

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PUBLIC SERVICE MUTUAL INS., CO.,)	
Individually and as Subrogee of)	
KENARD MGMT. CO.,)	
)	
Plaintiff)	
)	NO. 09 C 2829
v.)	
)	
CAPITOL TRANSAMERICA CORP.,)	
d/b/a CAPITAL INDEM. CORP.,)	
)	
Defendant)	

PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT IN THE AMOUNT OF \$71,744.11 ON COUNT I OF THE COMPLAINT

Now comes the Plaintiff, Public Service Mutual Insurance Company ("PSM") and hereby moves this Honorable Court for entry of judgment in the amount of \$71,744.11 on Count I of Plaintiff's Complaint. Consistent with this Court's Memorandum Opinion and Docket Entry dated November 17, 2010 (*attached hereto as Exhibit 1*), this Court should enter judgment against the defendant, Capitol Transamerica Corp. ("Capitol) on Count I in the amount of \$71,744.11 because this figure represents 50% of the defense fees and costs PSM has incurred in connection with defending Kenard in the Underlying Lawsuit. ¹

As grounds in support of this Motion, PSM states as follows:

1. On November 17, 2010, this Court entered a Memorandum Opinion and Docket Entry that "Capitol and PSM must share the cost of Kenard's defense 50/50,

¹ Plaintiff reserves the right to seek an amendment of this Judgment because there will be at least one additional invoice from counsel retained by PSM to defend Kenard in the Underlying Lawsuit. Additionally, this Judgment relates only to Count I of the Complaint and there are remaining claims which must be resolved.

including fees and costs that PSM has already expended defending Kenard in the Underlying Lawsuit." *Exhibit 1, Docket Entry and Memorandum Opinion.*

2. To date, PSM has incurred \$143,488.23 defending Kenard in the Underlying Lawsuit (Doyle v. Kenard). *Exhibit 2, Affidavit of Scott Edwards, Regional Claims Manager for PSM.* These costs include attorneys' fees, expert fees and court reporting costs. The costs were necessary and appropriate to defend Kenard from the wrongful death allegations in the Underlying Lawsuit. The costs were fair and reasonable. *Exhibit 2.*

3. By letter dated November 2, 2010, PSM demanded repayment of defense costs and fees (as well as all of the fees incurred in connection with this Federal Court litigation). *Exhibit 3, letter to Linda Spring, Esquire, dated November 2, 2010 (without attachments).* The November 2, 2010 correspondence included all invoices and checks relating to the payments made by PSM to defend Kenard in the Underlying Lawsuit.

4. Following this Court's recent Memorandum Opinion and Docket Entry, PSM made a formal demand for Capitol to reimburse PSM for \$71,744.11 (or 50% of the \$143,488.23) PSM has incurred to date.

5. This Court should enter Judgment for PSM on Count I for \$71,744.11 because this represents 50% of the \$143,488.23 PSM has incurred to defend Kenard in the Underlying Litigation. Pursuant to the Court's Memorandum Opinion and Docket Entry dated November 17, 2010, Capitol is obligated to reimburse PSM for \$71,744.11 and there is no valid reason for Capitol's continued refusal to comply with the Court's Order. Capitol has had all invoices and supporting documentation relating to the costs and fees for approximately one month. Moreover, the costs incurred by PSM were fair and reasonable under the circumstances.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter judgment for PSM on Count I of the Complaint for \$71,744.11.

Respectfully submitted,

Plaintiff,
Public Service Mutual Insurance Company

By: /s/ John A. Donovan III
One of its attorneys

Dated: 12-1-2010

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