



AlaFile E-Notice

11-CV-2018-900431.00

Judge: BRIAN P HOWELL

To: MICHAEL G DEAN
mdean@ago.state.al.us

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

STATE OF ALABAMA ET AL V. AMERICAN PLUMBING AND SEPTIC SERVICE, LLC E
11-CV-2018-900431.00

The following matter was FILED on 10/11/2018 2:13:47 PM

C001 STATE OF ALABAMA
MOTION FOR CLARIFICATION
[Filer: DEAN MICHAEL GREGORY]

Notice Date: 10/11/2018 2:13:47 PM

KIM MCCARSON
CIRCUIT COURT CLERK
CALHOUN COUNTY, ALABAMA
25 WEST 11TH STREET
ANNISTON, AL, 36201

256-231-1750
Kim.McCarson@alacourt.gov



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10/11/2018 2:11 PM
11-CV-2018-900431.00
CIRCUIT COURT OF
CALHOUN COUNTY, ALABAMA
KIM MCCARSON, CLERK

STATE OF ALABAMA

Revised 3/5/08

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Unified Judicial System

11-CALHOUN

 District Court
 Circuit Court

CV21

 STATE OF ALABAMA ET AL V. AMERICAN
PLUMBING AND SEPTIC SERVICE, LLC E
CIVIL MOTION COVER SHEET

Name of Filing Party: C001 - STATE OF ALABAMA

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

 MICHAEL G DEAN
501 Washington Avenue
MONTGOMERY, AL 36104
Attorney Bar No.: DEA037

 Oral Arguments Requested
TYPE OF MOTION**Motions Requiring Fee**

- Default Judgment (\$50.00)
Joinder in Other Party's Dispositive Motion
(i.e. Summary Judgment, Judgment on the Pleadings,
or other Dispositive Motion not pursuant to Rule 12(b))
(\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative
Summary Judgment (\$50.00)
Renewed Dispositive Motion (Summary
Judgment, Judgment on the Pleadings, or other
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56 (\$50.00)
- Motion to Intervene (\$297.00)
- Other _____
pursuant to Rule _____ (\$50.00)

*Motion fees are enumerated in §12-19-71(a). Fees
pursuant to Local Act are not included. Please contact the
Clerk of the Court regarding applicable local fees.

 Local Court Costs \$ 0 _____
Motions Not Requiring Fee

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other _____
Motion for Clarification
pursuant to Rule _____* (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously
with this motion an Affidavit of Substantial Hardship or if you
are filing on behalf of an agency or department of the State,
county, or municipal government. (Pursuant to §6-5-1 Code
of Alabama (1975), governmental entities are exempt from
prepayment of filing fees)

 Date:
10/11/2018 2:11:23 PM

 Signature of Attorney or Party
/s/ MICHAEL G DEAN

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



**IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA
CASE NO.: 11-CV-2018-900431**

THE STATE OF ALABAMA,
THE ALABAMA BOARD OF ELECTRICAL CONTRACTORS,
THE ALABAMA DEPARTMENT OF PUBLIC HEALTH,
THE ALABAMA LIQUEFIED PETROLEUM GAS BOARD,
THE ALABAMA ONSITE WASTEWATER BOARD,
THE ALABAMA PLUMBERS AND GASFITTERS EXAMINING BOARD,

Plaintiffs,

vs.

AMERICAN PLUMBING AND SEPTIC SERVICE, LLC,
an Alabama corporation; et al

Defendants.

**RECEIVER'S MOTION FOR GUIDANCE AS TO PRIORITY OF PAYMENT OF
DEFENDANTS' ATTORNEYS' FEES AND RECEIVERSHIP FEES AND EXPENSES**

Jeffrey C. Schneider, as court-appointed receiver, hereby moves for guidance as to priority of payment of the Individual Defendants' attorneys' fees relative to the Receivership's fees and expenses.

1. On August 3, 2018, after this Court issued the Temporary Restraining Order, the Receiver froze \$321,044.24¹ for the Receivership Entities. (DE 195, Ex. B.)

2. As outlined in the Receiver's initial report and in his testimony before the Court, the Receiver paid the the bills of the Receivership Entities during the pendency of the TRO stage of the case related to preserving and stabilizing the assets of the estate. These bills included

¹ The Receiver was originally advised by BB&T that \$339,593.69 had been frozen, but due to stopped payments and chargebacks, the final amount frozen by BB&T and transferred to the Receiver was \$321,044.24.

financing and lease payments for the vehicles and equipment used in the business, rental payments for the space where the equipment and records were located, and security for the space and equipment.

3. As of this filing, the Receiver has paid \$116,526.82 in receivership expenses. In other words, \$116,526.82 of the \$321,044.24 has already been spent to maintain the Receivership's Entities, leaving approximately \$204,000.00. This does not include the Receivers' own fees or expenses, which will be the subject of a fee application filed shortly; however, for the Court's information, the Receiver's fees and expenses are approximately \$117,000.

4. Late last week, after entry of the Stipulated Permanent Injunction and the order granting the Receiver's Motion to Sell and/or Abandon, the Receiver began eliminating many of the Receivership Entities' recurring expenses. The vast majority of the vehicles and equipment have already been sold or are in the process of being tendered back. That allowed the Receiver to release the 24-hour security guards. And the Receiver is now negotiating with the landlords to consensually terminate the leases. These measures will eliminate well over \$30,000 a month in expenses, but as demonstrated above, the Receivership Estate has only approximately \$204,000 left at this point.

5. Yesterday, this Court entered an order requiring the Individual Defendants' attorneys' fees to be paid out of the Receivership Estate, totaling \$220,017.73. (DE 285.)

6. In the Stipulated Permanent Injunction (DE 272), the Court awarded \$435,095.50 to the Plaintiffs for their attorneys' fees. The Stipulated Permanent Injunction also required the

Receiver to pay 50% of the damages for the victims who testified during the preliminary injunction hearing, which sums are estimated to be approximately \$30,000.²

7. Needless to say, there is simply not enough money in the Receivership Estate to pay all of the foregoing amounts, and there still remains some very important work to be done relative to the investigation into the GreenSky transactions (which could result in either funds for the estate or forgiveness of loans owed by the victims).

8. Paragraph 34 of the Stipulated Permanent Injunction specifically affords the Receiver a first priority security interest and lien upon all receivership assets for the payment of his fees and expenses. In addition, unlike the Individual Defendants' attorneys, neither the Receiver nor the testifying victims can look to anyone else for payment.

9. In light of the foregoing, and in the hopes of leaving a small reserve for the Receiver to complete his work, the Receiver seeks this Court's guidance and respectfully suggests the following:

- a. that this Court treat the October 10, 2018 Order as one determining that the Individual Defendants' attorneys are *entitled* to fees, but not as one requiring the immediate payment of the amount specified, which alone exceeds the amount remaining in the Receivership Estate;
- b. that the Receiver immediately pay the testifying victims 50% of their actual damages, to which they are entitled pursuant to the Stipulated Permanent Injunction, because they are victims that made sacrifices by making

² The remaining 50% of their damages shall have a priority claim in the Receivership Estate, per Paragraph 35 of the Stipulated Permanent Injunction.

themselves available to testify and be cross-examined at the preliminary injunction hearing;

- c. that the Receiver pay the Receiver's fees and expenses, given that all parties agreed that he has a first priority security interest, but only *after* a fee application has been filed and after the Court has approved the amount;

10. At the conclusion of the case, depending on how much remains in the Receivership Estate, the Court can then provide further guidance as to how and in what proportion the remaining expenses should be paid (*i.e.*, based on a priority schedule, or *pro rata*, or based on some other process that is equitable).

WHEREFORE, the Receiver respectfully requests that this Court clarify the timing and priority of the payments to be made and provide any other relief that is just and proper.

Dated: October 11, 2018

Respectfully submitted,

Jeffrey C. Schneider, P.A.
Court-Appointed Receiver
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 Telephone: 305.403.8788
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 Email: jcs@klsg.com

By: /s/ Jeffrey C. Schneider
 JEFFREY C. SCHNEIDER, P.A.
Court-Appointed Receiver

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2018, the foregoing document was served this day on all counsel of record identified on the attached Service List via electronic mail.

/s/ Jeffrey C. Schneider
 Jeffrey C. Schneider, P.A.
Court-Appointed Receiver

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