this point.
4. Thus far, 19 months have passed since the settlement of this matter, which the court later entered into the record as a judgment, and currently the amount due the

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 Shelby Cnty Judge of Probate, AL
 07/19/2006 12:40:34PM FILED/CERT

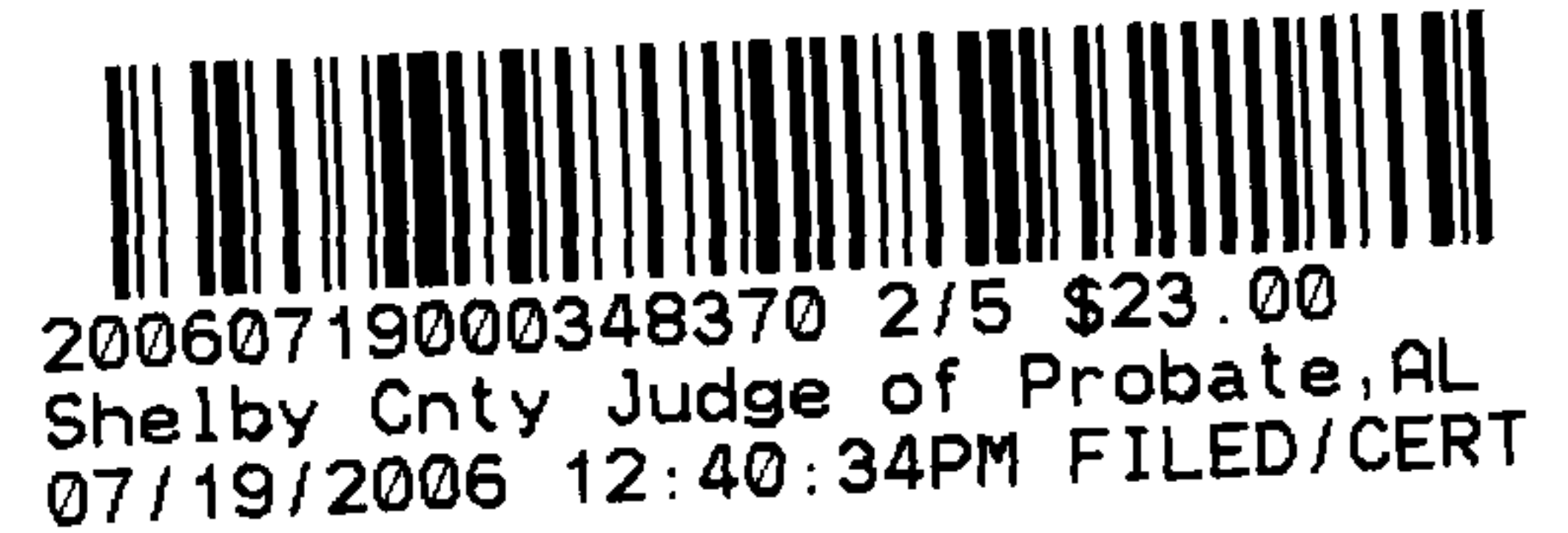
2/26/04

Granted

[Handwritten signatures]

plaintiff is \$143,714.68. This amount is due to increase with the passage of another 30 days.

WHEREFORE, these premises considered, counsel respectfully requests that this honorable Court grant this Motion and assess an additional 15% penalty upon the defendant pursuant to Ala.Code (1975) §25-5-59 (b).



NO ORAL ARGUMENT REQUESTED

Certificate of Service

I hereby certify that I have caused a copy of this document to be served upon the below mentioned attorney of record by depositing a copy of the same with the U.S. Postal Service, postage pre-paid and correctly addressed.

Date: December 5, 2003

Submitted by:

Submitted by:



William V. Powell, Jr.
POWELL & DENNY, P.C.
1320 Alford Avenue
Suite 201
Birmingham, AL 35226
(205) 978-2051

Mr. Douglas Rogers
3106 Independence Dr.
Birmingham, AL 35209

1. The first step is to identify the problem. This involves understanding the situation and the needs of the people involved. It is important to listen to all sides and to be open to new ideas.

2. The second step is to develop a plan. This involves setting goals and determining the steps that need to be taken to achieve them. It is important to be realistic and to consider the resources available.

3. The third step is to implement the plan. This involves putting the plan into action and monitoring progress. It is important to be flexible and to be willing to make adjustments as needed.

4. The fourth step is to evaluate the results. This involves assessing the outcomes of the plan and determining whether the goals have been achieved. It is important to be honest and to be willing to learn from mistakes.

5. The fifth step is to share the results. This involves communicating the outcomes of the plan to the people involved and to the wider community. It is important to be transparent and to be willing to accept feedback.

10-10-68



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Shelby Cnty Judge of Probate, AL
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Anne-Marie Adams, Clerk of the Circuit Court, of Jefferson County, do hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears of record in said Court.

WITNESS my hand and the seal of said Court, this

the _____ day of JUL 12 2006

Anne-Marie Adams

Clerk

State of Alabama Unified Judicial System Form C-7 Rev 2/79	CASE ACTION SUMMARY CONTINUATION	Case Number <i>2001-1380</i>
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Style:	Page Number _____ of _____ Pages
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DATE	ACTIONS, JUDGMENTS, CASE NOTES
6-18-02	Letter from atty to Jly Houn
6-24-02	Order Approving Settlement - Judge A E H
8-6-02	Letter Sent - WVPJ
10-28-02	Order - Motion to Enforce Settlement Granted - Judge A E H
11-6-02	Def't LD - Mot. to alter, amend, or vacate Oct. 28 Order (R4)
12/16/02	Defendant's Motion to Vacate this Court's Order of 10/28/02 is granted. Further by consent of all parties, judgment is rendered in favor of Plaintiff and against Defendant in the sum of Eleven Thousand & 00/100 (\$11,000.00) and court costs.
12	
5-22-03	Mot to Enforce Settlement
5-29-03	Plf 77M Re-Notice of Hearing on Plf's Motion To enforce settlement & Motion for contempt
7-18-03	Def't Mot to Dismiss enforce Settlement & for Contempt
8-12-03	Ord. On Mot to Dismiss enforce Settlement & for Contempt - Granted - Judge A E H
8-12-03	Ord. Mot to Enforce Settlement & Mot for Contempt Denied - Judge A E H
2-26-04	Ord. Mot Assess penalty - granted
2-9-04	Hearing set 2-26-04
12-9-03	Mot to Assess penalty
4-23-04	Ord on Mot Alter Amend Vacate Ord. Denied

[illegible]