

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
AUG 31 PM 2:30
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION

V

Cause No. IP 00-C-1265 T/G

KENNETH R. PAYNE, et. al.

MOTION TO SET ASIDE DEFAULT JUDGMENT

KENNETH R. PAYNE, in person and by counsel, Linda M. Wagoner,
respectfully requests this Court to set aside the default judgment entered against him
June 5, 2001, for the following reasons:

1. He filed, or attempted to the best of his ability to file an answer to the complaint *pro se*. A detailed explanation of that attempt is contained in his affidavit attached and incorporated by reference as Exhibit A.
2. He contemporaneously filed a detailed answer in IP 00-1629 T/G on December 13, 2000; it is logical to assume he would have filed answers in both suits at the same time.
3. His inability to file the answer was not due to any circumstances within his control.
4. He was unaware that the default had been entered until he had the benefit of current counsel and a review of the court file.
5. He believes he has meritorious defenses to the complaint.
6. The interests of justice would best be served by vacating the entry of

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default and permitting an answer to be filed.

Respectfully submitted,


Linda M. Wagoner

Certificate of Service

I certify that a copy of the foregoing was sent to:

Securities and Exchange Commission
500 W. Madison, Ste. 1400
Chicago, IL 60661

Dennis Zahn
700 Jefferson Plaza
One Virginia Ave.
Indianapolis, IN 46204

William Bock, III
Bank One Cetner/Circle
111 Monument Cir. #900
Indianapolis, IN 46204

by depositing in the United States Mail, postage prepaid this 31 day of
Aug, 2001.


Linda M. Wagoner

AFFIDAVIT OF KENNETH R. PAYNE

Under penalties for perjury, Kenneth R. Payne says:

1. He is the same Kenneth R. Payne named in a certain lawsuit pending in the Southern District of Indiana under Cause Number IP 00-1265-T/G.
2. He was served with a copy of the lawsuit at a time when he was represented by Attorney Fred Scott. He was aware that Mr. Scott filed no answer on his behalf.
3. In December, 2000, he was detained in the Marion County jail under order of this same court in cause number IP00-129-CR T/F. He had been detained since late September, 2000.
4. His arrest on IP00-129-CR T/F was a subject of local news; he has every reason to believe the parties in this lawsuit were aware of where he was located.
5. He was held in the Marion County Jail under "lockdown" conditions, by order of the United States Marshal. Those conditions included no access to telephones, no visitations and extremely limited access to the law library.
6. He was without funds with which to procure counsel to protect him at that time. His criminal case appointed attorneys were not appointed to perform activities in the civil cases and specifically declined to do so.
7. He prepared and filed, *pro se* responses to the civil complaints against him in IP 00-C-1265 T/G and IP 00-C-1629 T/G. The responses were hand-written on yellow legal-pad paper, written on both sides of the paper.
8. At that time, he had no access to a copy machine to make copies of those answers.
9. He placed both answers, in separate envelopes, into the jail mail system. He

address both envelopes to the "United States District Court, Ohio & Meridian Streets, Indianapolis, IN 46204" – or something close to that address.

10. The docket for IP 00-C-1629 reflects the filing of an answer December 13, 2000. It is evident that the envelope containing the document was sufficiently addressed for the document to reach it's designated destination.

11. He frequently mailed letters to various friends from the jail, sometimes mailing more than one letter to the same person on the same day. He knows, from correspondence with those recipients, that not all of his letters were received.

12. If mail were returned due to improper address or some other imperfection, he would receive no notice of the return. The Marion County jail does not deliver returned mail to the sender of the mail. He does not know what is done with such mail by the jail.

13. He does not know if his answer in IP 00-C-1265 T/G was lost in the mail or returned as undeliverable for some reason.

14. He was unaware that the answer had not been received by the Court until approximately August 23, 2001, when his current lawyer reviewed the file and informed him.

15. He feels he has legitimate answers and defenses to the matters set forth in the complaint.

16. He would like a reasonable opportunity to respond to the allegations of the complaint with his current lawyer.

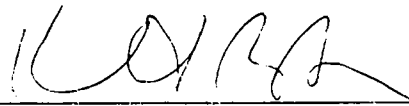
17. He is also aware, from correspondence with friends, that not all mail sent to him at the Marion County jail reached him.

18. On June 1, 2001, he was not in the Marion County Jail and received no notice of the Application for Default filed in this case.

I AFFIRM UNDER PENALTIES FOR PERJURY THAT ALL OF THE ABOVE
AVERMENTS ARE TRUE AND CORRECT TO MY BEST INFORMATION AND
BELIEF.

Dated: _____

August 31, 2001



Kenneth R. Payne