

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND,

Plaintiff,

v.

ABC EXPRESS, INC., ET. AL.,

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

C.A. 3:90CV00378

MEMORANDUM OPINION

This matter is before the Court on Plaintiff's motions for summary judgment, default judgment, and costs and attorney's fees.

FACTS

Plaintiff is a surety on a bond covering N. Richmond Transportation Inc. The bond is payable to "all travelers or shippers to whom the Principal may be held legally liable for .... [N. Richmond Transportation Inc.'s] failure to perform ... contracts for the supplying of transportation." Plaintiff's liability under the bond is limited to Ten Thousand Dollars (\$10,000.00).

On August 4, 1989, N. Richmond Transportation filed for bankruptcy under Chapter 7 of the Bankruptcy Code. It listed debts to unsecured creditors in excess of \$200,000.00. The unsecured creditors received no payments in the bankruptcy proceeding. On June 28, 1990, Plaintiff filed this action for statutory

Interpleader under 28 U.S.C. § 1335. This case is now ripe for disposition.

The Court makes the following Findings of Fact:

1. The Court on August 1, 1990 Ordered that Defendants seeking funds could submit an affidavit signed by a designated official of the company, instead of filing a complete answer.

2. Thirteen Defendants submitted either an answer or an appropriate affidavit. The sworn claims total Twenty-Six Thousand Eight Hundred Forty-Eight Dollars and Ninety-Seven Cents (\$26,848.97).

3. Three unsworn claims did not comply with the August 1, 1990 Order. The claims of General Transport Services and Mid-America Express, Inc., although mailed to counsel for Plaintiff, were never submitted to the Court. The claim of South East Carriers was stated in a letter to the court dated July 9, 1990. These three Defendants failed to file any answer, affidavit or other supporting documents. Their claims are therefore DENIED.

4. Attorney Frank Willard submitted a claim for \$400 representing unpaid fees in connection with counseling N. Richmond Transportation on the scope of the Interstate Commerce Act. The Court FINDS that Defendant Willard was not a "traveller or shipper" and is therefore not covered by the bond. His claim is therefore DENIED.

5. Defendant Swain & Sons Transports, Inc. has a valid claim of \$1,645.00.

6. Defendant Seward Motor Freight, Inc. has a valid claim

of \$1308.00.

7. Defendant Nationwide Transportation, Inc. has a valid claim of \$942.27.

8. Defendant Mt. Pleasant Transfer Co. has a valid claim of \$6655.00.

9. Defendant Orbit Transport, Inc. has a valid claim of \$3191.70.

10. Defendant PTL Intermodal Inc. has a valid claim of \$1625.00.

11. Defendant Klump Trucking, Inc. has a valid claim of \$550.00.

12. Defendant JAG Trucking, Inc. has a valid claim of \$375.00.

13. Defendant WDP Transportation, Inc. has a valid claim for \$615.00.

14. Defendant Hi-Way Express has a valid claim of \$5862.00.

15. Defendant Winefield Transportation Co. has a valid claim of \$2100.00.

16. Defendant Rawhide Trucking, Inc. has a valid claim of \$1,340.00.

17. Defendant Ron Bush Trucking has a valid claim of \$640.00.

18. There is no reason to distinguish between the various valid claims. Therefore they will be awarded damages on a pro rata basis.

### SUMMARY JUDGMENT

No opposition has been noted to Plaintiff's motion for summary judgment. The Court finds that there are no genuine issues of material facts, that the Plaintiff has deposited the disputed funds with the Court, and that the Plaintiff is entitled to relief in interpleader. Therefore, Plaintiff's motion for summary judgment is GRANTED, and an appropriate Order will Enter.

### DEFAULT JUDGMENT

Defendant Norma R. Richmond failed to enter an appearance before the Court, and default judgment was entered against her on October 17, 1990. The Court GRANTS Plaintiff's motion for default judgment and will ENTER an Order of default judgment against Norma R. Richmond in the amount of Twenty Thousand Two Hundred and Thirty-One Dollars (\$20,231.00), which represents the amount deposited with the Court (\$10,631), plus costs and attorneys fees in this action (\$10,600), plus estimated attorney's fees for collection (\$1,000), minus fees and costs awarded out of the fund (\$2,000).

### COSTS AND ATTORNEY'S FEES

Plaintiff seeks attorney's fees and costs in connection with this action. Defendant Nationwide Transportation has filed a brief in opposition.

An award of attorney's fees is left to the sound discretion of the Court. Murphy v. Travelers Ins. Co., 534 F.2d 1155 (5th

Cir. 1976); John Alden Life Ins. v. Doe, 658 F.Supp. 638 (S.D. W.Va. 1987). Fees and costs are not awarded as a matter of course, but will generally be available to a disinterested stakeholder who admits liability and deposits the contested funds with the court. See 7 C. Wright. A. Miller & M. Kane, Federal Practice and Procedure, § 1719 (2d ed. 1986).

Attorney's fees should generally be awarded to surety insurers who submit bond funds in interpleader, concede liability, and ask the Court to equitably distribute the funds. Rather than paying the first \$10,000 in claims, or using a makeshift pro-rata distribution, Plaintiff submitted the bond funds to the Court. This placed the funds under the Court's equitable control. For example, the Court could require that interest be paid on the funds pending distribution. Interpleader actions also promote finality and forestall numerous smaller lawsuits based on the bond.

For these reasons, the Court is reluctant to disallow attorney's fees in all surety bond cases. Such a rule would deter insurers from filing interpleader actions. Without judicial oversight, insurers will distribute the funds in a manner which minimizes their own expenses, rather than maximizing fairness. Although the fund is diminished by a fee award, the fund recipients, as a class, benefit from judicially supervised distribution. The Court therefore FINDS that reasonable attorney's fees should be generally awarded to surety insurers who interplead in good faith.

Nonetheless, Interpleader is not necessarily the most

efficient method of distributing contested sums. In this case, by Plaintiff's own admission, attorneys fees and costs have already exceeded Plaintiff's maximum liability under the bond. Numerous Defendants have also incurred attorney's fees and other expenses in connection with filing claims. The parties, as a whole, would have been better off if Plaintiff had randomly distributed the \$10,000.

The Court will not award full compensation to the Plaintiff where the fees and costs are excessive relative to the amount of money at issue. The Court must keep a reasonable amount of the corpus of the fund intact if it is to do equity to the claimants.

The Court FINDS that equity requires a cap on the payment of Plaintiff's costs and attorney's fees out of the fund. Such a cap preserves incentives to bring actions in Interpleader, but limits full compensation to those cases which can be resolved without consuming a substantial portion of the fund. For actions on a surety bond, the Court FINDS that TWENTY PERCENT (20%) of the fund is an equitable cap on the amount that Plaintiff can recover from the fund. The Court therefore AWARDS costs and fees to Plaintiff from the fund in the amount of Two Thousand Dollars (\$2000.00).

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Final Order and Judgment Order to all counsel and unrepresented parties of record.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND,

Plaintiff,

v.

ABC EXPRESS, INC., ET. AL.,

Defendants.

)  
)  
)  
)  
) C.A. 3:90CV00378  
)  
)  
)  
)

FINAL ORDER

This matter is before the Court on Plaintiff's motions for summary judgment, default judgment, and costs and attorney's fees.

1. The Court GRANTS Plaintiff's motion for summary judgment against all the Defendants. All the Defendants are PERMANENTLY ENJOINED AND RESTRAINED from instituting or prosecuting any action or proceeding in any state or federal court against the bond or for the interpleaded funds deposited by Plaintiff with the Court. Plaintiff is DISCHARGED from any and all liability to the Defendants as to the bond or the bond funds.

2. The Court ENTERS Default Judgment against Norma R. Richmond by separate Order.

3. The Court AWARDS Plaintiff costs and attorney's fees in the amount of Two Thousand Dollars (\$2000.00).

4. The Court AWARDS those Defendants with sworn claims the remainder of the monies deposited with the Court, on a pro rata basis. The Clerk is DIRECTED to DISBURSE the funds previously

deposited with the Court as follows:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND (costs & attorney's fees):	\$2000.00
Hi-Way Express:	\$1870.74
JAG Trucking, Inc.:	\$ 119.67
Klump Trucking Company, Inc.:	\$ 175.52
Mt. Pleasant Transfer, Inc.:	\$2123.81
Nationwide Transportation Services, Inc.:	\$ 300.71
Orbit Transport:	\$1018.57
PTL Intermodal, Inc.:	\$ 518.59
Rawhide Trucking, Inc.:	\$ 427.63
Ron Bush Trucking:	\$ 204.24
Seward Motor Freight, Inc.:	\$ 417.42
Swain & Sons Transports, Inc.:	\$ 524.97
WDP Transportation, Inc.:	\$ 196.27
Wingfield Transportation Company:	<u>\$ 670.18</u>
TOTAL:	\$10568.32

This depletes the funds remaining in the account for this case.

It is so ORDERED.

Let the Clerk send a copy of this Final Order and the accompanying Memorandum Opinion to all counsel and unrepresented parties of record.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

FIDELITY AND DEPOSIT COMPANY OF	)	
MARYLAND,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. 3:90CV00378
	)	
ABC EXPRESS, INC., ET. AL.,	)	
	)	
Defendants.	)	

JUDGMENT ORDER

This matter is before the Court on Plaintiff's motion for default judgment against Defendant Norma R. Richmond.

The Court ENTERS JUDGMENT FOR PLAINTIFF AGAINST NORMA R. RICHMOND in the amount of Twenty Thousand Two Hundred and Thirty-One Dollars (\$20,231.00), which represents the amount deposited with the Court (\$10,631), plus costs and attorneys fees in this action (\$10,600), plus estimated attorney's fees for collection (\$1,000), minus fees and costs awarded out of the fund (\$2,000).

It is so ORDERED.

Let the Clerk send a copy of this Judgment Order and the accompanying Memorandum Opinion to all Norma R. Richmond and counsel for Plaintiff.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE