

OWNER OPERATOR INDEP ETAL V NEW PRIME INC ETAL (31103CC0015)

04/10/09

COUNSEL APPEAR. ARGUMENT HEARD ON PENDING SUMMARY JUDGMENT MOTIONS, ALL OF WHICH ARE TAKEN UNDER ADVISEMENT. JRB/TAW

04/14/09

JUDGMENT:

COURT REVIEWS MOST RECENT BRIEFS OF PARTIES. AFTER FURTHER CONSIDERATION, THE COURT RULES AS FOLLOWS ON THE PARTIES' MOTIONS FOR SUMMARY JUDGMENT:

- (1) THE COURT FINDS THAT SOME GENUINE ISSUES OF MATERIAL FACT EXIST PRECLUDING SUMMARY JUDGMENT ON THE BASIS OF JUDICIAL ESTOPPEL, INCLUDING THE POSITIONS TAKEN BY THE PARTIES IN THEIR FILINGS OR COMMUNICATIONS WITH THE WORKERS' COMPENSATION DIVISION (AS OPPOSED TO CORRESPONDENCE BETWEEN COUNSEL) AND, THE BENEFITS OR ADVANTAGES OBTAINED OR SOUGHT TO BE OBTAINED THEREBY. DEFENDANTS' MOTION IN THIS REGARD IS THUS DENIED.
- (2) AS TO DEFENDANTS' SEPARATE MOTIONS FOR SUMMARY JUDGMENT AS TO COUNT I (CONVERSION) AND COUNT III (MISREPRESENTATION) THE COURT FINDS NO GENUINE ISSUE OF MATERIAL FACT EXISTS PRECLUDING SUMMARY JUDGMENT AS TO SAID COUNTS AND SAID MOTIONS ARE SUSTAINED AND SAID CLAIMS ARE DISMISSED.
- (3) AS TO PLAINTIFFS' AMENDED / SUPPLEMENTAL MOTION FOR CLASS CERTIFICATION, WHICH PLAINTIFFS LIMITED TO COUNT I, SAID MOTION IS DENIED AS MOOT AND THE COURT OTHERWISE FINDS NO SUFFICIENT CHANGE OF CIRCUMSTANCE TO ALTER THE PRIOR RULING BY JUDGE SWEENEY OF 03/13/07.
- (4) THE COURT DENIES EACH OF PLAINTIFFS' PENDING MOTIONS FOR SUMMARY JUDGMENT.
- (5) THE COURT FURTHER EXPRESSLY DETERMINES THAT THERE IS NO JUST REASON FOR DELAY.

AT REQUEST OF BOTH LEAD COUNSEL ON 04/10/09, THE JURY TRIAL SCHEDULED FOR 05/11/09 IS CONTINUED. COUNSEL ARE REQUESTED TO

CONTACT THE DIVISION CLERK TO ARRANGE A SCHEDULING / PHONE  
CONFERENCE WITHIN 20 DAYS. COPY TO ALL COUNSEL. JRB/TAW