

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**WO**

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

TRUSTEES OF THE NATIONAL ASBESTOS  
WORKERS MEDICAL FUND,

Plaintiff/Judgment Creditor,

v.

EAGLE MECHANICAL INSULATION LLC,

Defendant/Judgment Debtor.

---

WELLS FARGO BANK,

Garnishee.

No. MC12-0096-PHX-DGC

**ORDER AND JUDGMENT AGAINST  
GARNISHEE (NON-EARNINGS)**

Before the Court is the Application for Judgment on Garnishment of Non-Earnings filed by Plaintiff/Judgment Creditor Trustees of the National Asbestos Workers Medical Fund (“Plaintiff”) (Doc. 6), United States Magistrate Steven P. Logan’s Report and Recommendation (“R & R”) (Doc. 8), and Plaintiff’s second Application for Judgment on Garnishment of Non-Earnings (Doc. 15). The R & R recommends that the Court deny Plaintiff’s original Application (Doc. 6) because the record, at the time, did not establish that Defendant/Judgment Debtor Eagle Mechanical Insulation LLC (“Defendant”) had received “a copy of the summons and writ of garnishment, a copy of the underlying judgment and the notice to judgment debtor and request

1 for hearing form,” as required by Arizona’s garnishment statute. *See* A.R.S. § 12-1574(D).  
2 Judge Logan found that “the Writ of Garnishment and Summons (Doc. 3) d[id] not instruct  
3 Garnishee to serve Defendant with those documents,” and “[i]n its Answer (Doc. 5),  
4 Garnishee . . . does not assert that those documents were mailed to Defendant . . . [and] states  
5 only that a copy of the Answer has been delivered to Plaintiff and Defendant (Doc. 5 at 2).”  
6 Doc. 8 at 3. Plaintiff’s response to the R & R requested that the Court delay ruling on the  
7 original Application until the Garnishee answers a newly issued Writ of Garnishment. Doc. 12.

8 The Court issued a second Writ of Garnishment to Garnishee that specifically instructed  
9 Garnishee to serve the statutorily required papers on Defendant. Doc. 11. Garnishee’s Answer  
10 certifies that “a copy of the summons and writ of garnishment, a copy of the underlying  
11 judgment and the notice to judgment debtor and request for hearing form was delivered to the  
12 judgment debtor on 12/7/12 [], via mail.” Doc. 14 at 2. The Answer also shows the following:

- 13 1. Garnishee owes Judgment Debtor \$4,616.37.
- 14 2. Garnishee claims an answering fee of \$100.00.

15  
16 Plaintiff’s Second Application for Judgment on Garnishment of Non-Earnings requests  
17 that the Court enter judgment on its behalf because the record now establishes that the  
18 deficiencies found in Judge Logan’s R & R have been cured. Doc. 15. The record does so  
19 demonstrate.

20 THEREFORE, IT IS ORDERED that Plaintiff has judgment against Garnishee in the  
21 amount of \$4,516.37.

22 IT IS FURTHER ORDERED that Garnishee has judgment against Defendant in the  
23 amount of \$100.00 for reasonable compensation for answering the Writ, to be paid from the  
24 garnished funds pursuant to A.R.S. § 12-1591(b).

25 **IT IS ORDERED:**

- 26 1. Magistrate Judge Steven P. Logan’s R & R (Doc. 8) is **accepted**, and Plaintiff’s  
27 original Application for Judgment on Garnishment of Non-Earnings (Doc. 6) is  
28 **denied**.

